

**RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Joseph E. Strickland, Master-in-Equity, Judge

2012-213558

SCBT, N.A.

Respondent,

( v.

Sand Dollar 31, LLC, Rhonda  
Meisner, of whom Rhonda  
Meisner is Appellant

Appellant.

**RECORD ON APPEAL**

**RECEIVED**

OCT 16 2013

**SC Court of Appeals**

Rhonda Meisner, Appellant  
Post Office Box 689  
Blythewood, South Carolina 29016  
(803) 960-3696  
pegasus@nuvox.net

Teri Stomski, Esquire  
Rogers, Townsend and Thomas, PC  
220 Executive Center Drive  
Columbia, SC 29210

Jason Wyman  
Rogers, Townsend and Thomas, PC  
220 Executive Center Drive  
Columbia, South Carolina 29210  
(803) 771-7900  
Attorney for Respondent

RECEIVED

OCT 16 2013

SC Court of Appeals

Certificate of Appellant

---

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.

September 3, 2013



Rhonda L. Meisner, Appellant  
Post Office Box 689  
Blythewood, South Carolina 29016  
(803) 960-3696  
Appellant  
pegasus@nuvox.net

**CERTIFICATE OF COUNSEL RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable Joseph E. Strickland, Master-in-Equity

---

Appellate Case No. 2012-213558

SCBT, N.A.

Respondents,

v.

Sand Dollar 31, LLC; Rhonda  
Meisner, Defendants, of  
whom Rhonda Meisner is

Appellant.

---

**CERTIFICATE OF APPELLANT**

---

The undersigned certifies that this the Record on Appeal contains all records requested of any party and complies with Rule 211(b), SCACR.

October 23, 2013

Rhonda L. Meisner, Appellant  
Post Office Box 689  
Blythewood, South Carolina 29016  
pegasus@nuvox.net  
(803)960-3696

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N. A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner;

Defendant(s).

(016555-00040)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

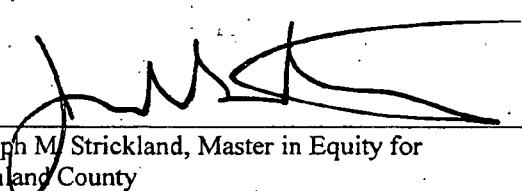
**ORDER DENYING DEFENDANT'S  
MOTION TO ALTER OR AMEND**  
(Pursuant to Rule 59(e), SCRC.P.)

FILED  
RICHLAND COUNTY  
2012 NOV -6 PM 4:58  
J. ELLIOTT W. MCBRIDE  
CLERK, C.P. & G.S.

This matter came before me on July 18, 2012 upon Defendants Sand Dollar 31, LLC and Rhonda Meisner's motion to alter or amend pursuant to SCRC.P. 59(e). Glenn Bowens, Esquire appeared on behalf of Defendants Sand Dollar 31, LLC and Rhonda Meisner, who was also present at the hearing. Teri K. Stomski, Esquire appeared on behalf of Plaintiff SCBT, N.A..

This Court has received and reviewed memorandum from counsel and reviewed all of the evidence submitted. After careful consideration of the record and arguments of counsel, this Court hereby denies Defendants' motion to alter or amend.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Joseph M. Strickland, Master in Equity for  
Richland County

Nov. 6, 2012  
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina B&T, NA

Plaintiff(s),

vs.

Sand Dollar 31, LLC

Defendant(s)

) **IN THE COURT OF COMMON PLEAS**

) **CASE NUMBER: 2011-CP-40-6317**

) **JR NO:**

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SUMMONS AND ORDER

OF

APPOINTMENT

Status Conference

JEANETTE W. McBRIDE  
Clerk, P. & G.S.

2012 OCT 18 AM 10:38

RICHLAND COUNTY  
FILED

BY VIRTUE of the Order of Reference filed in the above entitled case, I have appointed **November 6, 2012 at 4:00 o'clock pm** to Courtroom 2-D, Richland County Judicial Center, 1701 Main Street, Columbia, S.C., as the time and place for holding a hearing at which time and place all interested parties will appear. Continuance of this hearing will be granted only upon strict compliance with Rule 40(c), SCRCP.

Upon receipt of this Summons and Order, the Plaintiff(s) or moving party will notify this office immediately of any persons entitled to notice who have not been mailed a copy of this Summons and Order. All parties will please take notice of Rule 5(d), SCRCP.

If unliquidated damages are sought against a Defendant in Default, Plaintiff must give notice of time and place of this hearing pursuant to Rule 55, SCRCP. Additionally, it shall be the responsibility of the Plaintiff or moving party to comply with Rule 6, SCRCP. A copy of this notice must be filed with the Court by the date of the hearing.

**AND IT IS SO ORDERED.**

  
JOSEPH M. STRICKLAND, MASTER  
IN EQUITY FOR RICHLAND COUNTY

CC: Teri Kimball-Cullen Stomski, Esq.  
Samuel C. Waters, Esq.  
Richard R. Gleissner, Esq.  
Glen Bowens, Esq.  
Rhonda Meisner

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina B&T, NA

Plaintiff(s),

vs.

Sand Dollar 31, LLC

Defendant(s)

) **IN THE COURT OF COMMON PLEAS**  
) **CASE NUMBER: 2011-CP-40-6318**  
) **JR NO:**

SUMMONS AND ORDER  
OF  
APPOINTMENT  
Status Conference

2012 OCT 18 AM 10:39  
JANETTE W. HERRING  
C.P. & G.S.

RICHLAND COUNTY  
FILED

BY VIRTUE of the Order of Reference filed in the above entitled case, **I have appointed November 6, 2012 at 4:00 o'clock pm** to Courtroom 2-D, Richland County Judicial Center, 1701 Main Street, Columbia, S.C., as the time and place for holding a hearing at which time and place all interested parties will appear. Continuance of this hearing will be granted only upon strict compliance with Rule 40(c), SCRCP.

Upon receipt of this Summons and Order, the Plaintiff(s) or moving party will notify this office immediately of any persons entitled to notice who have not been mailed a copy of this Summons and Order. All parties will please take notice of Rule 5(d), SCRCP.

If unliquidated damages are sought against a Defendant in Default, Plaintiff must give notice of time and place of this hearing pursuant to Rule 55, SCRCP. Additionally, it shall be the responsibility of the Plaintiff or moving party to comply with Rule 6, SCRCP. A copy of this notice must be filed with the Court by the date of the hearing.

**AND IT IS SO ORDERED.**

  
JOSEPH M. STRICKLAND, MASTER  
IN EQUITY FOR RICHLAND COUNTY

CC: Teri Kimball-Cullen Stomski, Esq  
Samuel C. Waters, Esq.  
Richard R. Gleissner, Esq.  
Glen Bowens, Esq.  
Rhonda Meisner

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N. A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner;

Defendant(s).

(016555-00039)

Teri K. Stomski, Esquire  
Attorney for the Plaintiff

Glenn E. Bowens  
Attorney for the Defendants

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6318

JUDGMENT OF FORECLOSURE AND SALE  
Deficiency Judgment Demanded against Sand  
Dollar 31, LLC and Rhonda Meisner

JEANETTE M. NEBRIDE  
C.C.P. & G.S.

2012 MAY 16 AM 10:55

RICHLAND COUNTY  
FILED

A hearing was held April 25, 2012 at 10:00 am. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on September 22, 2011. The amended Lis Pendens was filed on September 27, 2011.
2. The Summons and Complaint were filed on September 22, 2011. The amended Summons and Complaint were filed on September 27, 2011.
3. Service was made upon all Defendant(s) as shown by the proof(s) of service filed herein.
4. The Defendant(s) Sand Dollar 31, LLC and Rhonda Meisner, answered and filed a counterclaim to which Plaintiff timely responded with an answer.
5. The Defendant(s) Rhonda Meisner, is not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit, certificate or order filed herein.
6. No Defendant raised any issues related to Plaintiff's standing to prosecute this

action.

7. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011 and this is not an owner-occupied dwelling.

8. All Pro Se Defendant(s) and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.

9. Sand Dollar 31, LLC for value received, made, executed and delivered a(n) Balloon Note dated July 24, 2006 promising thereby to pay to Plaintiff or its predecessor the sum of \$36,00.00 with interest at 8.5% per annum. Other terms and conditions are stated in the Balloon Note, of record herein.

10. To better secure the payment of the Balloon Note described above, Sand Dollar 31, LLC, made, executed, and delivered to a certain real estate Mortgage in writing, dated July 24, 2006 covering real property in Richland County, which is the same as that described in the Complaint. This Mortgage was filed on August 4, 2005, and is of record in the Office of RMC/ROD in Book 1214 at page 2023.

11. To better secure the payment of the Balloon Note described above Rhonda Meisner executed and delivered a Guaranty in favor of Plaintiff or its predecessor in interest, its successors and assigns dated July 24, 2006.

12. This Mortgage constitutes a Priority lien on the subject property, subject only to ad valorem taxes or other liens/taxes given priority by statute.

13. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

14. Any notice required by the terms of the Mortgage or by state or federal statutes has been given to the applicable defendant(s) prior to the commencement of this action.

15. Payment due on the Balloon Note has not been made as provided for therein, and the Plaintiff, as the holder or nominee for the holder, thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Balloon Note and Mortgage in the hands of the attorney herein for collection by foreclosure.

16. The sum of \$8,000.00 is a reasonable fee to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Balloon Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. The services of

counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel and their experience in handling foreclosure matters. The fee awarded herein is also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time. Plaintiff has advanced \$4,924.00 to its counsel as partial payment of the attorney fee and this amount appears in Plaintiff's advances.

17. According to Plaintiff's accounting, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Balloon Note, with interest at the rate provided in the Balloon Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney fee, all secured by the Balloon Note and Mortgage, is as follows:

|     |                                                                                                                                                                    |             |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| (a) | Principal due July 25, 2011 .....                                                                                                                                  | \$31,535.04 |
| (b) | Interest from December 25, 2010 through<br>April 25, 2012 at 8.5% per annum .....                                                                                  | \$2,270.83  |
| (c) | Allowable Advances (Escrow advances, corporate charges,<br>paid attorney fees, paid costs and expenses from the<br>foreclosure action, and/or other charges) ..... | \$6,263.60  |
| (d) | Outstanding Costs of collection prior to<br>hearing (service, filing, etc.) .....                                                                                  | \$0.00      |
| (e) | Title Abstract Search .....                                                                                                                                        | \$0.00      |
| (f) | Attorney fee (awarded herein, but unpaid) .....                                                                                                                    | \$3,0760.00 |
| (g) | Allowable Late Charges .....                                                                                                                                       | \$74.98     |

TOTAL debt secured by Balloon Note and Mortgage,  
including interest to date shown..... \$43,220.45

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 8.5% per annum (pursuant to the terms of the Balloon Note and Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

18. Plaintiff is seeking the usual foreclosure of the mortgage and has expressly

demanded the right to a personal or deficiency judgment pursuant to S.C. Code Ann. §29-3-660 demanded against Sand Dollar 31, LLC and Rhonda Meisner. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

19. The Plaintiff has alleged it is entitled to a declaratory judgment that the mobile home on the subject property is subject to its first mortgage lien as an improvement to the secured real property. The Defendant admitted the Plaintiff's allegations in their Answer and furthermore, the Plaintiff's allegations are supported by the evidence presented on its behalf. Based upon the above, I find the intent of the parties at the closing of the Plaintiff's first mortgage was for the mobile home to be subject to the lien of the Plaintiff's first mortgage, in addition to the raw land, as an improvement to the real property and I conclude, therefore, that the Plaintiff is entitled to a declaratory judgment that the mobile home is subject to the first lien of the Plaintiff's first mortgage.

20. Plaintiff is seeking to obtain reformation of the Deed as to correct the name of the Grantee on the Deed. The Defendants admitted Plaintiff's allegations seeking reformation of the grantee name in the deed and based on this and all evidence presented, I find the intended grantee name is Sand Dollar 31, LLC, and therefore Plaintiff is entitled to reformation of the deed to correct the Grantee's name.

21. The following Defendant(s) may claim a subordinate lien upon or subordinate legal interest in the subject property and in the event there is a surplus from the sale of the subject property, these Defendant(s) may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendant(s) and such liens or legal interests are as follows:

a. None

22. Plaintiff stipulated that it would not challenge a petition by Defendants Sand Dollar 31, LLC and/or Rhonda Meisner pursuant to SC Code §§29-3-660-29-3-760.

---

IT IS THEREFORE ORDERED:

23. There is due on the Balloon Note and Mortgage set forth in the Complaint the sum of \$43,220.45, as set out in the Findings of Fact supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

24. Pursuant to S.C. Code Ann. § 15-53-20. et seq. the Plaintiff is entitled to a

Declaratory Judgment that the mobile/manufactured home of Defendant(s) is an improvement to the property which is the subject of this action and is therefore subject to the lien of the Plaintiff's first mortgage. As such, any judicial sale of the subject property in this case shall include the mobile home as an improvement to the real property. Pursuant to S.C. Code Ann. § 56-19-390, following the sale, the South Carolina Department of Motor Vehicles, shall issue a Certificate of Title to the mobile/manufactured home to the successful purchaser, or its successors or assigns at the foreclosure sale.

25. The Subject Deed is hereby ordered reformed to correct the name of the Grantee to read as described in Paragraph 20 of this Judgment of Foreclosure and Sale, and the RMC/ROD is hereby directed to annotate the indices accordingly so as to give notice in the public records.

26. Plaintiff shall have judgment demanded against Sand Dollar 31, LLC and Rhonda Meisner. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

27. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and together with such interest shall constitute the total judgment debt due Plaintiff.

28. The amount of the judgment shall be subject to increase to permit Plaintiff to recover additional costs, commissions, and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorneys' services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs or supplemental compensation.

29. The Defendant(s) liable for the aforesaid judgment debt of the Balloon Note and Mortgage including interest at the rate of 8.5% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

30. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold by the below signed Master in Equity or Special Referee or other court-appointed or designated agent or auctioneer at public auction at the Richland County Courthouse, in the City of Columbia, and State of South Carolina on a sales day determined by the below signed Master in Equity or Special Referee, on the following terms:

- a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further

hearing and applied first to costs and expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 20 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

b. Interest on the balance of the bid after the deposit is applied shall be paid through the day of compliance at the note rate of 8.5%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions, and any other senior encumbrances.

d. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.

e. Purchaser to pay for deed preparation, costs of recording the deed and the satisfaction of mortgage, and transfer taxes on the deed.

f. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity or Special Referee.

31. Personal or deficiency judgment having been demanded, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Sec. 15-39-720 (1976).

32. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, of the South Carolina Rules of Civil Procedure, prior to sale

33. The Master in Equity will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms thereof within 30 days after date of sale, then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

34. If Plaintiff is the successful bidder at the said sale for a sum not exceeding the amount of costs and expenses of the sale, plus the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

35. The Master in Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this sale and to any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including a reasonable attorney fee) or so much thereof as the purchase money will pay on the same; After crediting the proceeds of sale, net of any commission on sale, an Order for Deficiency Judgment shall be entered without further notice or hearing.

NEXT: Any surplus should be held pending further Order of this court.

36. In the event the successful bidder is someone other than the Defendant(s) in possession of the subject property, the Sheriff of Richland County is ordered and directed to eject and remove from the property the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceable possession of said property without delay, and to keep said successful bidder or his assigns in such peaceable possession.

37. In the event the successful bidder is other than the Defendant(s) in possession of the subject property and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said property, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

38. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), is forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property so sold, or any part thereof.

39. In accordance with Rule 77(d), of the South Carolina Rules of Civil Procedure, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear in this action.

40. The deed of conveyance made pursuant to the foreclosure sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee. The Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

41. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

42. The following is a description of the property herein ordered to be sold:

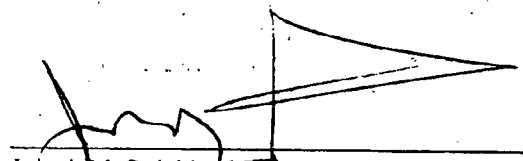
All that piece, parcel or tract of land, containing .22 acres, more or less, situate, lying and being on the Southwestern side of U.S. Highway No 321, about twelve miles North of the City of Columbia, in the County of Richland, State of South Carolina, being a part of the property shown and delineated on a plat prepared for Joseph C. Byrd, Jr. and Doris V. Byrd by R.E Collingwood, Jr., dated January 1, 1964 and recorded in the office of the Register of Deeds for Richland County in Plat Book "U" at page 90 and being more fully described on a plat prepared for Charles L. Duffie by Robert E. Collingwood, Jr. dated August 15, 1968 recorded December 2, 1968 in Plat Book 34 at Page 3, Office of the Register of Deeds for Richland County and according to said latter survey of the property having the following measurements and boundaries, to wit: On the North-east by U.S. Highway 321, and fronting thereon Eighty-five (85')...feet, then at right angles turning and running in a Southernly direction for On Hundred Fifty (154') feet to U.S. Highway 321.

All that piece, parcel or lot of land, containing .051 acres, more or less, situate, lying and being on the Southwestern side of U.S. Highway No. 321, about twelve miles North of the City of Columbia, in the County of Richland, State of South Carolina, being the identical property shown and delineated on a plat prepared for Charles L. Duffie by Henry 2. Duffie, Jr., Registered Land Surveyor dated the 9th day of April 1976, the said property being bounded on the Northeast by U.S Highway No. 321, and fronting thereon fifteen (15') feet; then turning at right angles and running in a southerly direction for One hundred forty-eight and five-tenths (148.5') feet; then turning at a right angles and running in an easterly direction for fifteen (15') feet; then turning and running at right angles in a northeasterly direction for a distance of one hundred fifty (50') feet to the point of commencement.

This is the property conveyed to Sand Dollar 31, LLC by deed of Charles L. Duffie dated March 1, 2006, recorded March 3, 2006 in Record Book 1157 at page 3375.

TMS: 10100-01-012

Property Address: 8391 Winnsboro Road  
Blythewood, SC 29016



Joseph M. Strickland  
Master in Equity

May 14, 2012  
Columbia, South Carolina

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

FORM 4

JUDGMENT IN CIVIL CASE

CASE NO. 11-CP-40-6318

SCBT, N. A.

Sand Dollar 31, LLC; Rhonda Meisner;

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:  
Teri K. Stomski (SC Bar#65250)  
Attorneys for the Plaintiff  
Rogers Townsend & Thomas, PC  
220 Executive Center Drive, Suite 109  
Post Office Box 100200  
Columbia, SC 29202  
(803) 771-7900  
(803) 343-7013 - Fax  
info@rtt-law.com

Attorney for : ☒ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: \_\_\_\_\_

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

As required by statute, a foreclosure sale has been or will be scheduled, which will officially end the case. Also, if a deficiency judgment remains demanded, a separate Order for Deficiency Judgment will be entered at the completion of the foreclosure sale.

INFORMATION FOR THE JUDGMENT INDEX

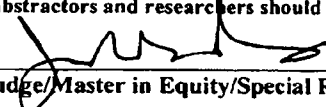
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| SCBT, NA                                     | Sand Dollar 31, LLC                      | \$43,220.45                                              |
| SCBT, NA                                     | Rhonda Meisner                           | \$43,220.45                                              |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

TMS: 10100-01-012  
8391 Winnsboro Road  
Blythewood, SC, 29016

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

  
Circuit Court Judge/Master in Equity/Special Referee

2097  
Judge Code

5/18/12  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 16<sup>th</sup> day of May, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

Teri K. Stomski (SC Bar #65250)

Rogers Townsend & Thomas, PC

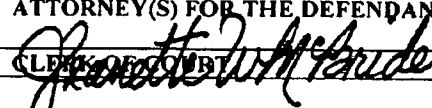
P.O. Box 100200

Columbia, SC 29202-3400

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

016555-00039

**ATTORNEY(S) FOR THE DEFENDANT(S)**

  
~~CLERK OF COURT~~

Sand Dollar 31, LLC

Rhonda Meisner

**Court Reporter:**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N. A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner;

Defendant(s).

(016555-00040)

Teri K. Stomski, Esquire  
Attorney for the Plaintiff

Glenn E. Bowens  
Attorney for the Defendants

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

JUDGMENT OF FORECLOSURE AND SALE  
Deficiency Judgment Demanded against Sand  
Dollar 31, LLC and Rhonda Meisner

RICHLAND COUNTY  
FILED  
2012 MAY 16 AM 10:54  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

A hearing was held April 25, 2012 at 10:00 am. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on September 22, 2011. The amended Lis Pendens was filed on September 27, 2011.
2. The Summons and Complaint were filed on September 22, 2011. The amended Summons and Complaint were filed on September 27, 2011.
3. Service was made upon all Defendant(s) as shown by the proof(s) of service filed herein.
4. The Defendant(s) Sand Dollar 31, LLC and Rhonda Meisner, answered and filed a counterclaim to which Plaintiff timely responded with an answer.
5. The Defendant(s) Rhonda Meisner, is not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit, certificate or order filed herein.
6. No Defendant raised any issues related to Plaintiff's standing to prosecute this

action.

7. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011 and this is not an owner-occupied dwelling.

8. All Pro Se Defendant(s) and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.

9. Sand Dollar 31, LLC for value received, made, executed and delivered a(n) Balloon Note dated July 24, 2006 promising thereby to pay to Plaintiff or its predecessor the sum of \$31,140.00 with interest at 8.5% per annum. Other terms and conditions are stated in the Balloon Note, of record herein.

10. To better secure the payment of the Balloon Note described above, Sand Dollar 31, LLC, made, executed, and delivered to a certain real estate Mortgage in writing, dated July 24, 2006 covering real property in Richland County, which is the same as that described in the Complaint. This Mortgage was filed on August 16, 2006, and is of record in the Office of RMC/ROD in Book 1218 at page 2100.

11. To better secure the payment of the Balloon Note described above Rhonda Meisner executed and delivered a Guaranty in favor of Plaintiff or its predecessor in interest, its successors and assigns dated July 24, 2006.

12. This Mortgage constitutes a Priority lien on the subject property, subject only to ad valorem taxes or other liens/taxes given priority by statute.

13. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

14. Any notice required by the terms of the Mortgage or by state or federal statutes has been given to the applicable defendant(s) prior to the commencement of this action.

15. Payment due on the Balloon Note has not been made as provided for therein, and the Plaintiff, as the holder or nominee for the holder, thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Balloon Note and Mortgage in the hands of the attorney herein for collection by foreclosure.

16. The sum of \$6,000.00 is a reasonable fee to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Balloon Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. The services of

counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel and their experience in handling foreclosure matters. The fee awarded herein is also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time. Plaintiff has advanced \$3,321.00 to its counsel as partial payment of the attorney fee and this amount appears in Plaintiff's advances.

17. According to Plaintiff's accounting, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Balloon Note, with interest at the rate provided in the Balloon Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney fee, all secured by the Balloon Note and Mortgage, is as follows:

|     |                                                                                                                                                                    |             |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| (a) | Principal due November 30, 2010.....                                                                                                                               | \$48,698.20 |
| (b) | Interest from October 31, 2010 through<br>April 25, 2012 at 8.5% per annum .....                                                                                   | \$6,237.50  |
| (c) | Allowable Advances (Escrow advances, corporate charges,<br>paid attorney fees, paid costs and expenses from the<br>foreclosure action, and/or other charges) ..... | \$4303.80   |
| (d) | Outstanding Costs of collection prior to<br>hearing (service, filing, etc.).....                                                                                   | \$0.00      |
| (e) | Title Abstract Search.....                                                                                                                                         | \$0.00      |
| (f) | Attorney fee (awarded herein, but unpaid).....                                                                                                                     | \$2,679.00  |
| (g) | Taxes .....                                                                                                                                                        | \$1,681.42  |
| (h) | Allowable Late Charges .....                                                                                                                                       | \$135.00    |

|                                                                                           |             |
|-------------------------------------------------------------------------------------------|-------------|
| TOTAL debt secured by Balloon Note and Mortgage,<br>including interest to date shown..... | \$63,734.92 |
|-------------------------------------------------------------------------------------------|-------------|

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 8.5% per annum (pursuant to the terms of the Balloon Note and Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

18. Plaintiff is seeking the usual foreclosure of the mortgage and has expressly demanded the right to a personal or deficiency judgment pursuant to S.C. Code Ann. §29-3-660 demanded against Sand Dollar 31, LLC and Rhonda Meisner. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale..

19. Plaintiff is seeking to obtain reformation of the Deed as to correct the name of the Grantee on the Deed. The Defendants admitted Plaintiff's allegations seeking reformation of the grantee name in the deed. Based on this and all evidence presented, I find the intended grantee name is Sand Dollar 31, LLC, and therefore Plaintiff is entitled to reformation of the deed to correct the Grantee's name.

20. The following Defendant(s) may claim a subordinate lien upon or subordinate legal interest in the subject property and in the event there is a surplus from the sale of the subject property, these Defendant(s) may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendant(s) and such liens or legal interests are as follows:

a. None

21. Plaintiff stipulated that it would not challenge a petition by Defendants Sand Dollar 31, LLC and/or Rhonda Meisner pursuant to SC Code §§29-3-660-29-3-760.

---

IT IS THEREFORE ORDERED:

22. There is due on the Balloon Note and Mortgage set forth in the Complaint the sum of \$63,734.92, as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

23. The Subject Deed is hereby ordered reformed to correct the name of the Grantee to read as described in Paragraph 19 of this Judgment of Foreclosure and Sale, and the RMC/ROD is hereby directed to annotate the indices accordingly so as to give notice in the public records.

24. Plaintiff shall have judgment demanded against Sand Dollar 31, LLC and Rhonda Meisner. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

25. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and

together with such interest shall constitute the total judgment debt due Plaintiff.

26. The amount of the judgment shall be subject to increase to permit Plaintiff to recover additional costs, commissions, and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorneys' services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs or supplemental compensation.

27. The Defendant(s) liable for the aforesaid judgment debt of the Balloon Note and Mortgage including interest at the rate of 8.5% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

28. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold by the below signed Master in Equity or Special Referee or other court-appointed or designated agent or auctioneer at public auction at the Richland County Courthouse, in the City of Columbia, and State of South Carolina on a sales day determined by the below signed Master in Equity or Special Referee, on the following terms:

a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 20 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

b. Interest on the balance of the bid after the deposit is applied shall be paid through the day of compliance at the note rate of 8.5%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions, and any other senior encumbrances.

d. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.

e. Purchaser to pay for deed preparation, costs of recording the deed and the satisfaction of mortgage, and transfer taxes on the deed.

f. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity or

Special Referee.

29. Personal or deficiency judgment having been demanded, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Sec. 15-39-720 (1976).

30. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, of the South Carolina Rules of Civil Procedure, prior to sale

31. The Master in Equity will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms thereof within 30 days after date of sale, then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

32. If Plaintiff is the successful bidder at the said sale for a sum not exceeding the amount of costs and expenses of the sale, plus the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

33. The Master in Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this sale and to any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including a reasonable attorney fee) or so much thereof as the purchase money will pay on the same; After crediting the proceeds of sale, net of any commission on sale, an Order for Deficiency Judgment shall be entered without further notice or hearing.

NEXT: Any surplus should be held pending further Order of this court.

34. In the event the successful bidder is someone other than the Defendant(s) in possession of the subject property, the Sheriff of Richland County is ordered and directed to eject and remove from the property the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceable possession of said property without delay, and to keep said successful bidder or his assigns in such peaceable possession.

35. In the event the successful bidder is other than the Defendant(s) in possession of the subject property and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said property, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to

the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

36. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), is forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property so sold, or any part thereof.

37. In accordance with Rule 77(d), of the South Carolina Rules of Civil Procedure, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear in this action.

38. The deed of conveyance made pursuant to the foreclosure sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee. The Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

39. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

40. The following is a description of the property herein ordered to be sold:

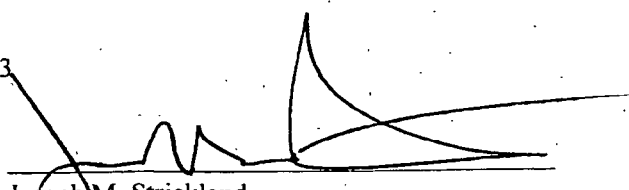
All that certain piece, parcel or lot of land with improvements thereon situate, lying and being on the eastern side of Linden Street, in or near the Town of Eau Claire in the County of Richland, State of South Carolina; said lot being composed of and embracing Lot No. 12, 13 and 14 in Block 6 upon a plat of College View Subdivision, prepared by surveyors Clodfelder and Schisler, dated August-September, 1927 and recorded in Plat Book F at page 24. TMS# 09313-03-21.

This being the same property conveyed to Sand Dollar 31, LLC by that deed of Master of Equity for Richland County by deed dated July 20, 2006 and recorded August 2, 2006 in Record Book 1213 at page 554

TMS: 09313-03-21

Property Address:

4824 Linden Street  
Columbia, SC 29203



Joseph M. Strickland  
Master in Equity

May 14, 2012  
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff(s)

vs.

Sand Dollar 31, LLC; Rhonda Meisner

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP-40-631

Submitted By: Teri K. Stomski (SC Bar # 65250)  
Attorney for the Plaintiff  
016555-00040

Rogers Townsend & Thomas, PC  
220 Executive Center Drive, Suite 109, Post Office Box 100200  
Columbia, SC 29202  
(803) 771-7900 (803) 343-7013 - Fax info@rttsc.com

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. ☒ NON-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

- ☐ Construction (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)  
☐ Previous Notice of Intent Case #  
20\_\_-CP-\_\_\_\_\_  
☐ 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)

- ☐ 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)  
☐ Transfer of Structured  
Settlement Payment Rights  
Application (760)  
☐ 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)  
☐ 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 Deposition (650)  
☐ Motion to Quash Subpoena in  
An Out-of-County Action (660)  
☐ Sexual Predator (510)

Submitting Party Signature:

Date:

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

SCANNED

**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code § 15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals;
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

016555-00039

**Please Note:** You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

RICHLAND COUNTY

SCBT, N.A.,

Plaintiff

vs.

Sand Dollar 31, LLC; Rhonda Meisner

Defendant.

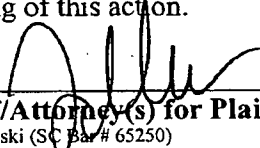
IN THE CIRCUIT COURT FOR THE  
FIFTH  
JUDICIAL CIRCUIT

CERTIFICATE OF EXEMPTION  
FROM ADR

DOCKET NO. 11-CP-40-6317

I certify that this action is exempt from ADR because:

- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus or prohibition;
- ☐ this action is appellate in nature;
- ☐ this is a post-conviction relief matter;
- ☐ this is a contempt of court proceeding;
- ☐ this is forfeiture proceeding brought by the State;
- ☒ this is a case involving a mortgage foreclosure; or
- ☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

  
\_\_\_\_\_  
Plaintiff/Attorney(s) for Plaintiff(s)  
Teri K. Stomski (SC Bar # 65250)

Rogers Townsend & Thomas, PC  
220 Executive Center Drive, Suite 109  
Post Office Box 100200  
Columbia, SC 29202  
(803) 771-7900

\_\_\_\_\_  
Defendant/Attorney(s) for Defendant(s)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: September 27, 2011

016555-00040

RICHLAND COUNTY  
FILED  
2011 SEP 29 PM 8:36  
JEANETTE M. McBRIDE  
C.C.P. & G.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner

Defendant(s).

(016555-00040)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

FIRST AMENDED  
SUMMONS AND NOTICES  
(NON-JURY)  
COMMERCIAL FORECLOSURE OF REAL  
ESTATE MORTGAGE  
Deficiency Judgment Demanded

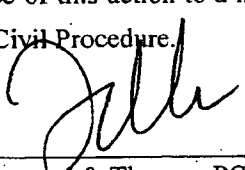
2011 SEP 27 PM 8:36  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

RICHLAND COUNTY  
FILED

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

  
Rogers Townsend & Thomas, PC  
ATTORNEY FOR PLAINTIFF

Teri K. Stomski (SC Bar # 65250)  
220 Executive Center Drive  
Columbia, SC 29210

Post Office Box 100200 (29202)  
(803) 771-7900

Columbia, South Carolina  
September 27, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner

Defendant(s).

(016555-00040)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

FIRST AMENDED  
COMPLAINT

(NON-JURY)

FORECLOSURE OF COMMERCIAL REAL  
ESTATE MORTGAGE  
Deficiency Judgment Demand

JEANETTE W. MCBRIDE  
Clerk of Court  
S.C. P. & G.S.

2011 SEP 27 PM 8:36

RICHLAND COUNTY  
FILED

Plaintiff alleges:

1. This is an action for the foreclosure of a commercial mortgage upon certain real estate in Richland County, South Carolina, and for entry of judgment(s) for breach of a promissory note and breach of a guaranty payment.

2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.

3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

4. This action involves the foreclosure of a commercial loan secured by a non-owner-occupied dwelling and is not subject to the Home Affordable Modification Program ("HMP") for residential loans owned, securitized, or guaranteed by the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("FHLMC") or any other section of the Making Home Affordable Program.

5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

6. The Defendant(s) herein described as judgment creditors, if any, have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the

provisions of South Carolina Code Section 15-35-840.

7. Heretofore, for value received, on or about July 24, 2006, Sand Dollar 31, LLC made, executed and delivered a certain promissory note ("Original Note") in the principal sum of \$31,140.00, together with interest therein from that date at the rate specified in the promissory note. On July 31, 2007, Borrower executed and delivered to South Carolina Bank and Trust, N.A. a Note in writing, according to the terms and conditions set out therein, which amended certain terms of the Original Note (the "First Amendment"). Thereafter South Carolina Bank & Trust N.A. changed its name to SCBT, N.A. The Original Note and the First Amendment are referred to herein collectively as the "Note". A copy of the Note, including all amendments thereto, is attached hereto, incorporated by reference, and marked as Exhibit "A".

8. In order to secure the payment of the Note according to the terms and conditions thereof, Sand Dollar 31, LLC made, executed and delivered unto South Carolina Bank and Trust, N.A. n/k/a SCBT, N.A., a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property:

All that certain piece, parcel or lot of land with improvements thereon situate, lying and being on the eastern side of Linden Street, in or near the Town of Eau Claire in the County of Richland, State of South Carolina; said lot being composed of and embracing Lot No. 12, 13 and 14 in Block 6 upon a plat of College View Subdivision, prepared by surveyors Clodfelder and Schisler, dated August-September, 1927 and recorded in Plat Book F at page 24. TMS# 09313-03-21.

This being the same property conveyed to Sand Dollar 31, LLC by that deed of Master of Equity for Richland County by deed dated July 20, 2006 and recorded August 2, 2006 in Record Book 1213 at page 554

TMS: 09313-03-21

9. The Mortgage was signed, witnessed and probated July 24, 2006; thereafter, the Mortgage was recorded in the Office of the RMC/ROD for Richland County on August 16, 2006, in Mortgage Book 1218 at Page 2100. A copy of the Mortgage is attached hereto, incorporated by reference herein and marked as Exhibit "B".

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the mortgaged premises.

11. In order to better secure payment and performance of the said Note and Mortgage, and also as a condition of Plaintiff, or Plaintiff's predecessor in interest, agreeing to extend the loan to the Borrower, Defendant Rhonda Meisner executed and delivered a Guaranty in favor of Plaintiff, or Plaintiff's predecessor in interest, its successors and assigns, dated July 24, 2006, absolutely and

unconditionally guaranteeing the payment of the entire indebtedness under the terms of the Note (the "Guaranty"). A copy of the Guaranty is attached hereto, incorporated by reference herein and marked as **Exhibit "C"**.

12. The Note, Mortgage and Guaranty are collectively referred to herein as the "Loan Documents".

13. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default, and the conditions of the Loan Documents have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due the principal sum of \$48,698.20, with interest, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

**FOR A FIRST CAUSE OF ACTION**  
**(Reformation of the Deed)**

14. Plaintiff hereby reiterates all of the foregoing allegations fully as if set forth verbatim, and which are incorporated herein by reference.

15. Heretofore, on or about July 24, 2006, Sand Dollar 31, LLC, made, executed and delivered a certain Balloon Note ("Note") in the original principal sum of \$31,140.00, payable in monthly installments of principal and interest.

16. In order to secure the payment of the Note according to the terms and conditions thereof, Sand Dollar 31, LLC made, executed and delivered unto South Carolina Bank and Trust, N.A. a certain real estate Mortgage covering the previously described property and any and all improvements to the property.

17. The Mortgage was signed, witnessed and probated July 24, 2006; thereafter, the Mortgage was recorded in the Office of the RMC/ROD for Richland County on August 16, 2006, in Mortgage Book 1218 at Page 2100.

18. The Borrower acquired the property securing the aforementioned mortgage by deed dated July 20, 2006 and recorded in Record Book 1213 at Page 554, in the Office of the Register of Deeds for Richland County, South Carolina.

19. The grantee name as shown on said deed is defective.

20. Through inadvertence or mistake, a space in between "Sand" and "Dollar" in the intended grantee name of "Sand Dollar 31, LLC" was omitted from the recorded Deed. Upon review of the recorded documents related to the subject property and the records of the South Carolina Secretary of State, Plaintiff is informed and believes that the grantee name should read as follows: Sand Dollar 31, LLC.

21. Plaintiff is informed and believes that it is entitled to reformation of the Deed to correct the Grantee's name on the Deed to read as described in Paragraph 20 above.

**FOR A SECOND CAUSE OF ACTION**  
**(Against Defendant Sand Dollar 31, LLC)**  
**(Foreclosure of Mortgage and Deficiency Judgment)**

22. Plaintiff hereby reiterates all of the foregoing allegations fully as if set forth verbatim, and which are incorporated herein by reference.

23. That according to the terms and conditions of the Note, it is provided that, in the event of default in the payment of any installment when due, or in the event of default under the Mortgage, the unpaid principal balance of the Note, all unpaid accrued interest and all other indebtedness or charges secured or to be secured by the Mortgage, may be declared by the holder immediately due and payable.

24. Pursuant to the Loan Documents, the unpaid principal balance of the Note, all unpaid accrued interest and all other indebtedness or charges secured or to be secured by the Mortgage, has been declared by the Plaintiff immediately due and payable.

25. Plaintiff has made demand upon Borrower for immediate payment in full of the total amount then due and owing on the Note, in response to which Borrower failed to provide payment in full.

26. The Mortgage provides that if Plaintiff institutes any suit or action to enforce any of the terms of the Mortgage, Plaintiff shall be entitled to recover all costs and expenses incurred by Plaintiff, including but not limited to attorney's fees, court costs and other legal expenses.

27. Plaintiff has been or may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

28. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

29. Plaintiff has the right to seek a deficiency judgment against the Borrower, Defendant Sand Dollar 31, LLC. That in the event that the net amount realized by the Plaintiff upon the sale of the subject property is insufficient to pay in full the total indebtedness of the Plaintiff, including costs of collection, the Plaintiff demands a personal judgment against said Defendant in the amount of such deficiency.

**FOR A THIRD CAUSE OF ACTION**  
**(Against Defendant Sand Dollar 31, LLC)**  
**(Breach of Contract)**

30. Plaintiff hereby reiterates all of the foregoing allegations fully as if set forth verbatim, and which are incorporated herein by reference.

31. Plaintiff made demand upon Borrower for immediate payment in full of the total amount then due and owing on the Note, in response to which Borrower failed to provide payment in full.

32. It has become and is necessary for the Plaintiff to employ legal counsel to prosecute this action, and that the fee for the services of the Plaintiff's counsel should, according to the terms of the Note, be added to the amount of the debt.

33. There is currently due and owing on the Note the principal sum of \$48,698.20, with interest from and after the date of default, at the rate or rates, as provided in the Note, as well as all accrued and unpaid interest, all costs of collection, including, but not limited to, reasonable attorneys' fees and court costs; and Plaintiff is entitled to judgment against Borrower in that amount.

**FOR A FOURTH CAUSE OF ACTION**  
**(Against Defendant Rhonda Meisner)**  
**(Breach of Personal Guaranty)**

34. Plaintiff hereby reiterates all of the foregoing allegations fully as if set forth verbatim, and which are incorporated herein by reference.

35. According to the terms of the Guaranty, Defendant **Rhonda Meisner** irrevocably, absolutely and unconditionally guaranteed to Plaintiff the full payment and prompt performance of each and every obligation of the Borrower, and agreed to pay upon demand all of the principal amount of the Note, interest thereon and all collection costs, expenses, and reasonable attorney's fees.

36. Guarantor agreed that the Guaranty would continue in full force until all indebtedness of the Borrower under the terms of the Loan Documents shall have been fully and finally paid and satisfied, and all of Guarantor's obligations under the Guaranty had been performed in full.

37. Pursuant to the terms of the Guaranty, Plaintiff is not required to resort for payment, or to proceed directly against any person or entity, including Borrower.

38. Plaintiff has made demand upon Guarantor for immediate payment in full of the total amount then due and owing on the Note, in response to which Guarantor failed to provide payment in full.

39. There is currently due and owing on the Note the principal sum of \$48,698.20 with interest from and after the date of default, at the rate or rates, as provided in the Note, as well as all

accrued and unpaid interest, all costs of collection, including, but not limited to, reasonable attorney's fees and court costs; and Plaintiff is entitled to judgment against Guarantor in that amount.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein and:

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

(3) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(4) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

First, to the costs and expenses of the within action and sale;

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

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(6) Issue an order directing the Sheriff of Richland County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

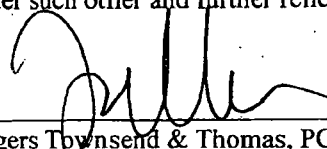
(7) On the First Cause of Action, for an order granting Plaintiff reformation of the Deed to correct the grantee name as set forth herein; and

(8) On the Second Cause of Action, for an order granting the Plaintiff a deficiency judgment against Defendant Sand Dollar 31, LLC, in the event that the proceeds of the sale of the mortgaged property are insufficient to pay in full the indebtedness, including costs of collection;

(9) On the Third Cause of Action a judgment against Borrower in the amount set forth above;

(10) On the Fourth Cause of Action, for an order granting Plaintiff a judgment against Guarantors in the amount set forth above, less any sums which Plaintiff may recover from Borrower on the Note; and

(11) Order such other and further relief as may be just and proper.



---

Rogers Townsend & Thomas, PC

ATTORNEY FOR PLAINTIFF

Teri K. Stomski (SC Bar # 65250)

220 Executive Center Drive  
Columbia, SC 29210

Post Office Box 100200 (29202)  
(803) 771-7900

Columbia, South Carolina  
September 27, 2011

## EXHIBIT A

SAND DOLLAR 31, LLC  
CHESTER ROAD  
LYTHEWOOD, SC 29016

SOUTH CAROLINA BANK AND TRUST, NA  
950 JOHN C CALHOUN DRIVE  
PO BOX 8007  
ORANGEBURG, SC 29115

RESP CODE 526

Loan Number

Date 07-24-2006

Maturity Date 07-15-2007

Loan Amount \$ 31,140.00

Renewal Of

BORROWER'S NAME AND ADDRESS  
"I" includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS  
"You" means the lender, its successors and assigns.

or value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of THIRTY ONE THOUSAND ONE HUNDRED Dollars \$ 31,140.00

THIRTY AND NO/100 No additional advances are contemplated under this note.

Single Advance: I will receive all of this principal sum on 07-24-2006.  
Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On 07-24-2006 I will receive the amount of \$ 31,140.00 and future principal advances are contemplated.

Conditions: The conditions for future advances are

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on 07-24-2006.  
☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 07-24-2006 at the rate of 8.500% per year until 07-15-2007.

☐ Variable Rate: This rate may then change as stated below. the following index rate:  
☐ Index Rate: The future rate will be

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ Frequency and Timing: The rate on this note may change as often as 12 months or less than 12 months.

A change in the interest rate will take effect 12 months or less than 12 months.  
☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than 12 % or less than 12 % each 12 months.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:  
☐ The amount of each scheduled payment will change.  
☐ The amount of the final payment will change.

ACCUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.  
POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).  
☐ at a rate equal to 10 % days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MIN OF \$25.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:  
11 MONTHLY INTEREST PAYMENTS RANGING FROM \$161.76 TO \$227.93 BEGINNING 08-15-2006 AND 1 PAYMENT OF \$31,360.58 ON 07-15-2007.

ADDITIONAL TERMS:

DATE 08-10-2006

☒ SECURITY: This note is separately secured by (describe separate document by type and date): REAL ESTATE MORTGAGE DATED 07-24-2006

(This section is for your internal use. Failure to file a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

ANNE WILSON, PRIVATE BANKER

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

SAND DOLLAR 31, LLC  
Rhonda Meisner  
RHONDA MEISNER, MEMBER

agreement. No monetary consideration shall be paid to you for this agreement. Time is of the essence of this agreement. I understand and agree that I am not entitled to any COMMISSIONS OR OTHER REMUNERATION; I understand and agree that any insurance premiums paid to insurance companies as part of this note will involve money retained by you or paid back to you as commissions or other remuneration. I understand and agree that some other payments to third parties may be retained by you or paid back to you as commissions or other remuneration.

In addition, I understand and agree that some other payments to third parties as part of this note may also involve money retained by you or other remuneration.

[illegible][illegible]

**ACCRUAL METHOD:** The amount of interest that I will pay on this loan or class of loans to me or other borrowers, will be calculated using the interest rate and accrual method stated on page 1 of this note. For the purpose of interest calculation, the accrual method will determine the number of days in a "year." If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

[illegible]

then you may treat those payments first as payments on the unpaid principal under this note, or you may treat them as payments of the charges.

SET-OFF: I agree that you may set off any amount due and payable to you from any money from you" means:

(1) any deposit account balance I have with you;

amount of which you are entitled to receive. This total includes any balance  
this note at the time you set off. This total includes any balance  
date for which you properly accelerate under this note.

interest in the company. Your right of sale, my sale request or endorsement, where my rights are on account or other obligation where my rights are representative. It also does not apply to any individual deferred retirement account.

occurs because you are not entitled to hold you harmless from any such claims arising out of your right of set-off. This note is sec

and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest, and to the extent not prohibited by law and not contrary to the interest and to the separate security instrument, by the "Default" and terms of the separate security instrument.

"Remedies" paragraphs herein.

[illegible]

REMEDIES: If I am in default on this note you may demand immediate payment of all I owe you under this note and other accounts.

(1) You may demand immediate payment of the principal, accrued unpaid interest and other charges.

(2) You may set off this debt against any right or claim of money from you, subject to the terms of the paragraph herein.

(3) You may demand security, additional security, or other remedy.

(4) You may refuse to make advances to the credit by me.

(5) You may use any remedy. By selecting any one or more of these remedies you do not waive your right to later use any other remedy. By waiving your right to later consider any remedy, you do not waive your right to later consider

In addition, if you hire an attorney to collect any fee you incur with such attorney plus court costs (except prohibited by law). To the extent permitted by the United Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER: I give up my rights to require you to be careful and require you to:

- (1) demand payment of amounts due (protest); or
- (2) obtain official certification of nonpayment (protest); or
- (3) give notice that amounts due have not been paid (protest dishonor).

**OBLIGATIONS INDEPENDENT:** I understand that I must pay the collateral.

[illegible]

pay this loan. INFORMATION: I agree to provide you, upon request, with any information you may deem necessary.

FINANCIAL INFORMATION: I agree to provide you with the financial statement or information I deem necessary, and I agree that the financial statements and information I provide to you be accurate, correct and complete. I agree to provide you with any notice to me, otherwise required by law, by first class mail, address change.

[illegible]

**ONLY USE THIS FORM TO REQUEST IMMEDIATE POSSESSION:**

WAIVER OF HEARING PRIOR TO IMMEDIATE SEIZURE OF PROPERTY. I agree that if the seizure of my property is for a business purpose I agree to waive the right to live and a pre-seizure hearing prior to seizure of any personal property and to accept this loan.

| DATE OF TRANSACTION | PRINCIPAL ADVANCE | BORROWER'S INITIALS<br>(next to square) | PRINCIPAL PAYMENTS | PRINCIPAL BALANCE | INTEREST RATE | INTEREST PAYMENTS | INTEREST PAID THROUGH: |
|---------------------|-------------------|-----------------------------------------|--------------------|-------------------|---------------|-------------------|------------------------|
|                     |                   |                                         |                    | \$                | % \$          |                   |                        |
|                     | \$                |                                         | \$                 | \$                | % \$          |                   |                        |
|                     | \$                |                                         | \$                 | \$                | % \$          |                   |                        |
|                     | \$                |                                         | \$                 | \$                | % \$          |                   |                        |
|                     | \$                |                                         | \$                 | \$                | % \$          |                   |                        |
|                     | \$                |                                         | \$                 | \$                | % \$          |                   |                        |
|                     | \$                |                                         | \$                 | \$                | % \$          |                   |                        |
|                     | \$                |                                         | \$                 | \$                | % \$          |                   |                        |
|                     | \$                |                                         | \$                 | \$                | % \$          |                   |                        |
|                     | \$                |                                         | \$                 | \$                | % \$          |                   |                        |
|                     | \$                |                                         | \$                 | \$                | % \$          |                   |                        |
|                     | \$                |                                         | \$                 | \$                | % \$          |                   |                        |
|                     | \$                |                                         | \$                 | \$                | % \$          |                   |                        |
|                     | \$                |                                         | \$                 | \$                | % \$          |                   |                        |
|                     | \$                |                                         | \$                 | \$                | % \$          |                   |                        |

(page 2 of 2)

SAND DOLLAR 31, LLC  
ONE CHESTER ROAD  
BLYTHEWOOD, SC 29018

SOUTH CAROLINA BANK AND TRUST, NA  
950 JOHN C CALHOUN DRIVE  
PO BOX 9007  
ORANGEBURG, SC 29115

RESP CODE 526

Loan Number

Date 07-31-2007

Maturity Date 07-31-2012

Loan Amount \$ 50,000.00

Renewal Of 10/2/08

BORROWER'S NAME AND ADDRESS

"I" includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS

"You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of FIFTY THOUSAND AND NO/100 Dollars \$ 50,000.00

☒ Single Advance: I will receive all of this principal sum on 07-31-2007. No additional advances are contemplated under this note.

☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On \_\_\_\_\_ I will receive the amount of \$ \_\_\_\_\_ and future principal advances are contemplated.

Conditions: The conditions for future advances are \_\_\_\_\_

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on \_\_\_\_\_

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions). \_\_\_\_\_ at the rate of 8.500%

INTEREST: I agree to pay interest on the outstanding principal balance from 07-31-2007 per year until 07-31-2012

☐ Variable Rate: This rate may then change as stated below.

☐ Index Rate: The future rate will be \_\_\_\_\_ the following index rate: \_\_\_\_\_

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ Frequency and Timing: The rate on this note may change as often as \_\_\_\_\_ A change in the interest rate will take effect \_\_\_\_\_ % or less than \_\_\_\_\_

☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than \_\_\_\_\_ % each \_\_\_\_\_ % The rate may not change more than \_\_\_\_\_ % each \_\_\_\_\_

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:  
☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☐ \_\_\_\_\_ basis.

ACCUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.  
POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to \_\_\_\_\_ days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MIN OF \$25.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

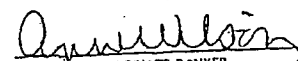
PAYMENTS: I agree to pay this note as follows:  
59 MONTHLY PAYMENTS OF \$437.89 BEGINNING 08-31-2007 AND 1 BALLOON PAYMENT OF \$44,582.33 ON 07-31-2012.

ADDITIONAL TERMS: PREPAYMENT PROVISION: IF ANY AMOUNT OF PRINCIPAL IS PREPAID, BORROWER AGREES TO PAY TO LENDER, AT THE TIME OF PREPAYMENT, 3% OF THE AMOUNT OF PRINCIPAL PREPAID PRIOR TO THE FIRST ANNIVERSARY DATE OF THE NOTE, 2% OF THE AMOUNT OF PRINCIPAL PREPAID PRIOR TO THE SECOND ANNIVERSARY DATE OF THE NOTE AND 1% OF THE AMOUNT OF PRINCIPAL PREPAID PRIOR TO THE THIRD ANNIVERSARY DATE OF THE NOTE.

☒ SECURITY: This note is separately secured by (describe separate document by type and date): REAL ESTATE MORTGAGE DATED 07-24-2006

(This section is for your internal use. Failure to get a separate security document does not mean the agreement without secure this note.)

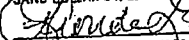
Signature for Lender

  
ANNE WILSON, PRIVATE BANKER

PURPOSE: The purpose of this loan is RENEW AND CASH OUT EXISTING LOAN

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 21). I have received a copy on today's date.

SAND DOLLAR 31, LLC

  
RHONDA MEISNER, MEMBER

SOUTH CAROLINA - UNIVERSAL NOTE  
EX-100, 1991 Bankers Systems, Inc., St. Louis, MO Form UN-SC 3/7/2002

(page 1 of 2)



## EXHIBIT B

Book 1218-2100  
2008073884 09182008001223130 Mortgage  
Fee:\$16.00 County Tax:\$0.00 State Tax:\$0.00

This document was prepared by (name, address, phone):  
SOUTH CAROLINA BANK AND TRUST, N.A.  
850 JOHN C. CALHOUN DRIVE  
ORANGEBURG, SC 29116  
(803) 634-2176



State of South Carolina

Space Above This Line For Recording Data

## REAL ESTATE MORTGAGE (With Future Advance Clause)

1. DATE AND PARTIES. The date of this Mortgage is 07-24-2008 and the parties and their addresses are as follows:

MORTGAGOR: SAND DOLLAR 31, LLC  
1 CHESTER ROAD  
BLYTHEWOOD, SC 29018

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgages.

LENDER: SOUTH CAROLINA BANK AND TRUST, NA  
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA  
850 JOHN C CALHOUN DRIVE  
PO BOX 8007 ORANGEBURG, SC 29116

2. MORTGAGE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:  
SEE ADDENDUM ATTACHED

The property is located in RICHLAND (County) at 4824 LINDEN STREET  
(Address) COLUMBIA (City) South Carolina 29203 (Zip Code)

Together with all rights, easements, appurtenances, royalties, minerals rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT (NOT FOR FILING, PUBLIC USE, AND NOT FOR CONSUMER PURPOSES)  
Expires © 1984, 2001 Bankage Systems, Inc., St. Cloud, MN Form AGCD-REBI-6C 1/21/2003

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3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 82,280.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:  
A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., borrower's name, note amount, interest rate, maturity date);

NOTE DATED 07-24-2008 IN THE AMOUNT OF \$31,140.00 IN THE NAME OF SAND DOLLAR 31, LLC

- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
- C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
- E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

- 5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
- 6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
- 7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
- 8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
  - A. To make all payments when due and to perform or comply with all covenants.
  - B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
  - C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
- 9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 601), as applicable. For the purposes of this section, the term "Property" also includes any interest in all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

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10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and greases. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrances. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property):

- A. Existing or future leases, subleases, licensees, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
- B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

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any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

**15. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

**16. DEFAULT.** Mortgagor will be in default if any of the following occur:

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

**17. REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgage is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after of any sum in payment or partial payment on the Secured Debt shall not constitute a waiver of Lender's right to require full and complete cure of any foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

**18. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

**19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has

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characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

**20. CONDEMNATION.** Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

**21. INSURANCE.** Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to the Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

**22. NO ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

**23. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

**24. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

**25. APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

**26. NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

**27. WAIVER OF HOMESTEAD.** Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

**28. U.C.C. PROVISIONS.** If checked, the following are applicable to, but do not limit, this Mortgage:

- ☐ Construction Loan. This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- ☐ Fixture Filing. Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- ☐ Crops; Timber; Minerals; Rents, Issues and Profits. Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

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☐ Personal Property. Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.

☐ Filing As Financing Statement. Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

28. OTHER TERMS. If checked, the following are applicable to this Mortgage:

- ☐ Line of Credit. The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- ☒ Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.
- ☐ Separate Assignment. The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- ☐ Additional Terms.

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

☐ Actual authority was granted to the parties signing below by resolution signed and dated \_\_\_\_\_

Entity Name: SAND DOLLAR 31, LLC

Rhonda Meyner (Signature) RHONDA MEYNER, MEMBER (Date) (Seal)

Signed, sealed and delivered in the presence of:

[Signature] (Witness)

Rachel E. DeBunkel (Witness)

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

PROBATE: STATE OF SOUTH CAROLINA, COUNTY OF Richland ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

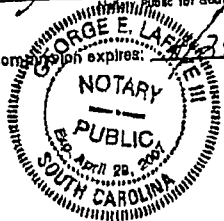
Sworn to and subscribed before me this 24TH day

of JULY, 2006

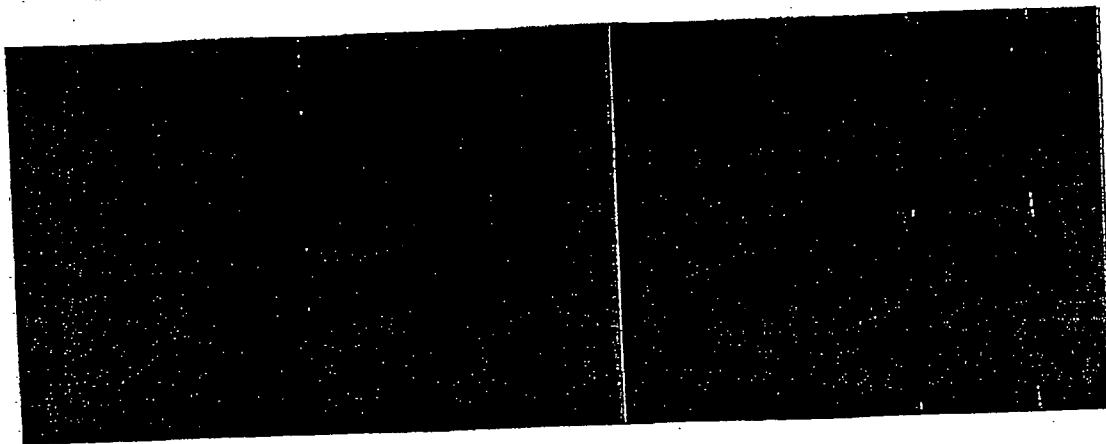
[Signature]

Rachel E DeBrul

My commission expires: 4/29/07



(page 8 of 8)



EX. IIT "A"  
(Property Description)

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being on the eastern side of Linden Street, in or near the Town of Eau Claire in the County of Richland, State of South Carolina; said lot being composed of and embracing Lot No. 12, 13, and 14 in Block 6 upon a plat of College View Subdivision, prepared by surveyors Clodfelder and Schisler, dated August-September, 1927, and recorded in Plat Book F at page 24.

This is the property conveyed to the mortgagor by deed of Joseph M. Strickland, Master - in - Equity for Richland County dated July 2006, ~~Recorded Deed - 2006~~ *Recorded Deed - 2006 Book 1213 page 554* herewith in the Office of Register of Deeds for Richland County. *Qm*

TMS: 09313-03-21

## EXHIBIT C

# GUARANTY

ORANGERBURG

(City)

SOUTH CAROLINA

(State)

JULY 24, 2006

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce SOUTH CAROLINA BANK AND TRUST NA (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of SAND DOLLAR 31, LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: NOTE DATED 07-24-2006 IN THE AMOUNT OF \$31,140.00 IN THE NAME OF SAND DOLLAR 31, LLC and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s): \_\_\_\_\_

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 31,140.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated \_\_\_\_\_  
☐ secured by \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

RHONDA MEISNER

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly.

# ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security; guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution thereof; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under § 1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. Until the obligations of the Borrower to Lender have been paid in full, the Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

(page 2 of 2)

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,  
v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

ANSWER & COUNTERCLAIM

JEANETTE W. MERRIDE  
C.C.P. & G.S.

2012 JAN 19 PM 4:32

RICHLAND COUNTY  
FILED

**TO: TERI STOMSKI, ESQ. ATTORNEY FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE NAMED**

Defendants, Sand Dollar 31, LLC and Rhonda Meisner, answering the Complaint of the Plaintiff herein would respectfully show unto the Court as follows:

**FIRST DEFENSE**  
(General Denial)

1. Each and every allegation of the Complaint not herein specifically admitted, qualified or explained is denied.
2. Upon information and belief the allegations in paragraphs 1-10, 12, 15-21, 23-26, 31, 38, 41-50 are admitted.
3. Paragraph 11 is admitted only to the extent it alleges that Defendant Rhonda Meisner executed a guarantee for the Defendant Sand Dollar. Defendant Rhonda Meisner's guarantee; however, is subject to the provisions of S.C. Code § 29-3-660 *et. seq.* The amount of any funds Defendant Meisner is obligated to pay pursuant to the guarantee, if any, is subject to reduction based on the appraised value of the subject property.

4. Paragraph 13 is admitted only to the extent it alleges the Plaintiff has received payments from the Defendant and that the loan is in default. The Defendant is without sufficient information at this time to admit or deny the sum owing is \$48,698.20 and demands strict proof thereof.
5. Paragraphs 14, 22, 30 and 34 require no response; however, to the extent a response is required the allegations inconsistent with the Defendant's previous responses are denied.
6. Paragraph 27 is denied.
7. Paragraph 28 does not require a response; however, to the extent a response is required the allegations contained in Paragraph 28 are denied.
8. Paragraph 29 is admitted only to the extent that the Plaintiff has the right to seek a deficiency judgment.
9. Paragraph 32 is denied; the Defendant attempted in good faith to work out a settlement that would avoid foreclosure.
10. Paragraph 33 is admitted only to the extent that the Defendant owes some amount to the Plaintiff; however, the Defendant is without sufficient information at this time to admit or deny the sum owing is \$48,698.20 and demands strict proof thereof.
11. Paragraph 35 is admitted only to the extent it alleges that Defendant Rhonda Meisner executed a guarantee for the Defendant Sand Dollar. Defendant Rhonda Meisner's guarantee; however, is subject to the provisions of S.C. Code § 29-3-660 *et. seq.* The amount of any funds Defendant Meisner is obligated to pay pursuant to the guarantee, if any, is subject to reduction based on the appraised value of the subject property.
12. As to the allegations contained in Paragraph 36 the Defendant craves reference to the guarantee attached to the Complaint for the exact terms of the guarantee agreement.
13. As to the allegations contained in Paragraph 37 the Defendant craves reference to the guarantee attached to the Complaint for the exact terms of the guarantee agreement.

14. Paragraph 39 is admitted only to the extent that it claims Defendant Rhonda Meisner executed a guarantee for the Defendant Sand Dollar. Defendant Rhonda Meisner's guarantee; however, is subject to the provisions of S.C. Code § 29-3-660 *et. seq.* The Defendant cannot admit the amount claimed and demands strict proof thereof.

**SECOND DEFENSE**  
(Estoppel)

15. The Plaintiff should be estopped to foreclose. The Plaintiff induced the Defendant into entering into the loan through its "private banking" system and indicated that the Defendant would be receive special considerations that were not available to the general public who were not part of the "private banking" system. The Defendant was led to believe that the Plaintiff would work with the Defendant should any problems arise in connection with the loan. When problems did arise the Plaintiff removed the Defendant from its "private banking" system and refused to work with the Defendant to resolve the problems with the loan.

**FIFTH DEFENSE**  
(Unclean Hands)

16. The Plaintiff's request to foreclose should be denied under the unclean hands doctrine. The Plaintiff induced the Defendant into entering into the loan through its "private banking" system and indicated that the Defendant would be receive special considerations that were not available to the general public who were not part of the "private banking" system. The Defendant was led to believe that the Plaintiff would work with the Defendant should any problems arise in connection with the loan. When problems did arise the Plaintiff removed the Defendant from its "private banking" system and refused to work with the Defendant to resolve the problems with the loan.

## COUNTERCLAIM

### FIRST CAUSE OF ACTION

(Declaratory Judgment)

17. Defendant incorporates the allegations contained above as if fully set forth verbatim.
18. Upon information and belief the Defendants are entitled to a declaratory judgment pursuant to S.C.R.C.P. 57 and S.C. Code Ann. §§15-53-10 through 15-15-140 to determine a question in actual controversy between or among the parties as to their respective rights and liabilities under a Note, Mortgage and Guarantee Agreement pertaining to real property located at 8391 Winnsboro Road Blythewood, SC 29016 and more particularly described in the Plaintiff's Complaint, which is incorporated by reference and to determine the respective rights and obligations of the parties with respect to the amount of any deficiency judgment due and owing, and to determine the appraisal rights of the respective parties.
19. Defendant Sand Dollar executed a mortgage that purported to waive its rights to an appraisal pursuant to state law. SC Code § 29-3-680 provides that "a defendant against whom a personal judgment may be taken on a real estate secured transaction may waive the appraisal rights as provided by this section if the debtors, makers, borrowers and/or guarantors are notified in writing before the transaction that a waiver of appraisal rights will be required and upon signing a statement during the transaction..."
20. Defendant Sand Dollar was not notified in writing before the transaction that a waiver of appraisal rights would be required. The only written information about the waiver of appraisal rights was contained in the mortgage itself, which was not provided "before" the transaction it was provided during the transaction.
21. The guarantor, Defendant Rhonda Meisner, was likewise not notified in writing before the transaction that a waiver of appraisal rights would be required. Moreover, Defendant Rhonda Meisner did not sign a statement "during the transaction" waiving appraisal rights.

22. Defendant Rhonda Meisner seeks a declaratory judgment that she retained her statutory appraisal rights; that the appraised value will be substituted for the high bid at the foreclosure auction if the appraised value is greater than the high bid and that the amount she would be obligated to pay, if any, pursuant to her guarantee will be reduced accordingly.
23. Defendant Sand Dollar seeks a declaratory judgment that its purported waiver of appraisal rights is not valid, as Sand Dollar was not notified in writing before the transaction that a waiver of appraisal rights would be required. Second, if the Court determines that Defendant Rhonda Meisner has the appraisal rights conferred by state law then, under the circumstances, Sand Dollar should also receive the benefit of the appraisal when determining whether Sand Dollar owes any deficiency. It would be inequitable under the circumstances to deny Sand Dollar the benefit of the appraisal.
24. The Defendants pray that the Court more fully inquire into the terms and conditions of the Note, Mortgage and Guarantee Agreement and issue its declaration as to the rights, responsibilities and obligations of the parties.
25. The Defendants reserve the right to assert any further claims or defenses that may be appear disclosed
26. **WHEREFORE**, having answered the Plaintiff's Complaint the Defendant prays the Complaint be dismissed with costs and grant the relief requested in the Defendants' Counterclaim.

Respectfully submitted:

  
\_\_\_\_\_  
Glenn Bowens, Esquire  
P.O. Box 424  
Winnsboro, S.C. 29180  
(803) 714-7766  
Attorney for the Defendants

January 20, 2012

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,  
v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6318

ANSWER & COUNTERCLAIM

**TO: TERI STOMSKI, ESQ. ATTORNEY FOR THE PLAINTIFF AND TO THE  
PLAINTIFF ABOVE NAMED**

Defendants, Sand Dollar 31, LLC and Rhonda Meisner, answering the Complaint of the Plaintiff  
herein would respectfully show unto the Court as follows:

**FIRST DEFENSE**  
(General Denial)

1. Each and every allegation of the Complaint not herein specifically admitted, qualified or explained is denied.
2. Upon information and belief the allegations in paragraphs 1-10, 12, 15-21, 23-26, 31, 38, 41-50 are admitted.
3. Paragraph 11 is admitted only to the extent it alleges that Defendant Rhonda Meisner executed a guarantee for the Defendant Sand Dollar. Defendant Rhonda Meisner's guarantee; however, is subject to the provisions of S.C. Code § 29-3-660 *et. seq.* The amount of any funds Defendant Meisner is obligated to pay pursuant to the guarantee, if any, is subject to reduction based on the appraised value of the subject property.
4. Paragraph 13 is admitted only to the extent it alleges the Plaintiff has received payments from the Defendant and that the loan is in default. The Defendant is without sufficient information at this time to admit or deny the sum owing is \$32,047.04 and demands strict proof thereof.

5. Paragraphs 14, 22, 30, 34 and 40 require no response; however, to the extent a response is required the allegations inconsistent with the Defendant's previous responses are denied.
6. Paragraph 27 is denied.
7. Paragraph 28 does not require a response; however, to the extent a response is required the allegations contained in Paragraph 28 are denied.
8. Paragraph 29 is admitted only to the extent that the Plaintiff has the right to seek a deficiency judgment.
9. Paragraph 32 is denied; the Defendant attempted in good faith to work out a settlement that would avoid foreclosure.
10. Paragraph 33 is admitted only to the extent that the Defendant owes some amount to the Plaintiff; however, the Defendant is without sufficient information at this time to admit or deny the sum owing is \$32,047.04 and demands strict proof thereof.
11. Paragraph 35 is admitted only to the extent it alleges that Defendant Rhonda Meisner executed a guarantee for the Defendant Sand Dollar. Defendant Rhonda Meisner's guarantee; however, is subject to the provisions of S.C. Code § 29-3-660 *et. seq.* The amount of any funds Defendant Meisner is obligated to pay pursuant to the guarantee, if any, is subject to reduction based on the appraised value of the subject property.
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14. Paragraph 39 is admitted only to the extent that it claims Defendant Rhonda Meisner executed a guarantee for the Defendant Sand Dollar. Defendant Rhonda Meisner's guarantee; however, is subject to the provisions of S.C. Code § 29-3-660 *et. seq.* The Defendant cannot admit the amount claimed and demands strict proof thereof.

**SECOND DEFENSE**  
(Estoppel)

15. The Plaintiff should be estopped to foreclose. The Plaintiff induced the Defendant into entering into the loan through its "private banking" system and indicated that the Defendant would be receive special considerations that were not available to the general public who were not part of the "private banking" system. The Defendant was led to believe that the Plaintiff would work with the Defendant should any problems arise in connection with the loan. When problems did arise the Plaintiff removed the Defendant from its "private banking" system and refused to work with the Defendant to resolve the problems with the loan.

**FIFTH DEFENSE**  
(Unclean Hands)

16. The Plaintiff's request to foreclose should be denied under the unclean hands doctrine. The Plaintiff induced the Defendant into entering into the loan through its "private banking" system and indicated that the Defendant would be receive special considerations that were not available to the general public who were not part of the "private banking" system. The Defendant was led to believe that the Plaintiff would work with the Defendant should any problems arise in connection with the loan. When problems did arise the Plaintiff removed the Defendant from its "private banking" system and refused to work with the Defendant to resolve the problems with the loan.

## COUNTERCLAIM

### FIRST CAUSE OF ACTION

(Declaratory Judgment)

17. Defendant incorporates the allegations contained above as if fully set forth verbatim.
18. Upon information and belief the Defendants are entitled to a declaratory judgment pursuant to S.C.R.C.P 57 and S.C. Code Ann. §§15-53-10 through 15-15-140 to determine a question in actual controversy between or among the parties as to their respective rights and liabilities under a Note, Mortgage and Guarantee Agreement pertaining to real property located at 8391 Winnsboro Road Blythewood, SC 29016 and more particularly described in the Plaintiff's Complaint, which is incorporated by reference and to determine the respective rights and obligations of the parties with respect to the amount of any deficiency judgment due and owing, and to determine the appraisal rights of the respective parties.
19. Defendant Sand Dollar executed a mortgage that purported to waive its rights to an appraisal pursuant to state law. SC Code § 29-3-680 provides that "a defendant against whom a personal judgment may be taken on a real estate secured transaction may waive the appraisal rights as provided by this section if the debtors, makers, borrowers and/or guarantors are notified in writing before the transaction that a waiver of appraisal rights will be required and upon signing a statement during the transaction..."
20. Defendant Sand Dollar was not notified in writing before the transaction that a waiver of appraisal rights would be required. The only written information about the waiver of appraisal rights was contained in the mortgage itself, which was not provided "before" the transaction it was provided during the transaction.
21. The guarantor, Defendant Rhonda Meisner, was likewise not notified in writing before the transaction that a waiver of appraisal rights would be required. Moreover, Defendant Rhonda Meisner did not sign a statement "during the transaction" waiving appraisal rights.

22. Defendant Rhonda Meisner seeks a declaratory judgment that she retained her statutory appraisal rights; that the appraised value will be substituted for the high bid at the foreclosure auction if the appraised value is greater than the high bid and that the amount she would be obligated to pay, if any, pursuant to her guarantee will be reduced accordingly.
23. Defendant Sand Dollar seeks a declaratory judgment that its purported waiver of appraisal rights is not valid, as Sand Dollar was not notified in writing before the transaction that a waiver of appraisal rights would be required. Second, if the Court determines that Defendant Rhonda Meisner has the appraisal rights conferred by state law then, under the circumstances, Sand Dollar should also receive the benefit of the appraisal when determining whether Sand Dollar owes any deficiency. It would be inequitable under the circumstances to deny Sand Dollar the benefit of the appraisal.
24. The Defendants pray that the Court more fully inquire into the terms and conditions of the Note, Mortgage and Guarantee Agreement and issue its declaration as to the rights, responsibilities and obligations of the parties.
25. The Defendants reserve the right to assert any further claims or defenses that may be appear disclosed
26. **WHEREFORE**, having answered the Plaintiff's Complaint the Defendant prays the Complaint be dismissed with costs and grant the relief requested in the Defendants' Counterclaim.

Respectfully submitted:

  
\_\_\_\_\_  
Glenn Bowens, Esquire  
P.O. Box 424  
Winnsboro, S.C. 29180  
(803) 714-7766  
Attorney for the Defendants

January 20, 2012

**COPY**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF RICHLAND ) CASE #: 2011-CP-40-6317  
2011-CP-40-6318

South Carolina B&T, NA, )  
Plaintiff, )  
v. )  
Sand Dollar 31, LLC; )  
Rhonda Meisner, )  
Defendants. )

## **HEARING**

\*\*\*\*\*

Wednesday, April 25, 2012  
10:03 a.m. to 10:34 a.m.

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 25th day of April, 2012, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

**Official Court Reporter**  
Master in Equity, Richland County  
1701 Main Street – Post Office Box 192 (29202)  
Columbia, South Carolina 29201

**APPEARANCES**

**Teri K. Stomski, Esquire**  
Rogers Townsend & Thomas, PC  
220 Executive Center Drive  
Columbia, South Carolina 29210  
Attorney for the Plaintiff

**Glenn E. Bowens, Esquire**  
Attorney at Law  
Post Office Box 424  
Winnsboro, South Carolina 29180  
Attorney for the Defendants

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| Mr. Bowens ..... Direct Examination .....  | 14                  |
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| The Court .....                            | 22                  |
| Certificate .....                          | 25                  |

**EXHIBITS**

|                                             |           |           |
|---------------------------------------------|-----------|-----------|
|                                             | Marked:   | Entered:  |
| <b>Defendants' Exhibit Number One .....</b> | <b>11</b> | <b>11</b> |
| (Bank Statement in re: 2011-6318)           |           |           |

1 **THE COURT:** The plaintiff may proceed.

2 **MS. STOMSKI:** Thank you, Your Honor. I'll call Ms.  
3 Whitney Wolfman of South Carolina Bank and Trust as  
4 my first witness.

5 **(Witness is sworn.)**

6 **MS. STOMSKI:** Your Honor, if I may, for the record and  
7 just to make sure that we're clear on the scope of  
8 the question and what we'll be talking about today,  
9 there's certain matters that the plaintiff and  
10 defendant agree are not in controversy at this  
11 point, and the only thing that we'll be taking  
12 testimony on is the amount of the debt, the  
13 foreclosure itself, and I believe those are the only  
14 matters outstanding.

15 **MR. BOWENS:** That's right.

16 **THE COURT:** All right. Please proceed.

17 **Whitney Wolfman**, being duly sworn, testifies as follows:

18 **MS. WOLFMAN - DIRECT EXAMINATION BY MS. STOMSKI:**

19 **Q:** Ms. Wolfman, please tell me your position with South  
20 Carolina Bank and Trust.

21 **A:** I'm a vice president in the special assets division.

22 **Q:** And in that role, how do you come to know about  
23 loans that are proceeding toward foreclosure?

24 **A:** They are transferred in to us when the original  
25 lender finds that there's not much else they can do

1 to get the loan current.

2 Q: So, there's not much else they can do to get the

3 loan current; would it be appropriate to say that at

4 that point, when they come to you, those loans are

5 in default?

6 A: Yes, generally.

7 Q: And that's because a payment is past due?

8 A: In general, uh-huh.

9 Q: And in your department, what ... is there anything

10 that you do to try to bring those loans current?

11 A: Yes. Occasionally we do try to work something out

12 with the borrower if they can bring interest current

13 or do some sort of renewal, we do try that

14 occasionally.

15 Q: All right. Are you familiar with the loan to Sand

16 Dollar 31, LLC, that's guaranteed by Rhonda Meisner?

17 A: I am.

18 Q: All right. Did you make any attempts in this

19 particular transaction when it came to you to ...

20 those types of things that you mentioned, bring it

21 to ... anything that you could to try to bring it

22 current, working with the borrower?

23 A: Yes, we did. We tried to work out basically a

24 renewal. I don't recall the exact details. We

25 could get those if we needed to, but we spent

1           several months trying to get her to pay the taxes  
2           and bring the interest current, to the point that we  
3           actually had the documents ready to sign. And I was  
4           emailed at 3:00 on the day that she was supposed to  
5           come in and sign, and she stated that she could not  
6           bring the interest current at that time.

7   Q:   Do you recall about when that was approximately?

8   A:   Middle towards the end of June, 2011.

9   Q:   Okay. So not quite a year ago. And when you said  
10       you had the documents ready, what kind of documents  
11       did you have ready for her to sign?

12   A:   The actual note modifications for each loan.

13   Q:   Okay. And so ... and you stated that she said she  
14       was not able to ... what did you say she was not  
15       able to pay?

16   A:   Not able to bring the ... I had emailed her the  
17       total amount due to bring the loans current so we  
18       could renew them under the new terms. And she  
19       replied, saying that she could not come up with that  
20       money at that time.

21   Q:   And one of those I think you said included interest,  
22       correct?

23   A:   Uh-huh (affirmative response). That's correct.

24   Q:   And that's something that they, that a borrower  
25       would have to pay to ... I think the banking term is

1           you can't capitalize interest, is that correct?

2   A:   That's correct.  You cannot roll it into the loan,  
3       they have to bring it current for renewal.

4   Q:   So if they're not able to pay it, then that puts the  
5       bank in a bind; would that be an accurate statement?

6   A:   Yes.

7   Q:   Okay.  After you attempted this renewal, as you  
8       characterized it, were there any other steps taken  
9       to try to modify the loan or any kind of forbearance  
10      or deed in lieu?

11  A:   Yes.  We actually had your office prepare deed in  
12      lieu packages on both properties, and they were  
13      mailed to her house just ... you know, we had I  
14      think discussed that somewhat, you know, when we  
15      were talking about the renewals, and it was never  
16      opposed by the borrower, so we decided maybe we'll  
17      just go ahead, you know, get the deed in lieu done  
18      and be done with it so we don't have to go through  
19      foreclosure.  Those were mailed, and we never got  
20      any response whatsoever.

21  Q:   All right.  Do you recall at some point that  
22      actually you and I discussed having to file a  
23      foreclosure?

24  A:   Yes.

25  Q:   Okay.  At the time we filed the foreclosure, were

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1       you made aware at some point that she was  
2       represented by counsel?

3   A:    I don't know that I was.

4   Q:    Okay. Were you aware that Rogers Townsend, that I  
5       specifically, was having a discussion with  
6       borrower's counsel about trying to see if there was  
7       any way to resolve it once he was employed?

8   A:    Yes.

9   Q:    All right. Was anything able to be accomplished at  
10       that point to be able to resolve it?

11   A:    No.

12   Q:    Okay. Did you prepare today a validation of debt  
13       that states the entire, a verified statement of the  
14       account on this loan?

15   A:    I did.

16   Q:    And do you have a copy with you?

17   A:    I don't. Sorry.

18   **MS. STOMSKI:** Your Honor, if I may, this is her folder;  
19       may I allow her to review it?

20   **MR. BOWENS:** Without objection.

21   **THE COURT:** Okay.

22   Q:    If you would, would you ... do you have that  
23       verified debt with you?

24   A:    And I think that's ... stuck that in your folder.

25   **MS. STOMSKI:** And, Your Honor, the validation of debt was

7

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1 provided to counsel. It was notarized on the 18th  
2 of April, and it was provided yesterday. I was  
3 speaking at two separate functions and had hearings  
4 in Charleston, but I provided it to him as quickly  
5 as I could.

6 Q: If you can take a look at that validation, what does  
7 it state as the principal amount owed?

8 A: \$31,535.04.

9 Q: Are there any other amounts owing other than the  
10 principal amount? If there are, could you please  
11 state those.

12 A: Yes. There's interest as of today of \$2270.83.  
13 There are late charges due of \$74.98, and then there  
14 are also attorney's fees in the amount of \$6263.60.

15 Q: All right. And what's the total, principal,  
16 interest and expenses due at this time?

17 A: \$40,144.45.

18 Q: And based on your knowledge, this is a true and  
19 accurate amount owed on this particular loan?

20 A: It is.

21 Q: All right. Do you anticipate there will be any  
22 other charges, or there may be other charges going  
23 forward?

24 A: Other than additional attorney's fees maybe for  
25 today and any work done thereafter and possibly late

1 charges, no, I don't think so.

2 Q: All right.

3 MS. STOMSKI: One moment, Your Honor. If I may approach?

4 THE COURT: Yes, ma'am.

5 Q: Ms. Wolfman, are you familiar ... this is attached  
6 as Exhibit A to the Complaint in this matter. Do  
7 you recognize this document?

8 A: I do.

9 Q: And can you tell us what that is?

10 A: Sure. This is the promissory note for the loan in  
11 question.

12 Q: And what was the principal amount for that note?

13 A: \$36,000.

14 Q: All right. And can you please tell me who the  
15 borrower is and who signed on behalf of the  
16 borrower?

17 A: Sure. Sand Dollar 31, LLC is the borrower, and  
18 Rhonda Meisner signed on behalf.

19 Q: All right. And is Exhibit B to the Complaint, which  
20 I would incorporate herein, do you recognize this  
21 document?

22 A: I do.

23 Q: And can you please tell the Court what it is.

24 A: This is the real estate mortgage.

25 Q: And can you tell me who it states as the borrower?

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1 A: Sand Dollar 31, LLC.  
2 Q: And who signed that mortgage?  
3 A: Rhonda Meisner.  
4 Q: All right. And do you recognize, this is Exhibit C  
5 to the Complaint, incorporated herein, do you  
6 recognize this document? It's a two-page document.  
7 A: I do. This is the guaranty agreement.  
8 Q: All right. And that is ... who is the guarantor  
9 stated on that?  
10 A: Rhonda Meisner.  
11 Q: And did she in fact sign that?  
12 A: She did.  
13 Q: All right.  
14 MS. STOMSKI: Your Honor, as these are a matter of record,  
15 I'm not going to introduce them unless that is ...  
16 unless there's opposition.  
17 MR. BOWENS: No objection.  
18 MS. STOMSKI: I have nothing further for Ms. Wolfman at  
19 this moment.  
20 THE COURT: All right. Cross-examination?  
21 MR. BOWENS: Thank you, Your Honor.  
22 MS. WOLFMAN - CROSS-EXAMINATION BY MR. BOWENS:  
23 Q: Ms. Wolfman, are you familiar with the private  
24 banking system at South Carolina Bank and Trust?  
25 A: Not as familiar as with my own department, no.

10

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1 Q: Okay.

2 **MR. BOWENS:** I'd like to have this marked as a defense  
3 exhibit.

4 Q: I believe you have with you there at your table  
5 already the ...

6 **THE COURT:** Hold on one minute. I'm sorry. Do you want  
7 to look at it?

8 **MS. STOMSKI:** I would, Your Honor.

9 **(Defendants' Exhibit Number One is marked and entered into**  
10 **the record at this time.)**

11 Q: This Exhibit One is a copy of a bank statement sent  
12 by South Carolina Bank and Trust. Do you recognize  
13 that as one of your bank statements?

14 A: It appears to be.

15 Q: This is pertaining to 6318, the one that applies to  
16 that case. I believe in your affidavit you indicate  
17 that you're charging interest and principal from  
18 December 15th, 2010, to April 25th, 2012.

19 A: Huh-uh (negative response). Just through April  
20 25th, 2012. It does not state when it was ...

21 Q: Well, it's interest from December 15, 2010, to April  
22 25th ...

23 A: Not in the one that we've submitted.

24 **MS. STOMSKI:** You should have the most recent one but ...  
25 the figures aren't any different, but we did note

1           that the date was at issue.

2   **MR. BOWENS:** I'm going off the one you sent me.

3   **MS. STOMSKI:** I know. I'm just wondering if you've got  
4           the most recent one. Do you want to take a look at  
5           what she's trying ...

6   **A:** Do you want to look at this one?

7   **MS. STOMSKI:** ... her original?

8   **MR. BOWENS:** On the one we have here, that is not there,  
9           so. Okay. Yeah, there appears to be a discrepancy  
10          between the one you gave me and the one she has.

11   **MS. STOMSKI:** Not from the amounts. But I just ...

12   **MR. BOWENS:** Just the date?

13   **MS. STOMSKI:** Right. Just from the date.

14   **Q:** Well, when is this interest calculated from, from  
15          what date to?

16   **A:** I would have to go back and check the system, but it  
17          would be from the date of the last payment.

18   **Q:** Which was June 24th, 2000 (sic)?

19   **A:** That's correct.

20   **Q:** Okay.

21   **A:** So probably from June 25th, 2011.

22   **Q:** Okay. So you would agree then that on June 24th,  
23          2000- ... based on Exhibit One that you have there,  
24          that Ms. Meisner made a payment and brought that  
25          loan current as of that date?

12

1 A: That's correct.

2 MR. BOWENS: That's all the questions I have, Your Honor.

3 THE COURT: Any re-direct?

4 MS. STOMSKI: None, Your Honor.

5 THE COURT: Okay. Thank you, Ms. Wolfman, you may come  
6 down. Watch your step coming down.

7 A: Do I leave this?

8 THE COURT: Yeah, leave the exhibits up there.

9 MS. STOMSKI: Your Honor, just ... I want to, just for  
10 ease, I was going to show you the copy. There was a  
11 typo on one, which is not what we put up to the  
12 Court for today, Your Honor, and it does indicate  
13 that there was a payment made in June. So we'll  
14 stipulate that there was that payment made. So  
15 there's ... that's not an issue and it didn't change  
16 the figures that we're presenting today.

17 THE COURT: The defendant's point is that it was in fact  
18 brought current back ...

19 MR. BOWENS: Right. Yeah, the affidavit we received said  
20 that interest was calculated from December 15th,  
21 2010, which didn't account for this payment. But  
22 apparently this was a mistake on this affidavit so  
23 it's been corrected.

24 THE COURT: All right.

25 MS. STOMSKI: Yes, Your Honor. And we do have the

13

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1 original to hand up to the Court and it does show  
2 the interest without that but, yes, Your Honor,  
3 we'll stipulate that payment was made and the  
4 interest was changed to reflect that payment.

5 **THE COURT:** All right. Anything further from the  
6 plaintiff?

7 **MS. STOMSKI:** Nothing, Your Honor.

8 **THE COURT:** All right, the plaintiff rests. Mr. Bowens?

9 **MR. BOWENS:** The defense calls Rhonda Meisner.

10 **THE COURT:** Do you want a short break? I know Ms.  
11 Meisner's kind of upset. You want to take about  
12 five minutes?

13 **MS. MEISNER:** I think I'll be okay.

14 **THE COURT:** You're okay? All right then.

15 (Witness is sworn.)

16 **Rhonda Meisner**, being duly sworn, testifies as follows:

17 **MS. MEISNER - DIRECT EXAMINATION BY MR. BOWENS:**

18 Q: Ms. Meisner, give us your name for the record,  
19 please.

20 A: Rhonda Lewis Meisner.

21 Q: And explain your relationship to Sand Dollar 31,  
22 LLC.

23 A: I'm the member of Sand Dollar 31.

24 Q: Now, describe for the Court the circumstances of how  
25 you came to be involved with South Carolina Bank and

1 Trust in getting the loan, primarily for the case of  
2 6318. But you got both of them I think at the same  
3 time so the circumstances will be the same for both,  
4 is that right?

5 A: Well, I was in the private banking department and I  
6 had followed the banker, Ann Wilson, from originally  
7 Bank of America, then she went to Wachovia, and then  
8 she went to South Carolina Bank and Trust. And she  
9 called me and asked me to move accounts to South  
10 Carolina Bank and Trust, which I did.

11 Q: What's different between private banking from  
12 ordinary, non-private banking?

13 A: Well, basically you, you know, you have a banker  
14 that calls you and says, you know, do you want to do  
15 this, are you interested in doing that. And the  
16 house on Linden Street, 4824 Linden Street, was  
17 purchased actually out of a foreclosure sale, which  
18 I purchased through money that I had in a self-  
19 directed retirement account thing. And Ann  
20 suggested that I take a loan on that house and on  
21 8391 to do some other things, which I did. In  
22 getting these loans I basically just called her on  
23 the phone and told her, you know, what Sand Dollar  
24 was interested in doing, and she took care of the  
25 rest. Like, she filled out the applications, that

15

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1 kind of thing. And I guess my point of view is that  
2 you would think when you go into a private banking  
3 situation, that when you lose your job and your  
4 tenants that are there can't pay, that there would  
5 be some consideration to work things out with you.  
6 But instead, it was explained to me that the private  
7 banking people make their commissions on performing  
8 loans only. So I basically was kicked out of the  
9 private banking and into Ms. Wolfman's department.  
10 And I understand that everybody has to pay their  
11 bills, but what Ms. Wolfman said about me not trying  
12 to bring things current is not accurate, because I  
13 did ... I mean, this ... I had lost my job. I did  
14 get a new job on March 28th, and as of July I made  
15 an \$1892 payment to bring it current and ...

16 Q: Did the bank give you representations that if you  
17 brought it current they would work with you to avoid  
18 foreclosure?

19 A: Yes, she did.

20 Q: And once you brought it current, what did the bank  
21 do?

22 A: They wouldn't accept payments after this one. And  
23 they said no, the maturity date is now; we're not  
24 going to do anything with that loan.

25 Q: And is that the reason why you oppose foreclosure on

1           this particular loan?

2   A:    Well, you know, I know Judge Strickland is going to  
3           decide that it has to be foreclosed, but I really  
4           wanted it on the record that the banks are not  
5           dealing fairly with people. And it's costing me a  
6           lot of money to do this, but I think that it is  
7           something that they need to know and they need to  
8           do. But, yes, that's why I'm opposing it.

9   Q:    Now, did you receive a package from the bank, trying  
10          to do a deed in lieu of foreclosure ...

11   A:    No, I did not receive that.

12   Q:    You did not receive that?

13   A:    I did not receive that.

14   Q:    Did you want to do a deed in lieu of foreclosure  
15          back when this first ... when they refused to do a  
16          workout or refused to accept payments after the June  
17          24th payment?

18   A:    Yes, I would have done a deed in lieu except that I  
19          was concerned about the Linden Street house because  
20          the people that live there pay ... they have ... he  
21          is a painter and he can't afford to pay his rent.  
22          And they were very far behind on their rent, and Ms.  
23          Wolfman even said to me, well, why don't you evict  
24          them. And I said, where are they going to go, where  
25          are they going to go? So ... I'm sorry, I'm

17

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1 rambling. But ... what was your question?

2 Q: That the bank would not accept your offer of a deed  
3 in lieu of foreclosure after ... they wouldn't work  
4 out anything on that loan?

5 A: That's right.

6 Q: That's all the questions I have.

7 **THE COURT:** All right. Cross-examination?

8 **MS. MEISNER - CROSS-EXAMINATION BY MS. STOMSKI:**

9 Q: Ms. Meisner, you mentioned that you were a customer  
10 in the private banking department?

11 A: Right.

12 Q: Would it be an accurate ... as a former banker, I  
13 have a little bit of knowledge about private  
14 banking, so tell me, my understanding is that  
15 private banking is a special part of a bank for  
16 those customers who ... doctors, lawyers, maybe a  
17 little more affluent, those types of folks are the  
18 ones who are offered to go into private banking; is  
19 that accurate?

20 A: That is accurate.

21 Q: Okay. And so you were considered to be one of those  
22 affluent, or your family or whomever, someone was in  
23 the private banking to be among those special few  
24 that go into private banking, is that correct?

25 A: Yes, ma'am. And to that end, I felt like if the

18

1 bank will treat me this way, anybody that's not able  
2 to pay, that's losing their primary house, I hope  
3 God is with them because, you know what, they're not  
4 being treated fairly by South Carolina Bank and  
5 Trust.

6 Q: But this isn't your primary residence, is it?

7 A: It is not. And that's why, if I lose this today,  
8 then that's one thing; it only affects Brenda and  
9 Alvin Hair.

10 Q: Well, we're actually, if I may, the only matter  
11 we're talking about today is the property that has  
12 the mobile home on it?

13 A: That's correct.

14 Q: And that's vacant, correct?

15 A: It is vacant. They moved out because they couldn't  
16 pay their rent, and they moved back into their  
17 father's house.

18 Q: And how long has it been vacant?

19 A: It's been vacant about four months. I have not re-  
20 rented it because I ... because of this situation.  
21 I couldn't do that.

22 Q: Okay. Did you make any attempts to discuss with  
23 your counsel whether or not you were able to put a  
24 new tenant in there?

25 A: Ma'am, I didn't ...

1 **MR. BOWENS:** I want to object to conversations she had  
2 with counsel. That's privileged.

3 **THE COURT:** All right. Sustained.

4 **Q:** Did you seek any advice from anyone, and not what  
5 that advice was, but did you seek advice about  
6 whether or not you were able to put a tenant in a  
7 property prior to foreclosure?

8 **A:** Yes, I prayed about it, and I felt like that it  
9 would be ... would not be fair to them to move in  
10 and potentially be forced out. As a matter of fact,  
11 Ms. Wolfman asked me why I didn't evict the people  
12 because they couldn't pay. So I would have no ...

13 **Q:** That's on the second property, right?

14 **THE COURT:** I'm sorry, let her finish the answer please.

15 **MS. STOMSKI:** Okay.

16 **A:** Both properties, at the time. One man lost his job  
17 and didn't have any income. He lived there with his  
18 disabled mother. They had no income. I lost my  
19 job, so I didn't have an income from August to March  
20 28th of 2011. Neither house ... well, Alvin and  
21 Brenda Hair, Alvin is a painter and Brenda cleans  
22 houses. But when the economy went down, they could  
23 not earn enough money to pay their rent. And so at  
24 the time they were about eight months behind, and  
25 Ms. Wolfman said why didn't I evict them. And I

20

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1       asked her where are they going to go.

2   Q:   But you did say that Ms. Wolfman ... you said that  
3       the property we're talking about in this particular  
4       ... the only action we're talking about is the  
5       property with the mobile home, and you said it's  
6       been vacant for four months.

7   A:   Four or five.

8   Q:   Okay. And you also said that Ms. Wolfman suggested  
9       ... or you did talk about having a tenant in the  
10      property?

11   A:   But they couldn't pay either. That's what I said  
12      earlier, ma'am.

13   Q:   Right. But when it went vacant there was an  
14      opportunity there to put a tenant in, correct?

15   A:   And as I said earlier, I didn't feel comfortable  
16      doing that. Since I was in foreclosure I thought  
17      that would be not the right thing to do for them.

18   Q:   Okay. When you had mentioned that you did make a  
19      payment toward your loan, are you familiar with the  
20      term "cross default", that when you have a mortgage  
21      and you have two different loans, that a default on  
22      one loan creates a default on the other? Are you  
23      familiar with that?

24   A:   The private banking people, Ann Wilson, who was my  
25      banker, told me that if I was behind on one loan,

1           that all of the language in South Carolina Bank and  
2           Trust, all of the loans are considered defaulted.  
3   Q:    Okay. So you acknowledge that you never brought all  
4           of your loans current?  
5   A:    When Ms. Wolfman told me that I had to bring \$5400,  
6           and I only had my job for about two months at the  
7           time, I could not bring \$5400. But I told her that  
8           I had just gotten a new job and that I would, you  
9           know, pay what I could. I thought that I could get  
10          that much money together but I was in a situation of  
11          basically just trying to regroup.  
12   Q:    And so you acknowledge that both loans have been in  
13          default since at least August or September of 2011?  
14   A:    That's correct.  
15   MS. STOMSKI: I have nothing further, Your Honor.  
16   THE COURT: Any re-direct?  
17   MR. BOWENS: No, Your Honor.  
18   THE COURT: Okay. Thank you, ma'am. You may come down.  
19           Watch your step coming down, please. Anymore from  
20          the defendant?  
21   MR. BOWENS: Nothing further.  
22   THE COURT: All right. Based on the evidence that's been  
23           presented today, I find for the plaintiff and ask  
24           that a proposed order be submitted. You're looking  
25          for a judicial sale as well, is that correct?

22

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1 **MS. STOMSKI:** Yes, Your Honor.

2 **THE COURT:** Okay. The next possible sale will be June  
3 4th, 2012, the first Monday in June. Let me ask the  
4 parties not to lose sight of the fact that even  
5 though we're in court and I've ruled, you can still  
6 work this out without my input. I think the lawyers  
7 understand that. And, of course, to make sure I'm  
8 clear on this, the right of redemption applies in a  
9 commercial context as well as another type of  
10 context, as far as she's the owner up until June  
11 4th. And if you work something about between now  
12 and June 4th, that's fine. Is that an accurate  
13 statement? I don't want to ...

14 **MS. STOMSKI:** Yes, Your Honor.

15 **MR. BOWENS:** Yes, Your Honor.

16 **THE COURT:** Okay. Anything further today?

17 **MR. BOWENS:** Just briefly. I'm not sure if ... we talked  
18 earlier about the ... we had a declaratory judgment  
19 action for the appraisal rights, and that's been  
20 stipulated to. I'm not sure if we had gone on the  
21 record when we were talking earlier or not on this  
22 one, but I just wanted to make sure that can be part  
23 of the order, that both Sand Dollar and Ms. Meisner  
24 would have appraisal rights, include that language  
25 in the order.

1 **MS. STOMSKI:** We will stipulate that we will not challenge  
2 her verified position pursuant to the statute.

3 **THE COURT:** All right. And also, under the Rules, the  
4 demand for a deficiency judgment can be waived in  
5 the meantime prior to judicial sale. So that's  
6 something I guess, again, the parties please don't  
7 lose sight of, you can negotiate that issue as well.  
8 So you don't have to worry about appraisal rights if  
9 in fact the deficiency judgment is waived prior to  
10 sale. All right. Anything further?

11 **MS. STOMSKI:** Your Honor, we do have ... we can hand up  
12 proposed ... the only thing that's not specifically  
13 in that was your request as far as the stipulation,  
14 as far as the petition goes. We can add that or ...

15 **THE COURT:** It'd be better to put it in the order I think,  
16 just so there'll be no question later on.

17 **MS. STOMSKI:** Thank you, Your Honor.

18 **MR. BOWENS:** Thank you, Your Honor.

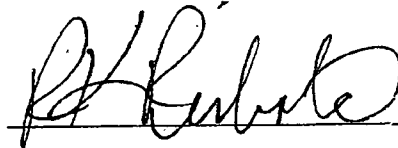
19 **THE COURT:** All right. Thank you.

20 (There being nothing further, the hearing was concluded  
21 at 10:34 a.m.)

**CERTIFICATE**

I certify that the foregoing transcript, consisting of 24 pages, is a true, accurate and complete transcript of the hearing taken before me, Robin K. Reibold, the undersigned Court Reporter. This hearing was held without a jury before The Honorable Joseph M. Strickland, Master in Equity for Richland County, on April 25, 2012, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.



November 20, 2012

ROBIN K. REIBOLD

MY COMMISSION EXPIRES: 4-28-2021

25

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**APPEARANCES**

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**EXHIBITS**

(There were no exhibits marked.)

*SCB&T v. Sand Dollar 31, LLC and Rhonda Meisner*

1 **THE COURT:** This is Civil Action Number 2011-CP-40-6317  
2 and Civic Action Number 2011-CP-40-6318. We've  
3 already had a judicial sale and we've already had  
4 the deficiency sale. I'm not sure, however, whether  
5 or not I signed the Order of Deficiency. Is that  
6 ... Ms. Stomski, do you remember me signing one or?  
7 **MS. STOMSKI:** We haven't at this point because I knew this  
8 motion hearing was pending.  
9 **THE COURT:** Okay. Mr. Bowens, wouldn't it be better to  
10 pursue appraisal rights rather than trying to set  
11 aside the judgment, especially since the deficiency  
12 hasn't been established yet?  
13 **MR. BOWENS:** Well, that's where maybe some of the  
14 confusion we've just talked about may have come in.  
15 **THE COURT:** Okay.  
16 **MR. BOWENS:** In our counterclaim we had asked for a  
17 declaratory judgment as to the amount of the  
18 deficiency that she could be held personally liable  
19 for under the guaranty agreement. And at the end of  
20 the hearing in April, I was about to bring that up  
21 about the deficiency, but I believe you were saying  
22 that we were going to have to have the sale first,  
23 then the appraisal rights, then I thought we'd come  
24 back to that.  
25 **THE COURT:** Yeah.

3

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1 **MR. BOWENS:** Well, in the meantime this order came out  
2 that had these amounts in here for \$43,000 and  
3 \$63,000 and some-odd, which exceed the amount that  
4 Ms. Meisner claims she could be held liable for  
5 personally. And once that was entered and filed I  
6 thought, well, I've got to file a motion to alter or  
7 amend to ... within the ten days to correct that  
8 before we wait until ... I didn't want to prejudice  
9 any of her rights by not filing a motion promptly.  
10 Ms. Stomski has raised the question about, when we  
11 were talking about I guess the timeliness of the  
12 motion, the order, the Form 4 order and the formal  
13 order that you signed were entered on May 16th. We  
14 did not get copied on that, that it was actually  
15 entered. I got the proposed order, but I did not  
16 know that it had been signed or filed with the  
17 clerk, to start the ten-day clock. Ms. Meisner was  
18 sent a letter directly by Ms. Stomski's firm, with a  
19 copy of the clocked Form 4 order, which was not  
20 signed by you by the way, but it was clocked in and  
21 it had the information on there for one of the cases  
22 but not both. I think it was 6317 or 18. But the  
23 other one ... it was only one of the cases. So when  
24 she gave that to me, that was what first alerted me  
25 that it had been entered and filed. And so the very

1        next day I filed the motion to make sure that we  
2        were as timely as we could be. But we did not get a  
3        copy from the clerk or from the plaintiff's firm  
4        that it had been entered, so I think we're as timely  
5        as we could be for filing the motion.

6    **MS. STOMSKI:** May I just address that before we get into  
7        too many points?

8    **THE COURT:** Yes, ma'am.

9    **MS. STOMSKI:** What Mr. Bowens has not told you was that we  
10       did in fact ... well, first let me start. Per your  
11       instruction, you asked that the ... we were ready to  
12       hand up the package and you asked that it be revised  
13       to include the stipulation that we would not  
14       challenge a timely petition on the appraisal rights.  
15       And so we did revise it, and we mailed that ...  
16       emailed that to you, per your request, on May 3rd,  
17       and we copied Mr. Bowens. So the proposed order,  
18       with every figure, everything that we're here about  
19       today, was sent to him on May 3rd. You did not sign  
20       the actual Judgment until May 14th. So from the  
21       time between May 3rd and May 14th, over a week, I  
22       didn't hear from Mr. Bowens, he didn't make any  
23       comments, didn't say anything was missing or that he  
24       had any questions about it. It was filed on May  
25       16th. Of course, the moment it gets filed, we don't

5

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1        get it immediately, but we wanted to make sure ...  
2        and thankfully Mr. Bowens put this in his own  
3        memorandum to support his motion today, Exhibit One,  
4        he states ... he puts my letter in there, where I  
5        sent to him and not his client, what I have to do  
6        under the Rule. The Rule says that I have to give  
7        him written notice of the entry of the order. It  
8        doesn't say I have to serve a paper order on him.  
9        It says written notice of the entry. And the letter  
10       says, A hearing was held and judgment of foreclosure  
11       and sale was entered in the above referenced  
12       foreclosure action. That was May 17th. So our  
13       first point is, this is not timely filed. He had  
14       within ten days of written notice of the entry, and  
15       June 7th, the filing date, is not within that ten-  
16       day period. Now, I will acknowledge that  
17       inadvertently another floor, the residential floor  
18       that deals with foreclosures, inadvertently did send  
19       a form letter that went out. You can tell it's ...  
20       it's Exhibit Number Two, Defendants' Exhibit Number  
21       Two, on his memorandum in support ...

22    **THE COURT:** By another floor, you mean another department?

23    **MS. STOMSKI:** Department, yes, sir.

24    **THE COURT:** In your law firm?

25    **MS. STOMSKI:** In the law firm, yes, sir. It wasn't

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1 signed; it did not come from me. It was in error,  
2 and we regret that that went out to Ms. Meisner and  
3 not directly to Mr. Bowens. But that was dated May  
4 29th, and he had already had notice of it since May  
5 17th.

6 **THE COURT:** Okay. Well ...

7 **MR. BOWENS:** If I could just make one quick comment. This  
8 letter, it's Exhibit One to my memorandum, is  
9 focused on the foreclosure sale, the date of the  
10 foreclosure sale. It does not say the order was  
11 filed May 16th. When it says that on April 25th a  
12 hearing was held, well, I was here, I knew that.  
13 And judgment was entered, I heard you say judgment  
14 for the plaintiff and we'll have a sale, which is  
15 what I thought that meant. But nowhere does it say  
16 that the Order was signed and filed on May 16th to  
17 know how many days I have. This is not written  
18 notification of the entry of the order, of the  
19 formal order. I remember you saying from the bench  
20 that judgment for the plaintiff and we'll have to  
21 set ... you said the earliest days is early June,  
22 June 4th or something. But this does not say that  
23 ... the date it was actually entered, which is what  
24 starts the ten-day clock. The first indication we  
25 had ...

1 **MS. STOMSKI:** The written notice starts the clock, not the  
2 actual ...

3 **MR. BOWENS:** Yeah, the written notice starts the clock,  
4 but that's not written notice of when the order was  
5 entered; it just says judgment of foreclosure and  
6 sale was entered, which I took that to mean when you  
7 ordered ... said that from the bench. But what  
8 starts the clock is notice of the action being  
9 signed and clocked in with the Clerk. And we didn't  
10 have any notice of that until Ms. Meisner got this  
11 letter, and she got it on or about June 6th. And  
12 then I got it the same day and filed the motion the  
13 very next day, which was within ten days of the date  
14 of the letter, which was May 29th, to Ms. Meisner.  
15 But I took this letter on May 17th, Exhibit One, to  
16 just be notification that the sale had been set for  
17 June 4th and to call if we had any questions about  
18 the sale or if it had been moved. That's how I took  
19 that letter, not as notification that the actual  
20 order had been signed and entered, to start our ten-  
21 day clock.

22 **THE COURT:** All right. And maybe I'm still in left field.  
23 I think since there's been no amount of a deficiency  
24 judgment been entered yet, I'm not sure ... but you  
25 want to alter or amend ...

1 **MR. BOWENS:** Well, what I want to do is to make sure that  
2 we have a ruling from Your Honor about the  
3 limitations of the guaranty agreement on Ms.  
4 Meisner's personal liability. That's the big issue  
5 that we have. Ms. Meisner claims that the dollar  
6 amount stated in the guaranty agreement, which was  
7 \$31,140; \$36,000; there's another one that's for  
8 \$50,000 that wasn't part of the actual hearing when  
9 we first had it back in April but it was provided  
10 subsequently, that her maximum liability as a  
11 personal guarantor is limited to those two dollar  
12 amounts. The plaintiff has a different  
13 interpretation of that guaranty agreement, and they  
14 claim it means those amounts plus interest, costs,  
15 attorney fees, on and on, which raises it above the  
16 dollar amount.

17 **MS. STOMSKI:** And, Your Honor, if I may approach, if you'd  
18 like to see ... I've already handed it to opposing  
19 counsel. I mean, if we're going to ...

20 **MR. BOWENS:** I mean, I don't know if you want to handle  
21 that today or ...

22 **THE COURT:** Well, I was going to make a comment about it.  
23 You have a copy of the guaranty?

24 **MS. STOMSKI:** I do. But my point is, and also that I  
25 raised in my pleadings, that the Rules and the case

1 law on 59(e) are very, very clear. You can't raise  
2 something for the first time at Motion to Alter or  
3 Amend that you could have raised at trial. We had  
4 our witness here; Whitney Wolfman was here to be  
5 able to testify as to the guaranty. He could have  
6 cross-examined her about any limitations, what the  
7 meaning of it is. And she could have gone through  
8 step by step exactly what it says. He did not do  
9 so; he's waived his right to bring it up now for the  
10 first time in a motion.

11 **MR. BOWENS:** Well, we raised it in our Answer and  
12 Counterclaim. And when we got to the part about the  
13 deficiency judgment, once the main part was over  
14 with, I was under the impression, and maybe I was  
15 mistaken, that we were going to defer those issues  
16 until we had to stand on the appraisal money. If I  
17 was wrong about that and misinterpreted it, I  
18 apologize. But if that's the case, I would ask that  
19 under Rule 52 and 59, let me be relieved of that and  
20 have a chance to get a ruling from the Court on that  
21 issue for declaratory judgment.

22 **THE COURT:** All right. Mr. Bowens, is your client under  
23 the belief she doesn't owe any deficiency at all?

24 **MR. BOWENS:** No. She just believes that it should be  
25 limited to the amounts that are stated in the

10

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1 guaranty agreement, not the total debt that Sand  
2 Dollar ... Sand Dollar's got a debt, according to  
3 the plaintiff, of \$63,734.92 on one property and  
4 \$43,220.45 on another. Ms. Meisner's guarantees  
5 were for \$31,140 on one and \$50,000 on the other  
6 one.

7 **MS. STOMSKI:** You're leaving out the part that says it's  
8 limited to the principal amount.

9 **MR. BOWENS:** Well, that's where the discrep- ... that's  
10 where the interpretation of what it means comes in,  
11 and that's why we want a declaratory judgment from  
12 the Court as to which way it goes. If the plaintiff  
13 is correct, then she's liable for the entire thing.  
14 If Ms. Meisner's correct, it's limited to just the  
15 dollar amounts. And that's what we have a dispute  
16 about.

17 **THE COURT:** Do you have a case, either of you, that would  
18 give us some guidance on that?

19 **MS. STOMSKI:** Well, it's the plain language. I mean, it  
20 very specifically ... there's no interpretation. It  
21 says it exactly, principal amount plus.

22 **THE COURT:** But the Supreme Court hasn't said anything  
23 about a similar situation somewhere?

24 **MS. STOMSKI:** It's a matter of contract. You know, they  
25 say you look at the plain language of the, as he

11

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1 states in his memorandum in support, I mean, look at  
2 the plain language. It says ... it doesn't say Or;  
3 it says, Principal amount plus accrued interest  
4 thereon and all other costs, fees and expenses  
5 agreed to be paid under all agreements evidencing  
6 the indebtedness and securing the payment of the  
7 indebtedness. And all attorney's fees. I mean,  
8 it's ... it's about as plain as you can get. And,  
9 again, I will go back. He had an opportunity with  
10 the officer of the bank here. He had his client.  
11 He could have asked her questions about, What is  
12 your interpretation. We agreed that we didn't know  
13 the deficiency amount, but we didn't hold that any  
14 matter that might relate to deficiency will be held  
15 at a different time. As Mr. Bowens said, you ruled  
16 from the bench. You ruled. So there was nothing  
17 discussed that we were going to hold up the merits  
18 of the case, such as whether or not her guarantee is  
19 limited to the principal amount or principal plus  
20 costs. We had that time, and he waived it by not  
21 bringing it up.

22 **MR. BOWENS:** I disagree that I waived it because I ... the  
23 deficiency may be moot if it's zero when we're done  
24 with the whole process. If, after the appraisal's  
25 over with, it could be zero, the whole thing is

12

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1 moot. But until we know the deficiency judgment  
2 amount, then we have ... then we can figure out what  
3 her maximum liability would be, which is why I  
4 thought we were going to do this separately from the  
5 main, Can they foreclose or not?

6 **THE COURT:** Do you have a Supreme Court case, state Supreme  
7 Court case that gives us guidance on this issue?

8 **MR. BOWENS:** Well, I haven't got anything on this  
9 particular ... I mean, I haven't researched that  
10 yet. But in the guaranty itself, it's a form  
11 guaranty contract, at the top of it there's two  
12 options, a Paragraph A and B. You can check one or  
13 the other. And in every case Paragraph A is  
14 checked, which appears to limit it to the dollar  
15 amount stated. Paragraph B is a much broader  
16 category. It says that, The undersigned guarantees  
17 to the lender payment and performance of each and  
18 every debt, liability and obligation of every type  
19 and description which borrower may now or at any  
20 time hereafter owe to the lender, whether such debt,  
21 liability or obligation now exists or is hereafter  
22 created, incurred and/or whether it is direct or  
23 indirect, due to or become due, absolute or  
24 contingent, primary or secondary, liquidated or ...  
25 it goes on and on and on.

1 **MS. STOMSKI:** Your Honor, we ...

2 **MR. BOWENS:** But that is the ... those are the type of

3 debts that are interest, attorney fees, costs,

4 that's the way we interpret this. Now, I know she

5 has a different view of that, but that's why we need

6 a ruling from the Court about that. And if it is

7 ... if this creates some ambiguity as to what it

8 means between Paragraph A and B and Four, the

9 ambiguity is construed against the drafter, which

10 was the plaintiff. She gets the benefit of the

11 ambiguity.

12 **MS. STOMSKI:** Your Honor, if I may. May I approach? If

13 he's going to get that much into detail I'd like for

14 you to at least see it. The part he leaves out is

15 that after A and B, it has a header right underneath

16 it that says, The undersigned further acknowledges

17 and agrees with lender that ... and then it goes on

18 to five more paragraphs. I mean, clearly it's not

19 even ... the part that she's disputing is not even

20 on a different page. It's all on the same page that

21 she signed. It clearly says principal amount plus

22 accrued interest, costs, fees, attorney's fees. And

23 she didn't raise this issue, again, you know, I

24 don't want to be a broken record, but her time to

25 raise this issue was at the trial. And therefore,

14

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1       under many Supreme Court cases ... I cite the  
2       *Mailsources v. M.A. Bailey, C.A.H. v. L.H.* They are  
3       very definitive that a party cannot raise an issue  
4       for the first time in a Rule 59(e) motion which  
5       could have been raised at trial. He could have  
6       raised it at trial. He did not. The Supreme Court  
7       and Court of Appeals have spoken. The Supreme Court  
8       case says a party cannot use Rule 59(e) to present  
9       to the Court an issue the party could have raised  
10      prior to judgment but did not.

11 **MR. BOWENS:** And, Your Honor, again, we raised this issue  
12      for the first time in the Counterclaim, where we  
13      specifically asked for a declaratory judgment as it  
14      relates to the deficiency amount and the guaranty  
15      agreement. And when we were in the trial it was my  
16      understanding from your comments, again, if I  
17      misunderstood I apologize, but that we were going to  
18      wait on the deficiency issue until we had the sale  
19      and the appraisal done, which is why we didn't go  
20      into it at that point. The Rule 52, 59 and 60  
21      allows the Court to make new findings, to reopen it.  
22      This was not made ... this is not a brand new issue  
23      that's come up after the judgment; it was already  
24      raised, and I thought it was being deferred until we  
25      had the ... until we knew whether it was going to be

15

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1 an issue or not. I mean, if it turns out it's zero  
2 because the appraisal is higher than the high bid,  
3 then we don't need to do this. But when I got this  
4 order it made me think something had gone on I'd  
5 missed and I needed to bring it before the Court's  
6 attention. I think we should wait until we have the  
7 final thing done and see what the deficiency is, if  
8 there is one.

9 **THE COURT:** Now, let me ask. And I'm trying to make a  
10 record so please don't think I'm being simplistic or  
11 repeating myself unnecessarily. Ms. Stomski, the  
12 defendant, Sand Dollar 31, LLC, did they make any  
13 payments at all on the notes and mortgages that are  
14 at issue in this lawsuit?

15 **MS. STOMSKI:** At some point they had, but then they had,  
16 by her own testimony, they went vacant for four to  
17 five months and she stopped paying. And she  
18 admitted at the trial that she was in default and  
19 that she had not been paying.

20 **THE COURT:** When was the last payment made, do you have a  
21 record of that?

22 **MS. STOMSKI:** I can find it.

23 **THE COURT:** I have the file in front of me. I guess I  
24 could look through it as well.

25 **MS. STOMSKI:** The principal due on 6317 was due as of

16

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1 November 30th of 2010, so no payments since November  
2 30th of 2010.

3 **THE COURT:** What about the other case?

4 **MS. STOMSKI:** July 25th of 2011, so about a year on that  
5 one ...

6 **THE COURT:** Okay.

7 **MS. STOMSKI:** ... with no payment.

8 **THE COURT:** All right. Mr. Bowens?

9 **MR. BOWENS:** There's also a couple other issues. With the  
10 Order, we were supposed to receive a Statement of  
11 Indebtedness, which I understood to be a breakdown  
12 of all the specific charges they were claiming,  
13 along with an Affidavit and Statement of Attorney  
14 Fees, which we never received. And I was waiting on  
15 that and I never got it. I thought it was going to  
16 be coming separately because it didn't come with the  
17 proposed order. But in the order that they  
18 prepared, they are ... they have a category called  
19 Allowable Advances. And they call it Escrow  
20 Advance; Corporate Charges, which are undefined;  
21 Attorney Fees again; Costs of Foreclosure; and/or  
22 Other Charges, which are ambiguous and undefined.  
23 We have no way to know what those go with or what  
24 they're for. And Corporate Charges and Other  
25 Charges, they have a separate line item for taxes,

17

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1       which escrow advances includes taxes. That's what  
2       escrow is for, is taxes and insurance. So without  
3       that Statement of Indebtedness and the Affidavit of  
4       Attorney Fees, I don't know how the Court or us can  
5       evaluate the propriety of these charges or the  
6       reasonableness of the claimed fees without ... I  
7       mean, you have to go to that six-factor test the  
8       Supreme Court has for determining reasonableness.  
9       And without the affidavit and the itemized  
10      statement, I don't know how either of us can ...  
11      how you can do it as the court or we can know  
12      whether to object or not. So we have some serious  
13      issues with these amounts.

14   **MS. STOMSKI:** And, if I can, Your Honor ...

15   **MR. BOWENS:** I put in the memorandum a copy of an order  
16      that you signed in a prior foreclosure on the very  
17      same property, where the attorney fees were \$2900.  
18      This case is double that, and I don't know why it  
19      would be double now when it was, you know, it's over  
20      \$6000 in this one and it was less than \$3000 before.  
21      So I think we need that attorney fee affidavit and  
22      itemized statement of costs and the Statement of  
23      Indebtedness to figure out what the actual amounts  
24      are or should be, or what's reasonable and what's  
25      proper.

18

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1 MS. STOMSKI: If I may address that. All the costs were  
2 testified to at the trial by Ms. Wolfman. She went  
3 through each of those, and he had his opportunity to  
4 ask her about that. And again, he received this  
5 proposed order at the same time you did, on May 3rd,  
6 and never raised any of these issues. As for the  
7 amount of the attorney's fees, one of the reasons  
8 this has been a very costly foreclosure for my  
9 client, relatively very low loan amounts on  
10 investment property, but we filed the Summons and  
11 Complaint ... the First Amended Summons and  
12 Complaint was filed September 27th of 2011. We  
13 couldn't get her served until December 15th, and  
14 that's when we finally got Mr. Bowens to agree. She  
15 evaded our process server. We had to pay process  
16 servers repeatedly to try to go after her. And  
17 then, right when we were going to have to face a  
18 very expensive publication, which would have added  
19 even more to this, I finally was able to get Mr.  
20 Bowens to agree December 15th. And he answered on  
21 January 19th. So we even gave him some leeway there  
22 when he actually filed his Answer on the 19th. So  
23 we ... this has been a very long process. We're on  
24 ... you know, we're getting close, you know, to a  
25 year on basically indebtedness that's, in one of

19

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1           them, less than 50 and the other one less than  
2           \$70,000. And so because all of this is bringing up  
3           now, the prejudice to my client is that he had the  
4           opportunity and he didn't bring it up, he didn't  
5           address any of his issues with you or me after the  
6           proposed order was sent. My understanding was that  
7           everything had been sent out. If it was not sent  
8           out, then he had an opportunity between May 3rd and  
9           when you signed, when he got our letter, any point  
10          he called me up. It wasn't until June 7th, the same  
11          day he filed his motion, which I found a bit  
12          troubling. He didn't, you know, call me and ask me.  
13          He sent an email the day he filed this motion,  
14          saying, you know, where were these things. I didn't  
15          know he didn't have them because he never objected  
16          to anything in the proposed order for all that time.  
17   **MR. BOWENS:** Well, I would think that they would know what  
18          they've sent. And I had no idea that it had been  
19          forwarded to you for your review either. I thought  
20          it was just coming to me. I had no ... typically,  
21          in my experience, when one party's attorney sends  
22          something to the Court, proposed order or whatever  
23          it may be, there's a transmittal letter that the  
24          opposing counsel's copied on. There was never any  
25          of that that I saw. I didn't even know you had this

20

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1           for consideration.

2 **MS. STOMSKI:** Well, Glenn, if I may, this ... I've got a  
3           copy of the email sent by Cathy Clark on Thursday,  
4           May 3rd, at 2:08 p.m. to corneliusf@rcgov.us, with a  
5           copy to gbowens@popebowens.com, and a copy to me;  
6           subject, Sand Dollar 31, LLC. And it says, Pursuant  
7           to ... the request was, Attached with the revised  
8           records of hearing and judgments of foreclosure and  
9           sale, gives both case captions, Pursuant to Judge  
10          Strickland's instructions at the hearing on April  
11          25th, let me know if you need anything else  
12          pertaining to these two cases.

13 **MR. BOWENS:** Your Honor, there is no way to tell from that  
14          email that that was sent to you. And you're not  
15          Cornelius. Typically there is, Dear Judge  
16          Strickland, enclosed please find. By copy of this,  
17          I'm serving on opposing counsel. That is at best a  
18          cryptic ...

19 **THE COURT:** Okay.

20 **MR. BOWENS:** ... notice. I had no way to know that was  
21          conveying it to you. It's not ... your email's not  
22          on there. There's no way for me to know that. I  
23          did not know it had gone to you when they had sent  
24          it to you.

25 **MS. STOMSKI:** That's the only address that we had to

21

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1           communicate with Your Honor.

2   **THE COURT:**   Again, coming from left field, I would deny  
3           your motions; however, Ms. Stomski, if you could  
4           write a non-argumentative order in that regard.  
5           However, I think the appraisal rights statute is the  
6           way to go.   Now, I'm sure Ms. Stomski will argue  
7           probably that that may have been waived or not  
8           timely in itself.   But I would certainly give your  
9           client a chance to dispute the bank's opinion as to  
10          what the property's actually worth.   And, of course,  
11          at this time we have not established a deficiency,  
12          what the amount is.

13 **MR. BOWENS:**   Well, that's correct, and that's why I  
14          thought the issue of the guaranty agreement as it  
15          relates to the deficiency judgment was for a later  
16          date.   That's why I ... the reason I brought this  
17          was because of the ... I got the order and was  
18          concerned about preserving her rights.   What we need  
19          for our purposes is either ... is a ruling that the  
20          guaranty agreement is limited to the dollar amount,  
21          or if it's more expansive, as the plaintiff claims.

22 **THE COURT:**   Now ...

23 **MR. BOWENS:**   If you want to do that today, we can do it  
24          now.   Or if you want to defer it till we get the  
25          deficiency judgment back and know whether we have an

22

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1           issue or not, we can wait until then.

2   **THE COURT:**   Okay.

3   **MR. BOWENS:**   But that's the issue that's come up that we

4           ... that's of most concern to us at this point. We

5           have some concern with the way the order was filed

6           and ... because it was before the sale, the order

7           that you signed didn't say to file it and publicly

8           index it before the sale. Those are ...

9   **THE COURT:**   Was it not filed before the sale?

10   **MS. STOMSKI:**   Oh, yes.

11   **THE COURT:**   It was?

12   **MS. STOMSKI:**   Oh, yes.

13   **THE COURT:**   Okay. The reason why I'm asking that, because

14           ...

15   **MS. STOMSKI:**   May 16th. That's why we sent the letter out

16           on the 17th, so that there was no question that it

17           ... because you can't have a sale if there's no

18           signed index order, and it was on May 16th at 10:55

19           a.m.

20   **THE COURT:**   Okay.

21   **MS. STOMSKI:**   In both cases.

22   **THE COURT:**   Maybe with regard to the limitations and the

23           guaranty agreement, I might benefit from a more

24           fleshed out brief on that issue.

25   **MR. BOWENS:**   We can prepare that for you.

1 **THE COURT:** Okay. In the meantime, I think y'all need to  
2 start the appraisal process. I mean, I'm very,  
3 very, how should I say ... flexible on a deadline  
4 for that.

5 **MR. BOWENS:** I think we have 30 days from the day of ...  
6 the last sale was on June, I'm sorry, July the 5th,  
7 wasn't it? I think that's when we had the final ...  
8 so it was 30 days from July the 5th of ...

9 **MS. STOMSKI:** Or was it the 3rd? No, it was the ...

10 **MR. BOWENS:** I think it was the 5th.

11 **MS. STOMSKI:** It was the 5th, you're right, in this  
12 county.

13 **MR. BOWENS:** So we have until August the 5th to file a  
14 petition for ...

15 **THE COURT:** The deficiency sale was ...

16 **MR. BOWENS:** Yeah. So we have 30 days from that day to, I  
17 think until August the 5th to file the petition for  
18 ...

19 **THE COURT:** Okay.

20 **MR. BOWENS:** So we'll do that promptly.

21 **THE COURT:** All right. And that's an issue I'm not too  
22 concerned about, but I think it would help us all if  
23 you exercise appraisal rights.

24 **MR. BOWENS:** Well, that's ... frankly, Your Honor, that's  
25 why I thought we were waiting on this issue, until

1           we had that ... the issue may be moot. There may be  
2           no deficiency judgment at the end of the day, so a  
3           declaratory judgment on their application of the  
4           guaranty agreement may be moot; it may not ever  
5           occur.

6   **THE COURT:** But you do want to brief it though?

7   **MR. BOWENS:** I will prepare a brief and submit it to you.

8   **THE COURT:** Okay. And so you and Ms. Stomski, y'all can  
9           exchange briefs I guess.

10   **MR. BOWENS:** Okay.

11   **MS. STOMSKI:** And, Your Honor, just so I'm clear on ...  
12           you said you want me to draft an order denying the  
13           defendant's motion to alter or amend, is that  
14           correct?

15   **THE COURT:** Exactly. In both cases, that's right.

16   **MS. STOMSKI:** Okay.

17   **THE COURT:** A brief, non-argumentative order. And then  
18           y'all please brief that other issue, the issue of  
19           whether or not the guaranty agreement is limited.

20   **MR. BOWENS:** Then we'll come back for a decision or get a  
21           decision from y'all on that issue?

22   **THE COURT:** Yeah. Either without a hearing or with a  
23           hearing. But at some point, again, at this stage  
24           even though we've had a deficiency sale, the amount  
25           of deficiency, if any, has not been determined. Are

25

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1 we all in agreement on that? Ms. Stomski?

2 **MS. STOMSKI:** And, Your Honor, actually, you know, you  
3 bring up a point that might make this completely  
4 obsolete when considering what was bid. In 6317 the  
5 bid was \$25,001 if I remember correctly, and in 6318  
6 it was \$10,001. I'm making sure with that. So I  
7 believe that this point is pretty moot because when  
8 you take those dollar amounts out, what's going to  
9 be owed, I think it's going to be under whatever he  
10 might allege on that. But, if I may for the record  
11 just continue my objection as to briefing the issue  
12 on the guaranty as untimely, as not raised at trial,  
13 therefore under the Supreme Court case of *Doran v.*  
14 *Doran* and a long line of other cases, it's not  
15 properly before the Court. If I may just preserve  
16 that for the record.

17 **THE COURT:** Sure. Duly noted. And your objection's  
18 overruled. Okay, anything further today?

19 **MR. BOWENS:** I think that's it.

20 **MS. STOMSKI:** Nothing further.

21 **THE COURT:** That's it?

22 **MR. BOWENS:** That's it. We'll brief that issue for you.

23 **THE COURT:** All right. Thank you very much.

24 (There being nothing further, the hearing was concluded  
25 at 4:37 p.m.)

26

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**CERTIFICATE**

I certify that the foregoing transcript, consisting of 26 pages, is a true, accurate and complete transcript of the hearing taken before me, Robin K. Reibold, the undersigned Court Reporter. This hearing was held without a jury before The Honorable Joseph M. Strickland, Master in Equity for Richland County, on July 18, 2012, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.



November 21, 2012

ROBIN K. REIBOLD

MY COMMISSION EXPIRES: 4-28-2021

27

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**COPY**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF RICHLAND ) CASE #: 2011-CP-40-6317  
2011-CP-40-6318

South Carolina B&T, NA, )  
Plaintiff, )  
v. ) **STATUS CONFERENCE**  
Sand Dollar 31, LLC; )  
Rhonda Meisner, )  
Defendants. )

Monday, August 13, 2012  
8:59 a.m. to 9:09 a.m.

The status conference with the Honorable Joseph M. Strickland, Master in Equity for Richland County, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 13th day of August, 2012, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

**APPEARANCES:**

Teri K. Stomski, Esquire  
Rogers Townsend & Thomas, PC  
220 Executive Center Drive  
Columbia, South Carolina 29210  
Attorney for the Plaintiff

Glenn E. Bowens, Esquire  
Attorney at Law  
Post Office Box 424  
Winnsboro, South Carolina 29180  
Attorney for the Defendants

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1 **THE COURT:** This is a status conference regarding two  
2 cases, 2011-CP-40-6317 and 2011-CP-40-6318. I think  
3 we're at the stage in those cases where we're going  
4 through the appraisal process?

5 **MR. BOWENS:** That's correct.

6 **THE COURT:** Before a deficiency. Mr. Bowens I guess is  
7 pursuing this by the book, by the statute. As a  
8 practical matter, normally we would do it a little  
9 more informally than the statute would require. So  
10 typically what we do is we let each side pick an  
11 appraiser, and if the appraisers can't agree then  
12 I'll pick one and they'll come to some sort of a  
13 resolution. Is that a problem, Mr. Bowens or Ms.  
14 Stomski? Is that a problem for either of you?

15 **MR. BOWENS:** Not for me, Your Honor.

16 **MS. STOMSKI:** Your Honor, we'd just, you know, look again  
17 to the statute. We don't have any particular issue,  
18 but we would just look to the statute for ...

19 **THE COURT:** Okay. And, of course ...

20 **MR. BOWENS:** We've appointed our, nominated our person. I  
21 don't know if you've had a chance to nominate ...  
22 the bank's had a chance to nominate somebody yet.

23 **MS. STOMSKI:** Well, and Your Honor, we would ... I was  
24 just looking, going, based on the statute, and it  
25 says as soon as the order is served on us that there

1           will be the appraisal. Then when that's granted,  
2           then we have ten days upon the service of that  
3           order. So really I was just waiting to kind of see  
4           what the Court was going to do ...

5 **THE COURT:** Do you prefer the more formal process?

6 **MS. STOMSKI:** Well, I mean, I was just ... without any  
7           other guidance, I was just going by the statute.

8 **THE COURT:** Okay, that's .... no, that's fine. I  
9           understand now. Yeah, that's fine. But I think  
10          you're okay to go ahead and get somebody, and have  
11          your appraiser and Mr. Bowens' appraiser get  
12          together. And if they can't agree, then the Court  
13          will appoint somebody. And my experience is that  
14          most ... first of all, in the time I've been here  
15          very few people exercise their rights under the  
16          appraisal statute. I think now, with more and more  
17          commercial foreclosures, people are starting to do  
18          that. And also, as a matter of history, most of  
19          these things get resolved once the appraisers get  
20          together. So, anyhow, that's how we're going to  
21          proceed I guess. Can you get somebody this week,  
22          Ms. Stomski?

23 **MS. STOMSKI:** Yes, sir, absolutely.

24 **THE COURT:** Okay. And y'all can work on that. And again,  
25          if the appraisers don't agree, then I'll get

*SCB&T v. Sand Dollar 31, LLC and Rhonda Meisner*

1           involved.    Okay.    Well, that's ... who's your  
2           appraiser, Mr. Bowens?

3 **MS. STOMSKI:** Angela Buckley is what ...

4 **MR. BOWENS:** Angela Buckley.

5 **THE COURT:** Okay.

6 **MS. STOMSKI:** And the one thing I'd noticed, Your Honor, I  
7    know we'll be doing this more informally, but under  
8    the statute it just said that it needed to be  
9    disinterested, and I noticed in her petition she  
10   didn't note that. And I just wasn't ... I just  
11   wanted to make sure before we start this, so it  
12   doesn't get expensive and have to pick new  
13   appraisers, that it is a disinterested party who's  
14   never done an appraisal on this property for Ms.  
15   Meisner before.

16 **MR. BOWENS:** Yeah, I don't think she's done an appraisal  
17   on this property before.

18 **THE COURT:** You can just ask, to double check. I don't  
19   think she's done work for this Court as well before,  
20   so. But okay, anything further?

21 **MS. STOMSKI:** The only thing I was going to mention, Your  
22   Honor. When I received your bid compliance package  
23   and etcetera about the sale, it was the first that  
24   we were aware that the winning bidder was an agent  
25   of Ms. Meisner's. We weren't aware of that until we

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1 saw your order that stated such.

2 **THE COURT:** Okay.

3 **MS. STOMSKI:** And so really, at this ... we're kind of ...  
4 we're finding ourselves in an interesting position.  
5 Ms. Meisner's actually the one who bid on the  
6 property, and bid it at the price that she did. And  
7 now she's coming to court and putting in her  
8 petition that it was for a figure significantly  
9 beneath its appraised value. So we find ourselves  
10 in an interesting position, where the winning bidder  
11 is not the bank but Ms. Meisner. So Ms. Meisner's  
12 saying, I'm getting this property at this low price,  
13 but on the other hand I'm saying that the figure's  
14 significantly beneath its appraised value; so I'm  
15 getting the property with great equity on one hand,  
16 but I'm also looking to the Court to diminish my  
17 deficiency judgment. So it seems somewhat of a  
18 double-dipping or perhaps an inconsistent position  
19 that she's coming to the Court. And so we find  
20 ourselves in the position of wondering, you know, is  
21 she going to abandon one of those positions since  
22 they're in conflict, or is she going to put us in a  
23 position where we need to seek to have the sale  
24 vacated.

25 **THE COURT:** Mr. Bowens?

1 **MS. STOMSKI:** Because ...

2 **MR. BOWENS:** This is new to me too. I don't know ... she

3 has a right to the appraisal. I don't think it ...

4 whether she or her agent was a bidder at the sale, I

5 don't think that negates her right to the appraisal.

6 **MS. STOMSKI:** And what I'm saying is, since she's coming

7 to a court of equity with conflicting positions, not

8 necessarily that she doesn't have a right to the

9 appraisal, but it might therefore require that the

10 sale be vacated so that she then, you know, we'd put

11 it back up for bid. If it is so significantly under

12 the appraised value, as she stated in her verified

13 petition, then it seems at odds.

14 **THE COURT:** Okay. Let me back up a bit. You're saying

15 that there may be a need to set aside the sale and

16 just have it sold again, based on the fact that the

17 mortgagor was in fact the successful bidder and is

18 now taking the position that only, typically only

19 third-party bidders do. That's an interesting

20 point. I've never had that issue presented to me

21 before; it's never come up. Again, as I said

22 earlier, not that many people exercise their rights

23 under the appraisal statute. They haven't until

24 recent years. I'm not sure what to do. Are you

25 aware of any cases that have the same scenario?

1 MS. STOMSKI: We've got a case, Your Honor. It's Wells  
2 Fargo v. Turner. It is 37 S.C. 147. It's a 2008  
3 case. And it does talk about when a sale is  
4 accompanied by other circumstances warranting the  
5 interference of the court. A judicial sale can be  
6 set aside in that circumstance or when the sale  
7 price is so gross as to shock the conscience. And  
8 in that situation, Freeman, one of the individuals  
9 involved in the sale, did bid in at a low cost, was  
10 found to be aware of the note and the mortgage  
11 value, etcetera, and therefore when ... at bidding  
12 at the low price, it was significantly less,  
13 etcetera, so. We're not necessarily looking at it  
14 from a price so low to shock the conscience as much  
15 as somewhat of a deliberate scheme on the part of  
16 the defendant borrower to bid in at a lower price  
17 and yet then also seek to have a deficiency lowered,  
18 with conflicting positions. So, but the court does  
19 talk about this in terms of, if you're going to come  
20 in and bid lower, significantly lower, and your  
21 position is that you would ... she can't arguably  
22 say she wouldn't pay more for this property than she  
23 already has. And so based on that, we have some  
24 concerns that how she can come with those  
25 conflicting positions. And to be honest, until I

7

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1       received your order on Thursday, I didn't realize  
2       that she was the winning bidder.

3 **THE COURT:** Who was the bidder, the winning bidder?

4 **MS. STOMSKI:** Kevin Nowell, N-O-W-E-L-L.

5 **THE COURT:** And he's with ...

6 **MS. STOMSKI:** It says, As agent for Rhonda Meisner.

7 **THE COURT:** And he was working for her or working with her  
8       or?

9 **MS. STOMSKI:** I'm not certain. I just read what was in  
10       the Master's Report on Sale and Order of  
11       Confirmation. That was the first I realized there  
12       must be some kind of connection between the two.

13 **THE COURT:** Mr. Bowens?

14 **MR. BOWENS:** I really don't know about that issue, with  
15       who he is and what his relationship is to Ms.  
16       Meisner. Maybe we can just go ahead and have the  
17       appraisers do their work and see where that comes  
18       out. That might make the whole issue moot. If not,  
19       then maybe just vacate the bid that she made and  
20       leave the bank's bid as the bid.

21 **THE COURT:** All right, Ms. Stomski, did we ... has the  
22       successful bidder complied with the bid, as far as  
23       you know? I'm trying to save a trip down to get  
24       Susan. If you remember.

25 **MS. STOMSKI:** I'm not certain. I'm looking at the

1 Statement of Disbursements that is dated July 23rd.  
2 Again, I'm sorry, Your Honor, I just got this on  
3 Thursday. It says, Receipts only five percent of  
4 the bid, yes, \$9551.95.

5 **THE COURT:** Which sale was it, do you remember?

6 **MS. STOMSKI:** I'm looking at this ... she was the winning  
7 bidder on both. But it ... I see that there's a  
8 total due, but I don't see necessarily that there's  
9 been a full compliance. I see the five percent of  
10 the bid appears to have been received.

11 **THE COURT:** Okay. And the sale was ... you don't remember  
12 which sale ...

13 **MS. STOMSKI:** I'm sorry, Your Honor, it was July 5th. I'm  
14 sorry.

15 **THE COURT:** July sale. Okay. Okay. Now, the initial  
16 judicial sale was July 5th, or was that the  
17 deficiency sale?

18 **MS. STOMSKI:** That was the ...

19 **THE COURT:** Deficiency sale?

20 **MS. STOMSKI:** That was the deficiency sale, yes, Your  
21 Honor.

22 **THE COURT:** Okay. I'm going to ask Mr. Middleton to go  
23 round up Ms. Golston, who keeps track of all this  
24 stuff for me. And I'm more interested in seeing, I  
25 guess from what we sent out ... well, if we already

1           sent out our Report on Sales and Disbursement, that  
2           means the bid was complied with.

3 **MS. STOMSKI:** I would imagine, Your Honor. I just ... I  
4           don't know for certain.

5 **THE COURT:** Now, how does that prejudice your client  
6           though?

7 **MS. STOMSKI:** As far as the ...

8 **THE COURT:** Well, you point out that ... I think your  
9           argument was that Ms. Meisner has conflicting  
10          positions. If she's the third-party bidder and then  
11          she's also claiming that she's entitled to a lower  
12          deficiency judgment, if at all I guess is part of  
13          their argument, how does that prejudice your client?

14 **MS. STOMSKI:** Well, from a double-dipping standard. She  
15          ends up with the property with an equity. She ...  
16          but then at the same time wants the deficiency ... I  
17          mean, she borrowed money and, but she wants that  
18          amount diminished, but then also takes the property  
19          back.

20 **THE COURT:** Okay.

21 **MS. STOMSKI:** And it's a deliberate scheme to extinguish  
22          the mortgagee's lien ...

23 **THE COURT:** Okay.

24 **MS. STOMSKI:** ... with those conflicting positions.

25 **THE COURT:** Mr. Bowens?

10

1 **MR. BOWENS:** I think we have to remember that the bank  
2 made one bid, and they could have bid higher. But  
3 secondly, Ms. Meisner, in her personal capacity, is  
4 not the borrower; Sand Dollar's the borrower. So  
5 Ms. Meisner was the guarantor on those. So if she  
6 is buying in her personal capacity, then that's ...  
7 she wasn't the owner; Sand Dollar was the owner. So  
8 I don't know that that makes her double-dipping or  
9 anything. And Sand Dollar didn't re-buy it.

10 **THE COURT:** Ms. Golston reports that the bid was in fact  
11 complied with in full, so she's back to being the  
12 owner. What we didn't know, Susan, was that Mr.  
13 Nowell was actually working for Ms. Meisner. You  
14 have no record of that?

15 **MS. GOLSTON:** No.

16 **THE COURT:** Okay. That's interesting. Because apparently  
17 he ...

18 **MS. GOLSTON:** I found out about it after the bid.

19 **THE COURT:** Oh, after the bid you found out?

20 **MS. GOLSTON:** I didn't know when he bid.

21 **THE COURT:** Okay, now we know?

22 **MS. GOLSTON:** Yes.

23 **THE COURT:** Okay. All right. Thank you. Well, I mean,  
24 do you want to set aside the sale and do it again,  
25 Ms. Stomski? Just send us a ... we normally do that

11

**Official Court Reporter**  
*Master in Equity, Richland County*  
1701 Main Street - Post Office Box 192 (29202)  
Columbia, South Carolina 29201

1 as a matter of course unless, Mr. Bowens, if it's  
2 going to prejudice your client in that respect,  
3 because she's back being the owner of the property  
4 and she's now fighting over whether or not she  
5 should pay them on a deficiency judgment. Is that  
6 your request, or are you going to talk to your  
7 client about that, Ms. Stomski?

8 **MS. STOMSKI:** I spoke to them briefly on Friday. And we  
9 did have concerns about that.

10 **THE COURT:** Okay. Well, if y'all decide to ask that we  
11 set aside the sale, file a formal motion, a Motion  
12 to Set Aside the Sale, and maybe a short brief, five  
13 pages or less, explaining why. And I guess, Mr.  
14 Bowens, we'll give you a chance to respond. Now,  
15 all this is going to be taking place against the  
16 backdrop of the appraisers doing their work, unless  
17 y'all want to wait until I make a ruling on the  
18 motion to set aside the sale. Mr. Bowens?

19 **MR. BOWENS:** Well, we're going to have to have it  
20 appraised anyway, so I think we'll just go ahead and  
21 have the appraisal done. Whatever happens with the  
22 set aside, our appraisal's going to be done anyhow.

23 **THE COURT:** All right. Ms. Stomski, how does that suit  
24 you?

25 **MS. STOMSKI:** That's fine, Your Honor.

12

1 **THE COURT:** Okay.

2 **MS. STOMSKI:** It seems like that would keep things moving  
3 along because we certainly don't want to create any  
4 delay.

5 **THE COURT:** Yes, ma'am. All right. So Ms. Stomski's  
6 going to submit a motion to set aside the sale after  
7 consulting with her client. And Mr. Bowens'  
8 position, and I think I agree with it, to have the  
9 appraisers go ahead and do their job. And  
10 hopefully, like I said, most of these things get  
11 resolved without my input, but if the appraisers  
12 can't agree then the Court will appoint somebody.  
13 All right. Anything further today?

14 **MR. BOWENS:** No. that's it. Thank you, Your Honor.

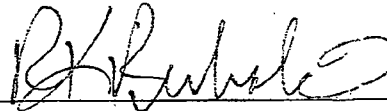
15 **MS. STOMSKI:** Thank you so much.

16 **(There being nothing further, the conference was concluded**  
17 **at 9:09 a.m.)**

**CERTIFICATE**

I certify that the foregoing transcript, consisting of 14 pages, is a true, accurate and complete transcript of the status conference taken before me, Robin K. Reibold, the undersigned Court Reporter. This status conference was held with The Honorable Joseph M. Strickland, Master in Equity for Richland County, on August 13, 2012, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.



November 21, 2012

ROBIN K. REIBOLD

MY COMMISSION EXPIRES: 4-28-2021

14

**Official Court Reporter**  
*Master in Equity, Richland County*  
1701 Main Street – Post Office Box 192 (29202)  
Columbia, South Carolina 29201

**GLENN BOWENS**

ATTORNEY AT LAW

TELEPHONE  
(803) 714-7766

POST OFFICE BOX 424  
WINNSBORO, SOUTH CAROLINA 29180

FACSIMILE  
(803) 714-0775

gbowens@bowenslawsc.com

June 7, 2012

The Honorable Joseph M. Strickland  
PO Box 192  
Columbia, SC 29202

Re: SCB&T v Sand Dollar 31, LLC and Rhonda Meisner  
Civil Action # 2011-CP-40-6317  
Civil Action # 2011-CP-40-6318

RECEIVED  
JUN 8 2012  
MASTER-IN-EQUIP

Dear Judge Strickland:

Enclosed please find copy of Motion to Alter or Amend in the above referenced matter.

Sincerely,

  
Glenn Bowens, Esq.

cc:

Terri Stomski,  
Rogers Townsend & Thomas, PC  
220 Executive Center Dr.  
Columbia, SC 29210

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N.A.,

☐ Plaintiff

v.

Sand Dollar 31, LLC, Rhonda Meisner

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-40-6317

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |                                                                                                                                                                                                          |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>Plaintiff's Attorney:</b><br>_____, Bar No. _____<br>Address: _____<br>phone: _____ fax: _____<br>e-mail: _____ other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  | <b>Defendant's Attorney:</b><br>Glenn Bowens, Bar No. 70870<br>Address: _____<br>PO Box 424 Winnsboro, SC 29180<br>phone: 803-714-7766 fax: 803-714-0775<br>e-mail: gbowens@bowenslawsc.com other: _____ |  |
| <input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete <b>SECTIONS I and III</b> )<br><input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete <b>SECTIONS II and III</b> )<br><input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete <b>SECTIONS II and III</b> )                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |                                                                                                                                                                                                          |  |
| <b>SECTION I: Hearing Information</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                                                                                                                                                          |  |
| Nature of Motion: Motion to Alter or Amend<br>Estimated Time Needed: 30 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |                                                                                                                                                                                                          |  |
| <b>SECTION II: Motion/Order Type</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |                                                                                                                                                                                                          |  |
| <input checked="" type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |                                                                                                                                                                                                          |  |
| <u>Glenn Bowens</u><br>Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  | June 7, 2012<br>Date submitted                                                                                                                                                                           |  |
| <b>SECTION III: Motion Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |                                                                                                                                                                                                          |  |
| <input checked="" type="checkbox"/> <b>PAID - AMOUNT: 25.00</b><br><input type="checkbox"/> <b>EXEMPT:</b> <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br>(check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)<br><input type="checkbox"/> Proposed order submitted at request of the court; or,<br>reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter: _____<br><input type="checkbox"/> Other: _____ |  |                                                                                                                                                                                                          |  |
| <b>JUDGE'S SECTION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |                                                                                                                                                                                                          |  |
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  | JUDGE _____<br>CODE: _____ Date: _____                                                                                                                                                                   |  |
| <b>CLERK'S VERIFICATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |                                                                                                                                                                                                          |  |
| Collected by: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  | Date Filed: _____                                                                                                                                                                                        |  |
| <input type="checkbox"/> <b>MOTION FEE COLLECTED:</b> _____<br><input type="checkbox"/> <b>CONTESTED - AMOUNT DUE:</b> _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |                                                                                                                                                                                                          |  |

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

MOTION TO ALTER OR AMEND

RICHLAND COUNTY  
FILED  
2012 JUN -7 PM 2:18  
JEANETTE W. BRIDGE  
C.C.P. & G.

TO: **TERI STOMSKI, ESQ. ATTORNEY FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE NAMED**

**YOU WILL PLEASE TAKE NOTICE** that the undersigned, as attorney for the

Defendants, Sand Dollar 31, LLC and Rhonda Meisner, will move before the Master in Equity at the Richland County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may conveniently be heard, for an Order vacating, setting aside, amending, altering or reconsidering the judgment rendered in the above captioned action on the grounds that:

- (1) The "Form 4 Judgment in a Civil Case" was prematurely filed and/or filed improperly by the Plaintiff.
- (2) The Form 4 indicates the judgment amount to be entered against Sand Dollar 31, LLC and Rhonda Meisner was \$63,734.92; however, this is a foreclosure action and at the time the Form 4 was filed the judgment amount had not yet been determined as neither the foreclosure sale nor the appraisal had taken place;
- (3) The Form 4 filed by the Plaintiff incorrectly states the judgment against Rhonda Meisner as \$63,734.92, the maximum amount of Rhonda Meisner's personal liability is limited to \$31,140.00 as this was the amount of her personal guarantee (this amount is subject to being further reduced based on the outcome of the foreclosure sale and the appraisal). The Form 4

filed by the Plaintiff erroneously conveys to the public that judgment for \$63,734.92 was entered against Rhonda Meisner.

(4) The judgment amount shown on the Form 4 includes attorney fees and costs. Upon information and belief, the Plaintiff has not yet submitted an Affidavit of Attorney Fees and Costs with an itemized statement of attorney fees and costs for approval by the Court nor provided a copy to the Defendants for their review and objection.

(5) Judge Strickland did not sign the Form 4 that was filed by the Plaintiff. The Form 4 Instruction # 2 provides in part "the judge will review and sign Form 4 when he or she signs an order that includes judgment enrollment information for the judgment index." Moreover, the Defendants were not provided with a signed copy of the formal order signed by Judge Strickland. The Defendants were not provided a copy of the filed Form 4, nor was counsel for the Defendants provided with a copy of the filed Form 4 or the formal order signed by Judge Strickland. The Plaintiff improperly communicated directly with the Defendants regarding the Form 4 even though the Defendants are represented by counsel.

(6) The full amount allegedly owed was entered in the "Information for the Public Index" section of the Form 4; however, Form 4 Instruction # 10 provides "When an Order of Foreclosure is filed, neither the parties or debt owed should not be listed in the Information for the Public Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code." Upon information and belief the Court did not specifically order the full judgment amount to be entered before the foreclosure sale and before submission of the itemized statement of attorney fees and costs.

The Plaintiff improperly filed the Form 4 and as a result the Defendants have been required to file this motion causing them to incur attorney fees and costs unnecessarily. The

Defendants request the court award Defendants' attorney fees and costs and/or make an appropriate adjustment to the attorney fees and costs that may be awarded to the Plaintiff to offset the fees and costs incurred by the Defendants with respect to this motion.

This motion is brought pursuant to S.C.R.C.P 52, 59 and 60 and will be supplemented and supported by such affidavits, depositions, discovery responses, memoranda of law, and such other documents as appropriate.

Respectfully submitted,



---

Glenn Bowens, Esq.  
PO Box 424  
Winnsboro, S.C. 29180  
Attorneys for the Plaintiff

Winnsboro, South Carolina  
June 7, 2012

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

CERTIFICATE OF SERVICE

RICHLAND COUNTY  
FILED  
2012 JUN -7 PM 2:18  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

I, Glenn Bowens, attorney for the Plaintiff, do hereby certify that I have this day served a copy of the foregoing **Motion to Alter or Amend** in connection with the above referenced case by placing a copy of the same in the United States Mail, postage prepaid, to the following Address:

Terri Stomski  
Rogers Townsend & Thomas, PC  
220 Executive Center Dr.  
Columbia, SC 29210

This the 7<sup>th</sup> Day of June 2012 A.D.

  
Glenn Bowens

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N.A.

☐ Plaintiff

v.

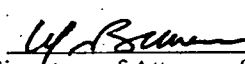
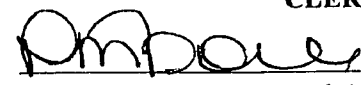
Sand Dollar 31, LLC, Rhonda Meisner

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.  
2011-CP-40-6317

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Plaintiff's Attorney:<br>_____, Bar No.<br>Address:<br>phone: _____ fax: _____<br>e-mail: _____ other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Defendant's Attorney:<br>Glenn Bowens, Bar No. 70870<br>Address:<br>PO Box 424 Winnsboro, SC 29180<br>phone: 803-714-7766 fax: 803-714-7775<br>e-mail: gbowens@bowenslawsc.com other: _____ |
| <input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete SECTIONS I and III)<br><input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete SECTIONS II and III)<br><input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete SECTIONS II and III)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                             |
| <b>SECTION I: Hearing Information</b><br>Nature of Motion: Motion to Alter or Amend<br>Estimated Time Needed: 30 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                             |
| <b>SECTION II: Motion/Order Type</b><br><input checked="" type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.<br><br><div style="display: flex; justify-content: space-between;"><div>Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant<br/></div><div>June 7, 2012<br/>Date submitted</div></div>                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                             |
| <b>SECTION III: Motion Fee</b><br><input checked="" type="checkbox"/> <b>PAID - AMOUNT: 25.00.</b><br><input type="checkbox"/> <b>EXEMPT:</b><br>(check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br><input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)<br><input type="checkbox"/> Proposed order submitted at request of the court; or,<br>reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter:<br><input type="checkbox"/> Other: _____ |                                                                                                                                                                                             |
| <b>JUDGE'S SECTION</b><br><input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | JUDGE: _____<br>CODE: _____ Date: _____                                                                                                                                                     |
| <b>CLERK'S VERIFICATION</b><br>Collected by: <br>Date Filed: _____<br><input type="checkbox"/> MOTION FEE COLLECTED: <u>25</u><br><input type="checkbox"/> CONTESTED - AMOUNT DUE: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                             |

SCCA/233 (11-03)

SCANNED

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

MOTION TO ALTER OR AMEND

2012 JUN -7 PM 2:18  
JEANELLE W. BRIDGE  
C.C.P. & G.

RICHLAND COUNTY  
FILED

**TO: TERI STOMSKI, ESQ. ATTORNEY FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE NAMED**

**YOU WILL PLEASE TAKE NOTICE** that the undersigned, as attorney for the Defendants, Sand Dollar 31, LLC and Rhonda Meisner, will move before the Master in Equity at the Richland County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may conveniently be heard, for an Order vacating, setting aside, amending, altering or reconsidering the judgment rendered in the above captioned action on the grounds that:

- (1) The "Form 4 Judgment in a Civil Case" was prematurely filed and/or filed improperly by the Plaintiff.
- (2) The Form 4 indicates the judgment amount to be entered against Sand Dollar 31, LLC and Rhonda Meisner was \$63,734.92; however, this is a foreclosure action and at the time the Form 4 was filed the judgment amount had not yet been determined as neither the foreclosure sale nor the appraisal had taken place;
- (3) The Form 4 filed by the Plaintiff incorrectly states the judgment against Rhonda Meisner as \$63,734.92, the maximum amount of Rhonda Meisner's personal liability is limited to \$31,140.00 as this was the amount of her personal guarantee (this amount is subject to being further reduced based on the outcome of the foreclosure sale and the appraisal). The Form 4

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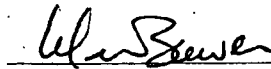
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The Plaintiff improperly filed the Form 4 and as a result the Defendants have been required to file this motion causing them to incur attorney fees and costs unnecessarily. The

Defendants request the court award Defendants' attorney fees and costs and/or make an appropriate adjustment to the attorney fees and costs that may be awarded to the Plaintiff to offset the fees and costs incurred by the Defendants with respect to this motion.

This motion is brought pursuant to S.C.R.C.P 52, 59 and 60 and will be supplemented and supported by such affidavits, depositions, discovery responses, memoranda of law, and such other documents as appropriate.

Respectfully submitted,



Glenn Bowens, Esq.

PO Box 424

Winnsboro, S.C. 29180

Attorneys for the Plaintiff

Winnsboro, South Carolina  
June 7, 2012

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

CERTIFICATE OF SERVICE

RICHLAND COUNTY  
FILED  
2012 JUN - 7 PM 2:58  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

I, Glenn Bowens, attorney for the Plaintiff, do hereby certify that I have this day served a copy of the foregoing **Motion to Alter or Amend** in connection with the above referenced case by placing a copy of the same in the United States Mail, postage prepaid, to the following Address:

Terri Stomski  
Rogers Townsend & Thomas, PC  
220 Executive Center Dr.  
Columbia, SC 29210

This the 7<sup>th</sup> Day of June 2012 A.D.

  
Glenn Bowens

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

## JUDGMENT IN A CIVIL CASE

CASE NO. 11-CP-40-6317

SCBT, N. A.

Sand Dollar 31, LLC; Rhonda Meisner;

## PLAINTIFF(S)

## DEFENDANT(S)

## Submitted by:

Teri K. Stomski (SC Bar#65250)  
Attorneys for the Plaintiff  
Rogers Townsend & Thomas, PC  
220 Executive Center Drive, Suite 109  
Post Office Box 100200  
Columbia, SC 29202  
(803) 771-7900  
(803) 343-7013 - Fax  
info@rtt-law.com

Attorney for : ☒ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: \_\_\_\_\_

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

As required by statute, a foreclosure sale has been or will be scheduled, which will officially end the case. Also, if a deficiency judgment remains demanded, a separate Order for Deficiency Judgment will be entered at the completion of the foreclosure sale.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| SCBT, NA                                     | Sand Dollar 31, LLC                      | \$63,734.92                                              |
| SCBT, NA                                     | Rhonda Meisner                           | \$63,734.92                                              |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, in the order:

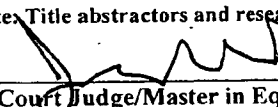
SCANNED

TMS: 09313-03-21

Property Address:

4824 den Street  
Columbia, SC 29203

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

  
Circuit Court Judge/Master in Equity/Special Referee

2097  
Judge Code

5/14/12  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 16th day of May, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

Teri K. Stomski (SC Bar #65250)

Rogers Townsend & Thomas, PC

P.O. Box 100200

Columbia, SC 29202-3400

ATTORNEY(S) FOR THE PLAINTIFF(S)

016555-00040

  
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Sand Dollar 31, LLC

Rhonda Meisner

**Court Reporter:**

2011-6318

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS  
DOCKET NO. 11-CP-40-6317  
DOCKET NO. 11-CP-40-6318

MEMORANDUM IN SUPPORT OF  
MOTION TO ALTER OR AMEND

The Defendants submit this Memorandum in Support of their Motion to Alter or Amend the Judgment in the above captioned matter. For the reasons set forth below the Defendants motion should be granted. There are two primary issues that merit altering or amending the judgment. First, is the pre-mature and improper recording of the judgment in the public record on May 16, 2012, before the foreclosure sale and appraisal were completed. The public record incorrectly shows the Defendants owe: \$63,734.92 (Civil Action# 11-CP-40-6317) and \$43,220.45 (Civil Action# 11-CP-40-6318). This order should be vacated and replaced by an order that shows the final amount owed by the Defendants after the sale and appraisal have been completed.

Second, the Defendants' Counterclaim sought a declaratory judgment as to whether they were entitled to appraisal rights pursuant to S.C. Code §29-3-680 and a declaratory judgment of the rights and liabilities of the parties under the Note, Mortgage and Guarantee Agreement and the amount of the deficiency judgment. The issue of the appraisal rights was determined in favor of the Defendants; however, the issue of the amount of the deficiency judgment was deferred until after the foreclosure sale. The order that was filed on May 16, 2012 contained a monetary judgment against Rhonda Meisner that exceeds the maximum amount contained in the Guarantee Agreement. The monetary judgment against Rhonda Meisner should be amended to take into account the limitations on her personal liability contained in the Guarantee Agreement.

### **Improper Recording of the Judgment**

During the foreclosure hearing on April 25, 2012 the Court granted the foreclosure and ordered the sale of the two properties. The Court also instructed counsel for the Plaintiff to prepare a proposed order and provide it counsel for the Defendants for review and comment. The proposed order contained a document entitled "Record of Hearing," which stated "Plaintiff's attorney presented or will present copies of the following documents" which included "Affidavit of Attorney Fees / Affidavit of Costs" and "Statement of Indebtedness." However, neither of these documents were produced. The undersigned was awaiting these documents in order to properly review the proposed order and determine whether there was any basis for objection.

In the meantime and without notice to counsel, the proposed orders were forwarded to the Court, giving the incorrect impression that counsel for the Defendants consented to the proposed orders. The orders were filed on May 16, 2012. Counsel for the Defendants was not provided notice that the orders were actually signed and filed. Counsel for the Plaintiff sent a letter dated May 17, 2012, the day after the orders were filed, which counsel for the Plaintiff claims was notice of the filing of the orders. However, the letter clearly does not provide notice that the orders were filed. The focus of the letter was notification that the foreclosure sale was to be held on June 4, 2012. There was no way to discern from the letter that the orders had been filed. The letter does not provide a date that the orders were filed. A copy of the letter is attached as **Exhibit 1**. Claiming this letter is notice that orders had been signed by the Court and filed smacks of gamesmanship.

The Plaintiff's counsel, or someone from her law firm, sent a letter dated May 29, 2012 directly to Sand Dollar and Rhonda Meisner, even though they were represented by counsel at the time the letter was sent. The letter, which stated that it was "an attempt to collect a debt," contained a copy of the filed Form 4 Order for 11-CP-40-6318. A copy of the letter is attached as **Exhibit 2**. The Plaintiff did not provide a copy of the filed Form 4 Order for 11-CP-40-6317. Rhonda Meisner

was travelling on business and the letter was actually received on June 6, 2012. The letter was the first indication the Defendants or counsel had that these orders had been filed. The Motion to Alter or Amend was filed the next day, June 7, 2012, which is within ten days of the date of the letter.

The Form 4 Order indicates the Defendants owe \$63,734.92 (Civil Action# 11-CP-40-6317) and \$43,220.45 (Civil Action# 11-CP-40-6318). The Form 4 Order, which was not signed by the Court, is used to index the parties' name and amount of the judgment in the public record. Based on the instructions for the use of a Form 4 Order (attached as **Exhibit 3**), the Plaintiff should not have filed the Form 4 Order. Instruction # 2 provides: "The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index." The judge did not sign the Form 4 Order. Instruction # 10 provides:

When an Order of Foreclosure is filed, neither the parties nor the debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

The foreclosure order signed by the Court did not specifically require entry of the full judgment amount before the foreclosure sale. The order stated in paragraph 33 that the Order for Deficiency would be entered after crediting the proceeds of the sale, not entry of the full judgment before the sale. Moreover, counsel for the Plaintiff knew when she filed the Form 4 Order that the sale and appraisal had not taken place and the amount recorded in the public record would be reduced. Making matters worse, counsel for the Plaintiff sent someone to bid on the properties: \$25,000.00 on the Linden Street property and \$10,000.00 on the Winnsboro Road property, which meant she absolutely knew the amount recorded was not the correct amount. The filing of the Form 4 Order gave the false impression that the Defendants owed \$63,734.92 and \$43,220.45 and became a lien on all property owned by the Defendants. The Defendants do not believe this was the Court's intention following the April 25, 2012 hearing.

### **Amounts Claimed**

The amounts claimed by the Plaintiff are vague and questionable. First, in 11-CP-40-6317, the Plaintiff claims attorney fees in the following amounts: (1) \$3,321.00; (2) \$2,679.00; and (3) an undisclosed amount for attorney fees under the category of "Allowable Advances." The Plaintiff claims over \$6,000.00 in attorney fees related to the Linden Street property. This same property was previously foreclosed upon and the court awarded \$2,900.00 in attorney fees, less than one half the amount being claimed in the present case. (A copy of the order in the previous case is attached as **Exhibit 4**) The court should deny this request for attorney fees without documentation supporting a claim for fees that are double the amount of the previous foreclosure on the same property.

Plaintiff also claims \$4,303.80 under the category of "Allowable Advances." The Plaintiff lists as "Allowable Advances": "escrow advances," "corporate charges," "paid costs and expenses from the foreclosure action," and an ambiguous charge for "other charges." The Plaintiff did not separately identify the amounts allocated from the \$4,303.80 for each of these charges. The Plaintiff also claims reimbursement for taxes in the amount of \$1,681.42. This claim appears to be duplicative with the claim for "escrow advances" in that the "escrow" is typically for taxes and insurance. There was no evidence that the Defendants did not maintain insurance on the property. Moreover, there is evidence that the taxes were not paid (see tax bills attached as **Exhibit 5**).

Second, in Civil Action # 11-CP-40-6318 the Plaintiff claims attorney fees in the following amounts: (1) \$4,924.00; (2) \$3,0760.00; and (3) an undisclosed amount for attorney fees under the category of "Allowable Advances." The Plaintiff lists as "Allowable Advances": "escrow advances," "corporate charges," "expenses from the foreclosure action" and an ambiguous charge for "other charges." The Plaintiff did not separately identify the amounts allocated from the \$6,263.60 for each of these charges. Without an affidavit and itemized statement of attorney fees

and costs it is impossible for the Court to evaluate the propriety and reasonableness of these claimed charges or for the Defendants to decide if these charges are objectionable.

The Court must evaluate the reasonableness of the claimed attorney fee based on the six factors outlined by the Supreme Court in Jackson v Speed, 326 S.C. 289, 486 S.E.2d 750 (1997). The Supreme Court held that the trial judge should consider the following six factors when determining the reasonableness of a claim for attorney fees: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Id. The Supreme Court also held that "on appeal, an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor" Id. The Court cannot accomplish this task without an itemized statement of attorney fees and costs. The Court should also consider that the Defendants offered to settle the case without the necessity of going to court and made a payment to bring the loan current when deciding the issue of attorney fees.

### **Personal Guarantee**

The Defendants' Answer & Counter Claim asked for a declaratory judgment to determine the parties' rights and liabilities under the Note, Mortgage and Guarantee Agreement and to determine the rights and obligations of the parties with respect to the amount of the deficiency judgment. The Defendant sought this declaratory judgment because Rhonda Meisner wanted to make certain that, should there be a deficiency judgment, her liability for the deficiency did not exceed the amount she personally agreed pay in the Guarantee Agreement.

Rhonda Meisner claims her maximum liability for a deficiency judgment is \$31,140.00 and \$36,000.00 as provided in the two respective Guarantee Agreements. The Plaintiff claims that Rhonda Meisner personally guaranteed those amounts and also guaranteed payment of all other debts incurred by Sand Dollar including the interest, attorney fees and other costs related to the two

Notes and Mortgages. The Plaintiff claims that the \$31,140.00 and \$36,000.00 amounts are only the maximum principal that Rhonda Meisner guaranteed. The Plaintiff is incorrect in its interpretation of the Guarantee Agreement, which necessitates a declaratory judgment by the Court.

The Guarantee Agreement contains two options, Paragraph A and B; one of which is to be checked based on the parties agreement. In both 11-CP-40-6317 and 11-CP-40-6318 Paragraph A was checked. Importantly, Paragraph A limited the amount guaranteed by Rhonda Meisner to \$31,140.00 (11-CP-40-6317) and \$36,000.00 (11-CP-40-6318) respectively. On the other hand, Paragraph B, which was not checked, required payment by the guarantor of:

...each and every debt, liability and obligation of **every type and description** which Borrower may now or at any time hereafter owe to lender (**whether such debt, liability or obligation now exists or is hereafter created or incurred**, and whether it is or may be direct or indirect, due or to become due, **absolute or contingent**, primary or secondary, liquidated or unliquidated, or joint, several or joint and several; all such debts, liabilities and obligations being hereinafter collective referred to as the "indebtedness"). (emphasis added)

The Plaintiff's claim for payment of Sand Dollar's debts beyond the \$31,140.00 and \$36,000.00 are the type of debts contemplated by Paragraph B. These debts did not exist at the time the Guarantee Agreement was executed; they were also contingent and had not yet become due. If Paragraph B had been checked, then arguably Rhonda Meisner may be liable for these additional debts; however, the parties did not agree and did not check Paragraph B. Even under the Plaintiff's interpretation that the specific dollar amount stated in the Guarantee Agreement referred to the amount of principal guaranteed, the Plaintiff still claims \$48,698.20 is due in principal in 11-CP-40-6317, when the guarantee only provided for \$31,140.00, which is over \$17,000.00 more in principal than the Plaintiff is allowed under its own interpretation.

Rhonda Meisner contends that a plain text reading of the Guarantee Agreements limited her liability. The Plaintiff disagrees and claims Rhonda Meisner owes \$63,734.92 in 11-CP-40-6317 and \$43,220.45 in 11-CP-40-6318. Given the disagreement over the interpretation of the Guarantee

Agreement, the Court must interpret it to determine the maximum amount that Rhonda Meisner guaranteed to pay. When a contract is susceptible of more than one interpretation, the non-drafting party is given the benefit of the ambiguity. The South Carolina Supreme Court has held:

It is generally held that an ambiguity in a written contract should be construed most strongly against the drafters. We quote, with approval, the following from 17A C.J.S. Contracts § 324:

"(A)mbiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage.

The reason for the rule of strict construction against the party preparing the contract is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes in meaning more than one with whom he is dealing, and that he who has brought the agreement into existence and is thus primarily responsible for its inadequacy should justly suffer for its shortcomings."

Myrtle Beach Lumber Compnay, Inc. v. Willoughby, 276 S.C. 3, 274 S.E.2d 423 (S.C. 1981).

There is no dispute that the Guarantee Agreements at issue in these two foreclosure cases were drafted and prepared by the Plaintiff. Based on the Supreme Court's holding the ambiguity must be resolved in favor of Rhonda Meisner.

The Plaintiff claims that the Defendant is attempting to re-try this matter by raising it for the first time in this motion. This issue is not being raised for the first time; it was raised in the Answer & Counterclaim. The Defendants and counsel were under the impression that these issues had been deferred until after the foreclosure sale and appraisal had been completed, which made sense, as the Court could not issue a declaratory judgment on these issues until after the foreclosure sale and appraisal. Moreover, the issue may have become moot if there was no deficiency, depending on the outcome of the foreclosure sale and appraisal. However, since the April 25, 2012 hearing, the Court signed an order that held Rhonda Meisner personally liable for \$63,734.92 and \$43,220.45, both of which are in excess of the limitations in the Guarantee Agreement.

Rule 52, SCRCF, provides that the Court may "amend its findings or make additional findings and may amend the judgment accordingly..." To the extent these issues were not specifically ruled upon during the April 25, 2012 hearing, Rule 60, SCRCF provides that the Defendants may be relieved from the judgment based on: mistake, inadvertence, surprise, or excusable neglect. The Defendants were under the impression that the declaratory judgment on the issues of the rights and liabilities of the parties under the Note, Mortgage and Guarantee Agreement with respect to the amount of the deficiency judgment was being deferred until after the foreclosure sale and appraisal were completed. Rule 60, SCRCF also provides that a party may be relieved from the judgment based on fraud, misrepresentation, or other misconduct of an adverse party. The Plaintiff's actions in forwarding the proposed order to the court without notification to opposing counsel and without providing the Affidavit of Attorney Fees / Affidavit of Costs and Statement of Indebtedness prior to forwarding the proposed order to the court denied the Defendants a meaningful opportunity for input into the order and are the type of actions contemplated by Rule 60, SCRCF that warrant relief from a judgment. The Defendants requested a declaratory judgment on these issues; the ends of justice would not be served by denying the Defendants a declaratory judgment on these issues.

The Plaintiff has engaged in conduct that the Defendants consider to be improper, fraudulent, libelous, abusive and in violation of the Federal Fair Debt Collection Practices Act and the South Carolina Consumer Protection Act including: (1) filing an order with a judgment amount the Plaintiff knew was not correct and/or final, especially when Plaintiff knew it was going to be bidding on the properties at the foreclosure sale and thereby reduce the amount of the judgment by the amount of the bid; (2) filing an order without obtaining the trial court's signature on the order; (3) filing an order in violation of the instructions; (4) failing to notify the Defendants' counsel that the proposed order had been transmitted to the court; (5) failing to notify Defendant's counsel that

the order had been signed and filed; and (6) sending a letter, in an attempt to collect a debt that was in litigation, directly to the Defendants when the Plaintiff knew the Defendants were represented by counsel.

The Defendants request the Court consider the Plaintiff's conduct, which the Defendants contend constitute unclean hands, when deciding the Plaintiff's request for attorney fees and the amount, if any, of the deficiency judgment. As a result of the Plaintiff's conduct, the Defendants have been required to file this motion causing them to incur attorney fees and costs unnecessarily. The Defendants request the court award Defendants' attorney fees and costs and/or make an appropriate adjustment to the attorney fees and costs that may be awarded to the Plaintiff to offset the fees and costs incurred by the Defendants with respect to this motion.

Respectfully submitted,

  
\_\_\_\_\_  
Glenn Bowens, Esq.  
PO Box 424  
Winnsboro, S.C. 29180  
Attorneys for the Plaintiff

July 17, 2012

ROGERS TOWNSEND & THOMAS, PC  
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W RTT-LAW.COM

Teri K. Stomski,  
Attorney  
EMAIL Teri.Stomski@rtt-law.com  
P 803.744 1926  
F 803.343-7017



ROGERS TOWNSEND  
ATTORNEYS AT LAW

May 17, 2011

Glenn E. Bowens  
The Bowens Law Firm  
P.O. Box 424  
Winnsboro, SC 29180

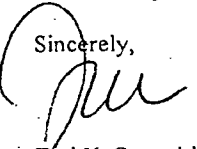
Re: SCBT, NA v. Sand Dollar 31, LLC;  
Case No. 11-CP-40-6318; Richland County  
Our File No. 016555-00039

Dear Glen:

Please be advised that on April 25, 2012 a hearing was held and Judgment of Foreclosure and Sale was entered in the above referenced foreclosure action. Please note that the foreclosure sale has been scheduled for June 4, 2012 or some subsequent sales day. If the currently scheduled foreclosure sale is postponed for any reason, please contact our office at 803-771-7900 to find out the status of the case and/or the next scheduled foreclosure sale date.

For further clarification, please check with the county Clerk of Court to view the original documents or to obtain any copies.

Sincerely,

  
Teri K. Stomski





**ROGERS TOWNSEND**  
ATTORNEYS AT LAW

ROGERS TOWNSEND & THOMAS, P.C.  
DEFAULT SERVICES DEPARTMENT

POST OFFICE BOX 100200 (29202)  
220 EXECUTIVE CENTER DRIVE  
COLUMBIA, SOUTH CAROLINA 29210  
P 803 744 4444 F 803 343 7013  
WWW.RTT-LAW.COM

May 29, 2012

Sand Dollar 31, LLC  
8391 Winnsboro Road,  
Blythewood, SC 29016

Rhonda Meisner  
1 Chester Road  
Blythewood, SC 29016

Re: SCBT, N. A. vs.  
Case No. 11-CP-40-6318; Richland County  
Our File No. 016555-00039

Dear Sir/Madam:

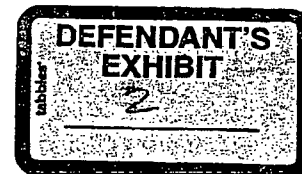
Please be advised that on April 25, 2012 a hearing was held and Judgment of Foreclosure and Sale was entered in the above referenced foreclosure action. This Judgment was filed on May 16, 2012. Please note that the foreclosure sale has been scheduled for either June 4, 2012 or some subsequent sales day. If the currently scheduled foreclosure sale is postponed for any reason, please contact our office at 803-744-4444 to find out the status of the case and/or the next scheduled foreclosure sale date.

For further clarification, please check with the county Clerk of Court to view the original documents or to obtain any copies.

Default Services Section

Enclosed: Form 4

**This is an attempt to collect a debt and any information  
obtained will be used for that purpose.**



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

FORM 4

JUDGMENT IN CIVIL CASE

CASE NO. 11-CP-40-6318

SCBT, N. A.

Sand Dollar 31, LLC; Rhonda Meisner;

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Teri K. Stomski (SC Bar#65250)  
Attorneys for the Plaintiff  
Rogers Townsend & Thomas, PC  
220 Executive Center Drive, Suite 109  
Post Office Box 100200  
Columbia, SC 29202  
(803) 771-7900  
(803) 343-7013 - Fax  
info@rtt-law.com

Attorney for : ☒ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: \_\_\_\_\_

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

As required by statute, a foreclosure sale has been or will be scheduled, which will officially end the case. Also, if a deficiency judgment remains demanded, a separate Order for Deficiency Judgment will be entered at the completion of the foreclosure sale.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| SCBT, NA                                     | Sand Dollar 31, LLC                      | \$43,220.45                                              |
| SCBT, NA                                     | Rhonda Meisner                           | \$43,220.45                                              |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

TMS: 10100-01-012  
8391 Winnsboro Road  
Blythewood, SC, 29016

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

Circuit Court Judge/Master in Equity/Special Referee

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 16<sup>th</sup> day of May, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 16<sup>th</sup> day of May, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Teri K. Stomski (SC Bar #65250)

Rogers Townsend & Thomas, PC

P.O. Box 100200

Columbia, SC 29202-3400

ATTORNEY(S) FOR THE PLAINTIFF(S)

016555-00039

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

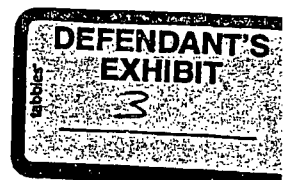
Sand Dollar 31, LLC

Rhonda Meisner

**Court Reporter:**

**FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE**  
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.  
  
The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.
3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.



9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

ROGERS TOWNSEND & THOMAS, PC  
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P 803.771.7900 F 803.343.7013  
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Teri K. Stomski,  
Attorney  
EMAIL Teri.Stomski@rtt-law.com  
P 803.744.1526  
F 803.343.7017



May 17, 2011

Glenn E. Bowens  
The Bowens Law Firm  
P.O. Box 424  
Winnsboro, SC 29180

Re: SCBT, NA v. Sand Dollar 31, LLC;  
Case No. 11-CP-40-6318; Richland County  
Our File No. 016555-00039

Dear Glen:

Please be advised that on April 25, 2012 a hearing was held and Judgment of Foreclosure and Sale was entered in the above referenced foreclosure action. Please note that the foreclosure sale has been scheduled for June 4, 2012 or some subsequent sales day. If the currently scheduled foreclosure sale is postponed for any reason, please contact our office at 803-771-7900 to find out the status of the case and/or the next scheduled foreclosure sale date.

For further clarification, please check with the county Clerk of Court to view the original documents or to obtain any copies.

Sincerely,

A handwritten signature in dark ink, appearing to be "Teri", written over a circular stamp or seal.

Teri K. Stomski





**ROGERS TOWNSEND**  
ATTORNEYS AT LAW

ROGERS TOWNSEND & THOMAS, C.  
DEFAULT SERVICES DEPARTMENT

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COLUMBIA, SOUTH CAROLINA 29210  
P 803 744 4444 F 803 343 7013  
WWW.RTT-LAW.COM

May 29, 2012

Sand Dollar 31, LLC  
8391 Wimsboro Road,  
Blythewood, SC 29016

Rhonda Meisner  
1 Chester Road  
Blythewood, SC 29016

Re: SCBT, N. A. vs.  
Case No. 11-CP-40-6318; Richland County  
Our File No. 016555-00039

Dear Sir/Madam:

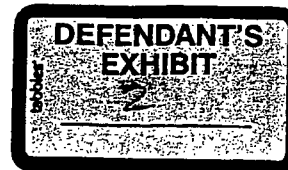
Please be advised that on April 25, 2012 a hearing was held and Judgment of Foreclosure and Sale was entered in the above referenced foreclosure action. This Judgment was filed on May 16, 2012. Please note that the foreclosure sale has been scheduled for either June 4, 2012 or some subsequent sales day. If the currently scheduled foreclosure sale is postponed for any reason, please contact our office at 803-744-4444 to find out the status of the case and/or the next scheduled foreclosure sale date.

For further clarification, please check with the county Clerk of Court to view the original documents or to obtain any copies.

Default Services Section

Enclosed: Form 4

**This is an attempt to collect a debt and any information  
obtained will be used for that purpose.**



TMS: 10100-01-012  
8391 Winnsboro Road  
Blythewood, SC, 29016

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

Circuit Court Judge/Master in Equity/Special Referee

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 16<sup>th</sup> day of May, 20 12 and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

Teri K. Stomski (SC Bar #65250)

Rogers Townsend & Thomas, PC

P.O. Box 100200

Columbia, SC 29202-3400

ATTORNEY(S) FOR THE PLAINTIFF(S)

016555-00039

ATTORNEYS FOR THE DEFENDANT(S)

CLERK OF COURT

Sand Dollar 31, LLC

Rhonda Meisner

**Court Reporter:**

# **FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE**

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.



STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
DOCKET NO. 2005-CP-40-4750

CitiBank, N.A., as Trustee Under the Pooling  
and Servicing Agreement dated as of November  
30, 2001, Series 2001-I,

Plaintiff,

vs.

Johnny C. Rumsey; also known as Curtis Rumsey,  
individually and as heir at law of Edye Pauline  
Rumsey, Deceased, and any heirs-at-law or  
Distributees or Personal Representatives and  
their spouses, if any they have, and all other  
persons with any right, title or interest in and to  
the real estate commonly known as 4824 Linden  
Street, Columbia, South Carolina; also any  
unknown adults and those persons who may be  
in the military service of the United States of  
America, all of them being a class designated as  
John Doe; and any unknown minors or persons  
under a disability being a class designated as  
Richard Roe; and CitiFinancial, Inc., formerly  
known as Commercial Credit Corporation; and  
Paragon Way, Inc., formerly known as TX Collect,  
Inc.;

Defendants.

MASTER's REPORT

AND

JUDGMENT

OF

FORECLOSURE

AND

SALE

(Deficiency Waived)

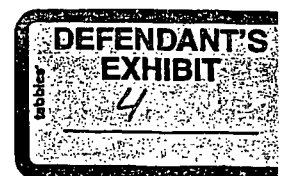
Notice: The original of this document was  
filed in the Office of the Clerk of Court for  
Richland County, and copies forwarded  
to the following on the same date to:

Mr. Kevin T. Brown of the firm of McDonald,  
McKenzie, Rubin, Miller and Lybrand, L.L.P.,  
as Attorney for the Plaintiff.

Mr. Pearce W. Fleming of the firm Pearce  
W. Fleming, PA., as Guardian ad Litem for  
the unknown Defendants who are minors  
or under a legal disability and as Attorney  
for unknown Defendants who are in the  
military service of the United States of  
America.

Pursuant to Rule 53 SCRCP, the above-entitled matter was referred to the undersigned to  
make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the  
cause. Any appeal from this Order is to the South Carolina Supreme Court or the South Carolina Court of  
Appeals as appropriate.

Pursuant to the said Order of Reference, a hearing was held, attended by the attorneys of  
record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find,  
conclude, and order as follows:



FINDINGS OF FACT:

1. The Lis Pendens was filed on September 30, 2005.
2. The Summons and Complaint were filed on September 30, 2005.
3. Service was made upon the defendants named in this Report as shown by the proofs of service filed herein.
4. The Defendants Johnny C. Rumsey, also known as Curtis Rumsey, CitiFinancial, Inc., formerly known as Commercial Credit Corporation, and Paragon Way, Inc., formerly known as TX Collect, Inc. are in default as shown by the affidavit filed herein.
5. According to the affidavit filed herein, no defendant in default is in the Military Service of the United States of America as contemplated under the Servicemember's Civil Relief Act of 2003, and any amendments thereto.
6. The Defendants in default, the Guardian ad Litem, and any attorneys of record were notified of the time, date, and place of the hearing in this matter.
7. For value received, Edye P. Rumsey and the Defendant Johnny C. Rumsey made, executed and delivered a note dated November 17, 1999, promising thereby to pay to the order of First Union Home Equity Bank, N.A., the sum of \$28,000.00, with interest at 9.96% per annum. Other terms and conditions are stated in the Note which is of record herein.
8. To better secure the payment of the Note described above, Edye P. Rumsey and the Defendant Johnny C. Rumsey made, executed and delivered to First Union Home Equity Bank, N.A., its successors and assigns, a mortgage in writing, dated November 17, 1999, covering real property in Richland County, which is the same as that described in the Complaint. The mortgage was filed on January 4, 2000, and is of record in the Office of the Register of Deeds for Richland County in Record Book R0373 at page 2413.
9. This mortgage constitutes a first lien on the subject property however it is not a purchase money mortgage.

10. On June 27, 2000, First Union Home Equity Bank, N.A., merged into First Union Bank of Delaware, with First Union Bank of Delaware being the surviving corporation, as shown by records on file with the Federal Reserve System.

11. On June 27, 2000, First Union Bank of Delaware, changed its name to First Union National Bank of Delaware.

12. On April 1, 2002, First Union National Bank of Delaware changed its name to Wachovia Bank of Delaware, N.A.

13. Upon information and belief Edye Pauline Rumsey died intestate on January 10, 2005, and leaving surviving her as her sole heir at law the Defendant Johnny C. Rumsey, also known as Curtis Rumsey.

14. Plaintiff has acknowledged that it has no knowledge of all of the actual heirs-at-law, next of kin, or devisees of Edye Pauline Rumsey, deceased, and therefore this action is directed to her administrators, executors, representatives, heirs-at-law, next of kin, and devisees, and all persons known and unknown who may claim an interest in or lien upon the subject property, and including those person who may be minors, under disability, or in the Military Service of the United States of America, for the purpose of litigating the title thereof. One or more of said Defendants may be deceased and any interest in or lien upon the subject property that they may have had or claimed to have had may have passed to administrators, executors, representatives, heirs-at-law, next of kin, and devisees, none of whom are known to the Plaintiff. There may be other persons unknown to the Plaintiff claiming rights, titles, estates, interest in or liens upon the subject property. All such unknown persons have been made parties defendant herein and all minors, and persons otherwise under disability, among them have been as a class designated as Richard Roe and persons in the Military Service of the United States of America among them are a class designated herein as Defendant John Doe, so that they can present and prove any such adverse claim or be forever barred from doing so. No one had come forward to present and prove an adverse claim.

15. By Assignment dated September 26, 2005, recorded October 4, 2005, in Record Book 1105 at page 1533, in the Office of the Register of Deeds for Richland County, Wachovia Bank of Delaware, N.A., assigned and transferred the subject Note and Mortgage to CitiBank, N.A., as Trustee

under the Pooling and Servicing Agreement dated as of November 30, 2001, Series 2001-I; by virtue of said Assignment, the Plaintiff is now the owner and holder of said Note and Mortgage

16. The titleholders of record in and to the subject property as of the filing of the Lis Pendens in this action are Edye P. Rumsey and the Defendant Johnny C. Rumsey, also known as Curtis Rumsey, who are the original mortgagor.

17. Payment due on the note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the note and mortgage in the hands of the attorney herein for collection. A Notice to Cure pursuant to The South Carolina Consumer Protection Code was sent to the Mortgagor on July 6, 2005.

18. The sum of \$2,900.00 is a reasonable fee to allow as attorney fees for plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Note and Mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

19. The amount due and owing on the note, with interest at the rate provided in the Note, and all other costs and expenses of collection, including an attorney's fee, secured by the note and mortgage, is as follows:

|                                                                              |                                                                                |                   |
|------------------------------------------------------------------------------|--------------------------------------------------------------------------------|-------------------|
| (a)                                                                          | Principal balance due as of May 22, 2005.                                      | \$24,455.49       |
| (b)                                                                          | Interest from April 22, 2005,<br>to April 22, 2006, at 9.96% per annum.        | 2,435.77          |
| (c)                                                                          | Property inspections                                                           | 58.40             |
| (d)                                                                          | Property appraisal                                                             | 300.00            |
| (e)                                                                          | LESS: Unapplied funds                                                          | -100.00           |
| (f)                                                                          | Late charges before being sent to<br>attorney for collection                   | 1.26              |
| (g)                                                                          | Costs of collection prior to hearing<br>(service, filing, reference fee, etc.) | 1,545.58          |
| (h)                                                                          | Attorney's fee                                                                 | 2,900.00          |
| TOTAL DEBT secured by note and mortgage,<br>including interest to date shown |                                                                                | <hr/> \$31,596.50 |

Interest for the period from the date shown in (b) above through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt" to comprise the amount of judgment debt entered

herein, and interest after the date of judgment at the rate of 9.96% per annum (pursuant to the terms of the note and mortgage), on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

20. The Plaintiff is seeking foreclosure of the mortgage and has in writing expressly waived the right to a personal or deficiency judgment pursuant to Rule 71(b) SCRPC.

21. The Defendant CitiFinancial, Inc., formerly known as Commercial Credit Corporation, has or may claim to have some interest in or lien upon the subject property by virtue of that certain Mortgage in the amount of \$15,395.84 given to Commercial Credit by J. Curtis Rumsey and Edye P. Rumsey, dated May 18, 1994, recorded May 18, 1994, in the Office of the Register of Deeds for Richland County in Mortgage Book M1738 at page 155; in the Complaint, the Plaintiff alleged that the debt secured by said mortgage has been paid in full and that said mortgage no longer constitutes a lien on the subject property; the Defendant CitiFinancial, Inc., formerly known as Commercial Credit Corporation, has not appeared in this action to contest said allegations which are deemed to be correct.

22. The Defendant Paragon Way, Inc., formerly known as TX Collect, Inc., has or may claim to have some interest in or lien upon the subject property by virtue of that certain judgment in the amount of \$1,614.24, obtained by TX Collect, Inc., against Edye Rumsey, filed August 17, 2004, in Judgment Roll Number 255663, in the Office of the Clerk of Court for Richland County; the interest or lien of the Defendant Paragon Way, Inc., formerly known as TX Collect, Inc., if any, is junior and subordinate to the lien of the Plaintiff's mortgage.

23. Pearce W. Fleming, Esquire, a member of South Carolina Bar, has been appointed attorney for each unknown Defendant who is in the military service within the meaning of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and he has filed an Answer, appeared, and actively participated herein for such unknown Defendants. The sum of \$150.00 is a reasonable fee to allow for such attorney's services rendered herein until final adjudication of the within action.

24. Pearce W. Fleming, Esquire, a member of the South Carolina Bar, has been appointed Guardian ad Litem for each unknown Defendant who is a minor or otherwise under disability, and has filed an Answer, appeared and actively participated herein. The sum of \$150.00 is a

reasonable fee to allow such Guardian ad Litem for services rendered and to be rendered herein until final adjudication of the within action.

CONCLUSIONS OF LAW

I, therefore, conclude that the Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement. I further conclude that the mortgage described in paragraph twenty-one (21) supra, no longer constitutes a lien on the subject property.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$31,596.50, representing the total debt due Plaintiff as set out in paragraph nineteen (19) supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof. Any sums advanced by the Plaintiff for real estate taxes on the subject property subsequent to the date of the hearing in this action shall be added to the judgment debt without further hearing.

2. The amount due in the preceding paragraph (the "total debt" as set forth in the paragraph nineteen (19) supra, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 9.96% per annum.

3. That the Defendants liable for the aforesaid mortgage debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned Master in Equity, at public auction, at the Richland County Judicial Center, in the City of Columbia, County and State aforesaid, on some convenient salesday hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the salesday shall be on the Tuesday next succeeding such holiday), on the following terms, that is to say:

A. FOR CASH: The undersigned Master in Equity, will require a deposit of 5% on the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within twenty (20) days same to be forfeited and applied to the costs and plaintiff's debt.

B. Purchaser to pay interest on his bid from the date of sale to the date of compliance at the rate of 9.96% per annum.

C. The sale shall be subject to taxes and assessments, to existing easements and restrictions, and to any other senior encumbrances.

D. Purchaser to pay for all costs of recording the deed.

E. Should the Plaintiff or the Plaintiff's attorney or agent fail to appear on sales day, the property shall not be sold, and in that event any such sale shall be null and void and of no force and effect; the property shall be readvertised and sold at some convenient sales day thereafter when the Plaintiff or the Plaintiff's attorney or agent is present.

5. If Plaintiff is the successful bidder at said sale for a sum not exceeding the amount of costs, disbursements, expenses and the indebtedness of the Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs, disbursements and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

6. Personal or deficiency judgment being waived, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

7. That the undersigned Master in Equity, will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and the Master in Equity will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within twenty (20) days after date of the sale, then the undersigned Master in Equity may advertise the said premises for sale on the next or some other subsequent salesday, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured.

8. That the undersigned Master in Equity will apply the proceeds of the sale as follows:

FIRST: To payment of the amount of the costs and expenses of this action, including any Guardian ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchaser money will pay on the same;

NEXT: Any surplus will be held pending the further Order of this Court.

9. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the defendants in possession herein, the Sheriff of Richland County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

10. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

11. IT IS FURTHER ORDERED that, pursuant to S.C. CODE Ann. §30-9-31 (Supp. 1987), the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Register of Deeds for Richland County in the name of the owner of record of the subject property immediately prior to execution of the deed, as well as in the name of the undersigned Master in Equity who executes such deed as grantor.

12. Upon completion of this action, the Register of Deeds will cancel of record the mortgage described in paragraph twenty-one (21) supra.

13. The undersigned Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c) SCRCP.

14. The following is a description of the premises herein ordered to be sold:

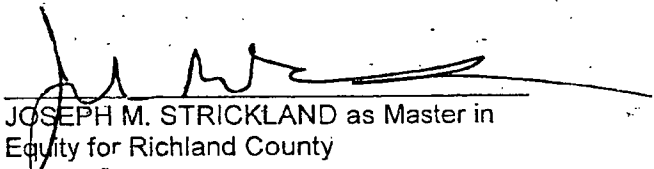
All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being on the eastern side of Linden Street, in or near the Town of Eau Claire in the County of Richland, State of South Carolina; said lot being composed of and embracing Lot No. 12, 13, and 14 in Block 6 upon a plat of College View Subdivision, prepared by surveyors Clodfelder and Schisler, dated August-September, 1927, and recorded in Plat Book F at page 24. TMS# 09313-03-21.

This being the same property conveyed to Edye P. Rumsey by deed of Peggy H. Ferguson, Byrl M. Warren, Robert G. McLeod, Jr., and Michael H. McLeod dated September 29, 1992, recorded January 27, 1993, in the Office of the Register of Deeds for Richland County in Deed Book D1126 at page 726. Thereafter, Edye P. Rumsey conveyed a one-half interest in said property to Johnny C. Rumsey by deed dated October 30, 1996, recorded November 20, 1996, in Deed Book D1349 at page 756, in the Office of the Register of Deeds for Richland County, South Carolina. Edye Pauline Rumsey died intestate on January 10, 2005, and leaving her as her sole heir at law Johnny C. Rumsey, also known as Curtis Rumsey.

CURRENT ADDRESS OF PROPERTY IS: 4824 Linden Street  
Columbia, South Carolina 29203

Columbia, South Carolina

May 31, 2006

  
JOSEPH M. STRICKLAND as Master in  
Equity for Richland County



# **RICHLAND COUNTY**

POST OFFICE BOX 11947  
COLUMBIA, SC 29211

treasurer@rcgov.us  
803-576-2250

PRINTED 7/17/2012

\*\*\*\*\* REAL ESTATE TAXES \*\*\*\*\*

LEVY YEAR 2011

CLERK  
TY YEAR RECEIPT MAP-BLOCK-PARCEL  
R-2011-140375-D 10100-01-12

473.30

|               |        |
|---------------|--------|
| CNTY TAX      | 279.25 |
| CNTY SALES    | 12.64  |
| RESID CR      | 0.00   |
| PEN/COST      | 157.34 |
| CNTY TOT      | 422.95 |
| CITY TAX      | 0.00   |
| CITY PEN      | 0.00   |
| CARE          | 249.00 |
| PYMTS TO DATE | 0.00   |
| ADJ TO DATE   | 0.00   |
| BALANCE DUE   | 672.95 |

LOC 8391 WINNSBORO RD

RMKS  
DIGEST 590  
CHANGE 0  
NET ASSM 590

R-2011-140375-D  
SANDEOLLAR 31 LLC

DIST NO  
2DP

PO BOX 689  
BLYTHEWOOD

SC 29016



# **RICHLAND COUNTY**

POST OFFICE BOX 11947  
COLUMBIA, SC 29211

David A. Adams  
Treasurer  
803-576-2250  
treasurer@rcgov.us

PRINTED 7/17/2012

\*\*\*\*\* REAL ESTATE TAXES \*\*\*\*\*

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TY YEAR RECEIPT MAP-BLOCK-PARCEL  
R-2011-140375-D 10100-01-12

473.30

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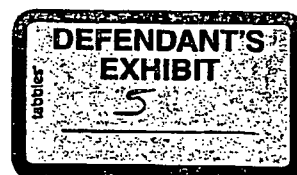
RMKS  
DIGEST 590  
CHANGE 0  
NET ASSM 590

R-2011-140375-D  
SANDEOLLAR 31 LLC

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**RICHLAND COUNTY**  
POST OFFICE BOX 11947  
COLUMBIA, SC 29211

Treasurer  
803-576-2250  
treasurer@rcgov.us

PRINTED: 7/17/2012

\*\*\*\*\* REAL ESTATE TAXES \*\*\*\*\*

LEVY YEAR 2011

CLERK: MAP-BLOCK-PARCEL  
TY YEAR RECEIPT: R-2011-125244-D 09313-03-21

LOC: 4824 LINDEN ST

RMKS: DIGEST 2.920  
CHANGE 0.00  
NET ASSM 2.920

R-2011-125244-D  
PEGASUS LLC

DIST-NO: 1UR  
PO BOX 689  
BLYTHEWOOD

SC 29016

|               |          |
|---------------|----------|
| CNTY TAX      | 207.71   |
| CNTY SALES    | 62.82    |
| RESID CR      | 0.00     |
| PEN/COST      | 289.08   |
| CNTY TOT      | 1,133.97 |
| CITY TAX      | 0.00     |
| CITY PEN      | 0.00     |
| GARB          | 249.00   |
| PYMTS TO DATE | 0.00     |
| ADD TO DATE   | 0.00     |
| BALANCE DUE   | 1,582.97 |



**RICHLAND COUNTY**  
POST OFFICE BOX 11947  
COLUMBIA, SC 29211

David A. Adams  
Treasurer  
803-576-2250  
treasurer@rcgov.us

PRINTED: 7/17/2012

\*\*\*\*\* REAL ESTATE TAXES \*\*\*\*\*

LEVY YEAR 2011

CLERK: MAP-BLOCK-PARCEL  
TY YEAR RECEIPT: R-2011-125244-D 09313-03-21

LOC: 4824 LINDEN ST

RMKS: DIGEST 2.920  
CHANGE 0.00  
NET ASSM 2.920

R-2011-125244-D  
PEGASUS LLC

DIST-NO: 1UR  
PO BOX 689  
BLYTHEWOOD

SC 29016

|               |          |
|---------------|----------|
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| CNTY TOT      | 1,133.97 |
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| CITY PEN      | 0.00     |
| GARB          | 249.00   |
| PYMTS TO DATE | 0.00     |
| ADD TO DATE   | 0.00     |
| BALANCE DUE   | 1,582.97 |

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

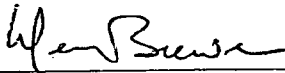
IN THE COURT OF COMMON PLEAS  
DOCKET NO. 11-CP-40-6317  
DOCKET NO. 11-CP-40-6318

CERTIFICATE OF SERVICE

I, Glenn Bowens, attorney for the Plaintiff, do hereby certify that I have this day served a copy of the foregoing **Memorandum in Support of Defendants' Motion to Alter or Amend** connection with the above referenced case by hand delivery to:

Terri Stomski  
Rogers Townsend & Thomas, PC  
220 Executive Center Dr.  
Columbia, SC 29210

This the 18<sup>th</sup> Day of July 2012 A.D.

  
Glenn Bowens

RICHLAND COUNTY  
FILED  
2012 JUL 18 PM 12:50  
JEANETTE W. McBRIDE  
Clerk of Court  
C.C.P. & S.S.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS  
DOCKET NO. 11-CP-40-6317  
DOCKET NO. 11-CP-40-6318

CERTIFICATE OF SERVICE

RICHLAND COUNTY  
FILED  
2012 JUL 18 PM 12:50  
JEANETTE W. McBRIDE  
C.C.P. & S.

I, Glenn Bowens, attorney for the Plaintiff, do hereby certify that I have this day served a copy of the foregoing **Memorandum in Support of Defendants' Motion to Alter or Amend** in connection with the above referenced case by hand delivery to:

Terri Stomski  
Rogers Townsend & Thomas, PC  
220 Executive Center Dr.  
Columbia, SC 29210

This the 18<sup>th</sup> Day of July 2012 A.D.

  
Glenn Bowens

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N. A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner;

Defendant(s).

(016555-00040)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

RETURN TO DEFENDANTS'  
MOTION TO ALTER OR AMEND  
(Pursuant to Rule 59(e), SCRPC)

2012 JUN 27 PM 3:06  
FILED  
RICHLAND COUNTY  
JANETTE W. McENRITT  
C.C.P. & G.S.

TO: GLENN BOWENS, ESQ., ATTORNEY FOR THE DEFENDANTS ABOVE-NAMED

The Plaintiff, SCBT, N.A., (hereinafter "Plaintiff"), by way of Return to Defendants Sand Dollar 31, LLC and Rhonda Meisner's Motion to Alter or Amend (hereinafter Defendants' motion"), respectfully asks this honorable court to deny Defendants' motion because (1) Defendants raised issues for the first time which could have been raised at trial but were not and (2) Defendants fail to comply with the requirements of Rule 7(b)(1), SCRPC.

Defendants filed the motion on or about June 7, 2012, and requested that the Court issue "an Order vacating, setting aside, amending, altering or reconsidering the judgment rendered in the above captioned action...." One of the grounds stated for the motion was "[t]he Form 4 filed by the Plaintiff incorrectly states the judgment against Rhonda Meisner as \$63,734.92, the maximum amount of Rhonda Meisner's personal liability is limited to \$31,400.00 as this was the amount of her personal guarantee (sic)...." (Defs. Mot. To Alter or Amend, June 7, 2012, p. 1.)

"A party cannot raise an issue for the first time in a Rule 59(e), SCRPC motion which could have been raised at trial." *MailSource, LLC v. M.A. Bailey & Associate, Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003). *See also C.A.H. v. L.H.*, 315 S.C. 389, 434 S.E.2d 268, 270 (1993) ("a party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment, but did not.") At no time at trial did Defendants raise the issue of a limited guaranty or that the judgment to be awarded by the court could not exceed a certain amount. However, even if the issue had been raised at trial, it is still without merit as the principal amount stated in the Judgment of Foreclosure (\$48,698.20) does not exceed the principal amount stated in the guaranty.

The guaranty to which Defendant refers is one of two guaranties signed by Defendant Meisner. The guaranty dated July 24, 2006 (hereinafter "Exhibit A" attached hereto and incorporated by reference) 5809398

SCANNED

states in pertinent part that "[t]he liability of the undersigned hereunder shall be limited to a *principal amount* of \$31,400.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), *plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto*. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other course to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder." (emphasis added)

The second guaranty signed by Defendant Meisner was dated July 31, 2007 (hereinafter "Exhibit B" attached hereto and incorporated by reference) states in pertinent part that "[t]he liability of the undersigned hereunder shall be limited to a *principal amount* of \$50,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), *plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto*. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other course to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder." (emphasis added). While the second guaranty was inadvertently omitted from the complaint, it is included herein to clarify the record in this matter. The correction of this omission does not prejudice the Defendants, as the Defendant Meisner admitted in her Answer that she guaranteed the debt and at trial it was stipulated by all parties that the only matter before the court was to determine the amount owed. At no time did the Defendants raise any issue about the guaranties or any limitations thereto and therefore, cannot now.

The Defendants' misstatement of the terms of the guaranty as limiting the Defendant Meisner's liability to only the principal amount is erroneous and further, to raise it for the first time in Defendants' motion is prohibited by Rule 59(e).

As for the other grounds of the Defendants' motion that the amount listed in the Form 4 is incorrect, the final amount of the judgment will be determined after the second sale and that amount will

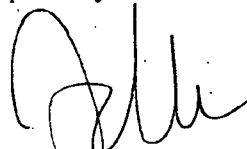
be shown on a Form 4 and indexed in the judgment roll and therefore, there is no prejudice to the Defendants. However, more importantly, the Form 4 is not the Judgment of Foreclosure and therefore is not the law of the case and accordingly, is not subject to a Rule 59(e) motion.

"[A]n application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set for the relief or order sought." Rule 7(b)(1), SCRCP. The purpose of Rule 7(b)(1) is to reduce prejudice to either party and ensure that the court has enough information to "comprehend the basis of the motion and deal with it fairly." *Camp v. Camp*, 386 S.C. 571, 575, 689 S.E.2d 634 (2010) (citations omitted). The misstatements, assertions unrelated to the Judgment of Foreclosure and issues raised for the first time in the motion that could have been raised at trial, but were not, are prejudicial to the Plaintiff. Further, Defendants were given a copy of the proposed Order on May 3, 2012, the same day it was provided to this court, and Defendants raised no objections until well after the Judgment of Foreclosure was entered.

This motion is prejudicial to the Plaintiff and should be denied as a matter of law under Rules 59(e) and 7(b)(1), SCRCP.

WHEREFORE, having fully set forth this Return to Defendants' Motion to Alter or Amend, Plaintiff, SCBT, N.A., asks this Honorable Court to deny Defendants' motion pursuant to Rule 59(e) and 7(b)(1), SCRCP and the precedent of the South Carolina Appellate Courts.

Respectfully submitted,



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Teri K. Stomski (SC Bar # 65250)  
ROGERS TOWNSEND & THOMAS, PC  
220 Executive Center Drive (29210)  
Post Office Box 100200  
Columbia, South Carolina 29202-3200  
(803)771-7900  
ATTORNEY FOR SCBT, N.A.

June 22, 2012

5809398

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N. A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

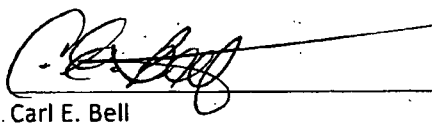
CERTIFICATE OF MAILING  
Motion to Alter and Amend

RICHLAND COUNTY  
FILED  
2012 JUN 27 AM 8:51  
JEANETTE W. MCBRIDE  
Clerk, P. & G.S.

(016555-00040)

I am an employee of the law offices of Rogers Townsend and Thomas, PC, attorneys for Plaintiff, do hereby certify that I have mailed a copy of the Motion to Alter and Amend, which is attached hereto and incorporated herein by reference, dated June 22, 2012 and in connection with the above-referenced case, by mailing a copy of the same by United States mail, postage prepaid, to the addressee listed below:

Glenn Bowens, Esq.  
Post Office Box 424  
Winnsboro, South Carolina 29180  
Attorney for the Defendant



Carl E. Bell

Exhibit A

# GUARANTY

ORANGERBURG

(City)

SOUTH CAROLINA

(State)

JULY 24, 2006

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce SOUTH CAROLINA BANK AND TRUST, NA (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of SAND DOLLAR 31, LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

- A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: NOTE DATED 07-24-2006 IN THE AMOUNT OF \$31,140.00 IN THE NAME OF SAND DOLLAR 31, LLC and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").
- B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s): \_\_\_\_\_

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 31,140.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated \_\_\_\_\_  
☐ secured by \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

RHONDA MEISNER

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly.

#### ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under § 111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. Until the obligations of the Borrower to Lender have been paid in full, the Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, or any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

Exhibit B

# GUARANTY

ORANGEBURG

(City)

SOUTH CAROLINA

(State)

JULY 31 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce SOUTH CAROLINA BANK AND TRUST NA

(herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of SAND DOLLAR 31 LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: NOTE DATED 07-31-2007  
FOR \$50,000.00 AND SAND DOLLAR 31 LLC and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s):

The Undersigned further acknowledges and agrees with Lender (that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 50,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the indebtedness and securing the payment of the indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated \_\_\_\_\_  
☐ secured by \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

RHONDA L. MEISNER

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly.

#### ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. Until the obligations of the Borrower to Lender have been paid in full, the Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon, or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

(page 2 of 2)

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,  
Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6318

PETITION FOR APPRAISAL  
S.C. Code § 29-3-680 *et. seq.*

2012 JUL 31 PM 4:26  
JEANETTE W. McBRIDE  
CLERK OF COURT  
& G.S.

RICHLAND COUNTY  
FILED

Pursuant to South Carolina Code §29-3-680 *et. seq.* the real estate subject to the Plaintiff's foreclosure action has been foreclosed upon by Joseph Strickland, Master in Equity for Richland County, with final sale held on July 5, 2012, in which a deficiency judgment against the Defendants, Sand Dollar 31, LLC and Rhonda Meisner, was sought; now comes the Defendants in this matter, and makes application within thirty (30) days after the sale of said mortgaged property, applying by verified petition to the Clerk of Court for Richland County, which is the County in which the Decree and Order for Sale was taken, for an Order of Appraisal of said property which is hereby listed as follows:

**Brief Legal Description of Real Estate:**

All that piece, parcel or tract of land, containing .22 acres, more or less, situate, lying and being on the Southwestern side of U.S. Highway No 321, about twelve miles North of the City of Columbia, in the County of Richland, State of South Carolina, being a part of the property shown and delineated on a plat prepared for Joseph C. Byrd, Jr. and Doris V. Byrd by R.E Collingwood, Jr., dated January 1, 1964 and recorded in the office of the Register of Deeds for Richland County in Plat Book "U" at page 90 and being more fully described on a plat prepared for Charles L. Duffie by Robert E. Collingwood, Jr. dated August 15, 1968 recorded December 2, 1968 in Plat Book 34 at Page 3, Office of the Register of Deeds for Richland County and according to said latter survey of the property having the following measurements and boundaries, to wit: On the North-east by U.S. Highway 321, and fronting thereon Eighty-five (85')...feet, then at right angles turning and running in a Southerly direction for On Hundred Fifty (154') feet to U.S. Highway 321.

All that piece, parcel or lot of land, containing .051 acres, more or less, situate, lying and being on the Southwestern side of U.S. Highway No. 321, about twelve miles North of the City of Columbia, in the County of Richland, State of South Carolina, being the identical property shown and delineated on a plat prepared for Charles L. Duffie by Henry 2. Duffie, Jr., Registered Land Surveyor dated the 9th day of April 1976, the said property being bounded on the Northeast by U.S Highway No. 321, and fronting thereon fifteen (15') feet; then turning at right angles and running in a southerly direction for One hundred forty-eight and five-tenths (148.5') feet; then turning at a right angels and running in an easterly direction for fifteen (15') feet; then turning and running at right angles in a northeasterly direction for a distance of one hundred fifty (50') feet to the point of commencement.

This is the property conveyed to Sand Dollar 31, LLC by deed of Charles L. Duffie dated March 1, 2006, recorded March 3, 2006 in Record Book 1157 at page 3375.

TMS: 10100-01-012

Property Address: 8391 Winnsboro Road  
Blythewood, SC 29016

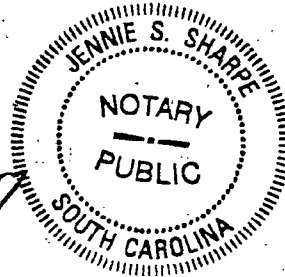
PERSONALLY appeared before me, Rhonda Meisner who, being duly sworn, deposes and says as follows:

1. That Pursuant to §29-3-680 the Defendant is timely requesting an order of appraisal in the above-filed action.
2. That pursuant to §29-3-710, the Court appoint Angela Buckley from Certified Appraisal Services, PO Box 938 Lugoff, S.C. 29078 (803) 714-9911, as one designated appraiser for the Petitioner.
3. That upon information and belief the mortgaged property was sold for a figure significantly beneath its appraised value and is thereby subject to §29-3-740, which states that the amount for which the property was sold beneath its appraised value should be deducted from the amount of any deficiency judgment.
4. That pursuant to §29-3-740, the return of the appraisers shall be filed and recorded by the Clerk of Court as a judgment of the Court.

Rhonda Meisner  
Rhonda Meisner, Affiant/Defendant

SWORN to before me this 31 day of July, 2012.

Jennie S. Sharpe  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: 7-23-2017



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,  
Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

PETITION FOR APPRASIAL  
S.C. Code § 29-3-680 *et. seq.*

Pursuant to South Carolina Code §29-3-680 *et. seq.* the real estate subject to the Plaintiff's foreclosure action has been foreclosed upon by Joseph Strickland, Master in Equity for Richland County, with final sale held on July 5, 2012, in which a deficiency judgment against the Defendants, Sand Dollar 31, LLC and Rhonda Meisner, was sought; now comes the Defendants in this matter, and makes application within thirty (30) days after the sale of said mortgaged property, applying by verified petition to the Clerk of Court for Richland County, which is the County in which the Decree and Order for Sale was taken, for an Order of Appraisal of said property which is hereby listed as follows:

**Brief Legal Description of Real Estate:**

All that certain piece, parcel or lot of land with improvements thereon situate, lying and being on the eastern side of Linden Street, in or near the Town of Eau Claire in the County of Richland, State of South Carolina; said lot being composed of and embracing Lot No. 12, 13 and 14 in Block 6 upon a plat of College View Subdivision, prepared by surveyors Clodfelder and Schisler, dated August-September, 1927 and recorded in Plat Book F at page 24. TMS# 09313-03-21.

This being the same property conveyed to Sand Dollar 31, LLC by that deed of Master of Equity for Richland County by deed dated July 20, 2006 and recorded August 2, 2006 in Record Book 1213 at page 554

TMS: 09313-03-21

Property Address: 4824 Linden Street  
Columbia, SC 29203

PERSONALLY appeared before me, Rhonda Meisner who, being duly sworn, deposes and says as follows:

1. That Pursuant to §29-3-680 the Defendant is timely requesting an order of appraisal in the above-filed action.
2. That pursuant to §29-3-710, the Court appoint Angela Buckley from Certified Appraisal Services, PO Box 938 Lugoff, S.C. 29078 (803) 714-9911, as one designated appraiser for the Petitioner.
3. That upon information and belief the mortgaged property was sold for a figure significantly beneath its appraised value and is thereby subject to §29-3-740, which states that the amount for which the property was sold beneath its appraised value should be deducted from the amount of any deficiency judgment.
4. That pursuant to §29-3-740, the return of the appraisers shall be filed and recorded by the Clerk of Court as a judgment of the Court.

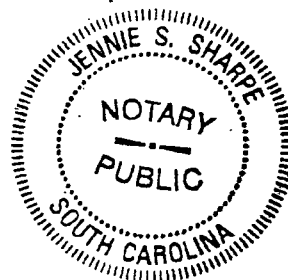
Rhonda L. Meisner

Rhonda Meisner, Affiant/Defendant

SWORN to before me this 31<sup>ST</sup> day of July, 2012.

Jennie S. Sharpe  
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 7-23-2017



**GLENN BOWENS**

ATTORNEY AT LAW

POST OFFICE BOX 424  
WINNSBORO, SOUTH CAROLINA 29180

gbowens@bowenslawsc.com

TELEPHONE  
(803) 714-7766

FACSIMILE  
(803) 714-0775

August 10, 2012

The Honorable Joseph M. Strickland  
PO Box 192  
Columbia, SC 29202  
Fax (803) 576-1865

**RECEIVED**  
AUG 13 2012  
MASTER-IN-EQUITY  
RICHLAND COUNTY

Re: SCB&T v Sand Dollar 31, LLC and Rhonda Meisner  
Civil Action # 2011-CP-40-6317  
Civil Action # 2011-CP-40-6318

Dear Judge Strickland:

Enclosed please find the Memorandum of Law regarding the Guaranty Agreements you requested.

Sincerely,



Glenn Bowens, Esq.

cc:

Terri Stomski,  
Rogers Townsend & Thomas, PC  
220 Executive Center Dr.  
Columbia, SC 29210

STATE OF SOUTH CAROLINA

COUNTY OF Richland

SCBT, NA

Plaintiff,

vs.

Schddollar 3140; Rhonda

Defendant.

IN THE COURT OF COMMON PLEAS  
JUDICIAL CIRCUIT

CASE NO.: 11-CP-40-6317

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |                                                                                                                                                             |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Plaintiff's Attorney:<br><u>Keri Stomski</u> , Bar No. _____<br>Address: <u>220 Executive Center Drive</u><br>Phone: <u>771-7900</u> Fax: <u>343-7017</u><br>E-mail: <u>keri.stomski@att.net</u> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  | Defendant's Attorney:<br><u>Glenn Bowens</u> , Bar No. _____<br>Address: _____<br>Phone: <u>714-7766</u> Fax: <u>714-5551</u><br>E-mail: _____ Other: _____ |  |
| <input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)<br><input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)<br><input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |                                                                                                                                                             |  |
| SECTION I: Hearing Information<br>Nature of Motion: <u>Petition for Appraisal</u><br>Estimated Time Needed: <u>15-30 minutes</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |                                                                                                                                                             |  |
| SECTION II: Motion/Order Type<br><input checked="" type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.<br><u>Rhonda Schddollar</u><br>Signature of Attorney for <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant Date submitted <u>7/31/2012</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |                                                                                                                                                             |  |
| SECTION III: Motion Fee<br><input type="checkbox"/> PAID - AMOUNT: \$ _____<br><input type="checkbox"/> EXEMPT: (check reason)<br><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br><input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)<br><input type="checkbox"/> Proposed order submitted at request of the court; or,<br>reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter: _____<br><input type="checkbox"/> Other: _____ |  |                                                                                                                                                             |  |
| JUDGE'S SECTION<br><input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  | JUDGE CODE _____<br>Date: _____, 20 <u>12</u>                                                                                                               |  |
| CLERK'S VERIFICATION<br>Collected by: <u>metts</u> Date Filed: <u>7/31</u> , 20 <u>12</u><br><input type="checkbox"/> MOTION FEE COLLECTED: \$ _____<br><input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |                                                                                                                                                             |  |

SCCA 233 (11/2003)

SCANNED

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

SCBT, N.A.,

Plaintiff,

v.

PETITION FOR APPRASIAL

S.C. Code § 29-3-680 *et. seq.*

Sand Dollar 31, LLC; Rhonda Meisner,  
Defendants.

2012 JUL 31 PM 4:24  
FILED  
RICHLAND COUNTY  
CLERK OF COURT  
SEANETTE W. McBRIDE  
C.C.P. & C.S.

Pursuant to South Carolina Code §29-3-680 *et. seq.* the real estate subject to the Plaintiff's foreclosure action has been foreclosed upon by Joseph Strickland, Master in Equity for Richland County, with final sale held on July 5, 2012, in which a deficiency judgment against the Defendants, Sand Dollar 31, LLC and Rhonda Meisner, was sought; now comes the Defendants in this matter, and makes application within thirty (30) days after the sale of said mortgaged property, applying by verified petition to the Clerk of Court for Richland County, which is the County in which the Decree and Order for Sale was taken, for an Order of Appraisal of said property which is hereby listed as follows:

**Brief Legal Description of Real Estate:**

All that certain piece, parcel or lot of land with improvements thereon situate, lying and being on the eastern side of Linden Street, in or near the Town of Eau Claire in the County of Richland, State of South Carolina; said lot being composed of and embracing Lot No. 12, 13 and 14 in Block 6 upon a plat of College View Subdivision, prepared by surveyors Clodfelder and Schisler, dated August-September, 1927 and recorded in Plat Book F at page 24. TMS# 09313-03-21.

This being the same property conveyed to Sand Dollar 31, LLC by that deed of Master of Equity for Richland County by deed dated July 20, 2006 and recorded August 2, 2006 in Record Book 1213 at page 554

TMS: 09313-03-21

Property Address: 4824 Linden Street  
Columbia, SC 29203

PERSONALLY appeared before me, Rhonda Meisner who, being duly sworn, deposes and says as follows:

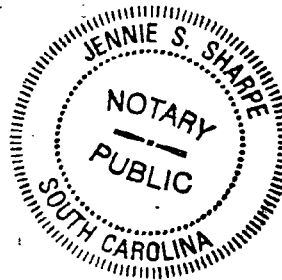
1. That Pursuant to §29-3-680 the Defendant is timely requesting an order of appraisal in the above-filed action.
2. That pursuant to §29-3-710, the Court appoint Angela Buckley from Certified Appraisal Services, PO Box 938 Lugoff, S.C. 29078 (803) 714-9911, as one designated appraiser for the Petitioner.
3. That upon information and belief the mortgaged property was sold for a figure significantly beneath its appraised value and is thereby subject to §29-3-740, which states that the amount for which the property was sold beneath its appraised value should be deducted from the amount of any deficiency judgment.
4. That pursuant to §29-3-740, the return of the appraisers shall be filed and recorded by the Clerk of Court as a judgment of the Court.

Rhonda L. Meisner

Rhonda Meisner, Affiant/Defendant

SWORN to before me this 31<sup>st</sup> day of July, 2012.

Jennie S. Sharpe  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: 7-23-2017



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS  
DOCKET NO. 11-CP-40-6317

CERTIFICATE OF SERVICE

2012 JUL 31 PM 4:24  
FILED  
RICHLAND COUNTY  
JANETTE W. McBRIDE  
C.C.P. & G.S.

I, Rhonda Meisner, do hereby certify that I have this day served a copy of the foregoing **Petition for Appraisal** in connection with the above referenced case by placing a copy of the same in the United States Mail, postage prepaid, to the following Address:

Rogers Townsend & Thomas, PC  
ATTN: Teri Stomski  
220 Executive Center Dr.  
Columbia, SC 29210

This the 31st Day of July 2012 A.D.

  
Rhonda Meisner

2011-6317

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
DOCKET NO. 11-CP-40-6317  
DOCKET NO. 11-CP-40-6318

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

MEMORANDUM IN SUPPORT OF  
MOTION TO ALTER OR AMEND

The Defendants submit this Memorandum in Support of their Motion to Alter or Amend the Judgment in the above captioned matter. For the reasons set forth below, the Defendants' motion should be granted. There are two primary issues that merit altering or amending the judgment. First, is the pre-mature and improper recording of the judgment in the public record on May 16, 2012, before the foreclosure sale and appraisal were completed. The public record incorrectly shows the Defendants owe: \$63,734.92 (Civil Action# 11-CP-40-6317) and \$43,220.45 (Civil Action# 11-CP-40-6318). This order should be vacated and replaced by an order that shows the final amount owed by the Defendants after the sale and appraisal have been completed.

Second, the Defendants' Counterclaim sought a declaratory judgment as to whether they were entitled to appraisal rights pursuant to S.C. Code §29-3-680 and a declaratory judgment of the rights and liabilities of the parties under the Note, Mortgage and Guarantee Agreement and the amount of the deficiency judgment. The issue of the appraisal rights was determined in favor of the Defendants; however, the issue of the amount of the deficiency judgment was deferred until after the foreclosure sale. The order that was filed on May 16, 2012 contained a monetary judgment against Rhonda Meisner that exceeds the maximum amount contained in the Guarantee Agreement. The monetary judgment against Rhonda Meisner should be amended to take into account the limitations on her personal liability contained in the Guarantee Agreement.

### **Improper Recording of the Judgment**

During the foreclosure hearing on April 25, 2012 the Court granted the foreclosure and ordered the sale of the two properties. The Court also instructed counsel for the Plaintiff to prepare a proposed order and provide it counsel for the Defendants for review and comment. The proposed order contained a document entitled "Record of Hearing," which stated "Plaintiff's attorney presented or will present copies of the following documents" which included "Affidavit of Attorney Fees / Affidavit of Costs" and "Statement of Indebtedness." However, neither of these documents were produced. The undersigned was awaiting these documents in order to properly review the proposed order and determine whether there was any basis for objection.

In the meantime and without notice to counsel, the proposed orders were forwarded to the Court; giving the incorrect impression that counsel for the Defendants consented to the proposed orders. The orders were filed on May 16, 2012. Counsel for the Defendants was not provided notice that the orders were actually signed and filed. Counsel for the Plaintiff sent a letter dated May 17, 2012, the day after the orders were filed, which counsel for the Plaintiff claims was notice of the filing of the orders. However, the letter clearly does not provide notice that the orders were filed. The focus of the letter was notification that the foreclosure sale was to be held on June 4, 2012. There was no way to discern from the letter that the orders had been filed. The letter does not provide a date that the orders were filed. A copy of the letter is attached as **Exhibit 1**. Claiming this letter is notice that orders had been signed by the Court and filed smacks of gamesmanship.

The Plaintiff's counsel, or someone from her law firm, sent a letter dated May 29, 2012 directly to Sand Dollar and Rhonda Meisner, even though they were represented by counsel at the time the letter was sent. The letter, which stated that it was "an attempt to collect a debt," contained a copy of the filed Form 4 Order for 11-CP-40-6318. A copy of the letter is attached as **Exhibit 2**. The Plaintiff did not provide a copy of the filed Form 4 Order for 11-CP-40-6317. Rhonda Meisner

was travelling on business and the letter was actually received on June 6, 2012. The letter was the first indication the Defendants or counsel had that these orders had been filed. The Motion to Alter or Amend was filed the next day, June 7, 2012, which is within ten days of the date of the letter.

The Form 4 Order indicates the Defendants owe \$63,734.92 (Civil Action# 11-CP-40-6317) and \$43,220.45 (Civil Action# 11-CP-40-6318). The Form 4 Order, which was not signed by the Court, is used to index the parties' name and amount of the judgment in the public record. Based on the instructions for the use of a Form 4 Order (attached as **Exhibit 3**), the Plaintiff should not have filed the Form 4 Order. Instruction # 2 provides: "The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index." The judge did not sign the Form 4 Order. Instruction # 10 provides:

When an Order of Foreclosure is filed, neither the parties nor the debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

The foreclosure order signed by the Court did not specifically require entry of the full judgment amount before the foreclosure sale. The order stated in paragraph 33 that the Order for Deficiency would be entered after crediting the proceeds of the sale, not entry of the full judgment before the sale. Moreover, counsel for the Plaintiff knew when she filed the Form 4 Order that the sale and appraisal had not taken place and the amount recorded in the public record would be reduced. Making matters worse, counsel for the Plaintiff sent someone to bid on the properties: \$25,000.00 on the Linden Street property and \$10,000.00 on the Winnsboro Road property, which meant she absolutely knew the amount recorded was not the correct amount. The filing of the Form 4 Order gave the false impression that the Defendants owed \$63,734.92 and \$43,220.45 and became a lien on all property owned by the Defendants. The Defendants do not believe this was the Court's intention following the April 25, 2012 hearing.

### **Amounts Claimed**

The amounts claimed by the Plaintiff are vague and questionable. First, in 11-CP-40-6317, the Plaintiff claims attorney fees in the following amounts: (1) \$3,321.00; (2) \$2,679.00; and (3) an undisclosed amount for attorney fees under the category of "Allowable Advances." The Plaintiff claims over \$6,000.00 in attorney fees related to the Linden Street property. This same property was previously foreclosed upon and the court awarded \$2,900.00 in attorney fees, less than one half the amount being claimed in the present case. (A copy of the order in the previous case is attached as **Exhibit 4**) The court should deny this request for attorney fees without documentation supporting a claim for fees that are double the amount of the previous foreclosure on the same property.

Plaintiff also claims \$4,303.80 under the category of "Allowable Advances." The Plaintiff lists as "Allowable Advances": "escrow advances," "corporate charges," "paid costs and expenses from the foreclosure action," and an ambiguous charge for "other charges." The Plaintiff did not separately identify the amounts allocated from the \$4,303.80 for each of these charges. The Plaintiff also claims reimbursement for taxes in the amount of \$1,681.42. This claim appears to be duplicative with the claim for "escrow advances" in that the "escrow" is typically for taxes and insurance. There was no evidence that the Defendants did not maintain insurance on the property. Moreover, there is evidence that the taxes were not paid (see tax bills attached as **Exhibit 5**).

Second, in Civil Action # 11-CP-40-6318 the Plaintiff claims attorney fees in the following amounts: (1) \$4,924.00; (2) \$3,0760.00; and (3) an undisclosed amount for attorney fees under the category of "Allowable Advances." The Plaintiff lists as "Allowable Advances": "escrow advances," "corporate charges," "expenses from the foreclosure action" and an ambiguous charge for "other charges." The Plaintiff did not separately identify the amounts allocated from the \$6,263.60 for each of these charges. Without an affidavit and itemized statement of attorney fees

and costs it is impossible for the Court to evaluate the propriety and reasonableness of these claimed charges or for the Defendants to decide if these charges are objectionable.

The Court must evaluate the reasonableness of the claimed attorney fee based on the six factors outlined by the Supreme Court in Jackson v Speed, 326 S.C. 289, 486 S.E.2d 750 (1997). The Supreme Court held that the trial judge should consider the following six factors when determining the reasonableness of a claim for attorney fees: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Id. The Supreme Court also held that "on appeal, an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor" Id. The Court cannot accomplish this task without an itemized statement of attorney fees and costs. The Court should also consider that the Defendants offered to settle the case without the necessity of going to court and made a payment to bring the loan current when deciding the issue of attorney fees.

### **Personal Guarantee**

The Defendants' Answer & Counter Claim asked for a declaratory judgment to determine the parties' rights and liabilities under the Note, Mortgage and Guarantee Agreement and to determine the rights and obligations of the parties with respect to the amount of the deficiency judgment. The Defendant sought this declaratory judgment because Rhonda Meisner wanted to make certain that, should there be a deficiency judgment, her liability for the deficiency did not exceed the amount she personally agreed pay in the Guarantee Agreement.

Rhonda Meisner claims her maximum liability for a deficiency judgment is \$31,140.00 and \$36,000.00 as provided in the two respective Guarantee Agreements. The Plaintiff claims that Rhonda Meisner personally guaranteed those amounts and also guaranteed payment of all other debts incurred by Sand Dollar including the interest, attorney fees and other costs related to the two

Notes and Mortgages. The Plaintiff claims that the \$31,140.00 and \$36,000.00 amounts are only the maximum principal that Rhonda Meisner guaranteed. The Plaintiff is incorrect in its interpretation of the Guarantee Agreement, which necessitates a declaratory judgment by the Court.

The Guarantee Agreement contains two options, Paragraph A and B, one of which is to be checked based on the parties agreement. In both 11-CP-40-6317 and 11-CP-40-6318 Paragraph A was checked. Importantly, Paragraph A limited the amount guaranteed by Rhonda Meisner to \$31,140.00 (11-CP-40-6317) and \$36,000.00 (11-CP-40-6318) respectively. On the other hand, Paragraph B, which was not checked, required payment by the guarantor of:

...each and every debt, liability and obligation of **every type and description** which Borrower may now or at any time hereafter owe to lender (**whether such debt, liability or obligation now exists or is hereafter created or incurred**, and whether it is or may be direct or indirect, due or to become due, **absolute or contingent**, primary or secondary, liquidated or unliquidated, or joint, several or joint and several; all such debts, liabilities and obligations being hereinafter collective referred to as the "indebtedness"). (emphasis added)

The Plaintiff's claim for payment of Sand Dollar's debts beyond the \$31,140.00 and \$36,000.00 are the type of debts contemplated by Paragraph B. These debts did not exist at the time the Guarantee Agreement was executed; they were also contingent and had not yet become due. If Paragraph B had been checked, then arguably Rhonda Meisner may be liable for these additional debts; however, the parties did not agree and did not check Paragraph B. Even under the Plaintiff's interpretation that the specific dollar amount stated in the Guarantee Agreement referred to the amount of principal guaranteed, the Plaintiff still claims \$48,698.20 is due in principal in 11-CP-40-6317, when the guarantee only provided for \$31,140.00, which is over \$17,000.00 more in principal than the Plaintiff is allowed under its own interpretation.

Rhonda Meisner contends that a plain text reading of the Guarantee Agreements limited her liability. The Plaintiff disagrees and claims Rhonda Meisner owes \$63,734.92 in 11-CP-40-6317 and \$43,220.45 in 11-CP-40-6318. Given the disagreement over the interpretation of the Guarantee

Agreement, the Court must interpret it to determine the maximum amount that Rhonda Meisner guaranteed to pay. When a contract is susceptible of more than one interpretation, the non-drafting party is given the benefit of the ambiguity. The South Carolina Supreme Court has held:

It is generally held that an ambiguity in a written contract should be construed most strongly against the drafters. We quote, with approval, the following from 17A C.J.S. Contracts § 324:

"(A)mbiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage.

The reason for the rule of strict construction against the party preparing the contract is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes in meaning more than one with whom he is dealing, and that he who has brought the agreement into existence and is thus primarily responsible for its inadequacy should justly suffer for its shortcomings."

Myrtle Beach Lumber Company, Inc. v. Willoughby, 276 S.C. 3, 274 S.E.2d 423 (S.C. 1981).

There is no dispute that the Guarantee Agreements at issue in these two foreclosure cases were drafted and prepared by the Plaintiff. Based on the Supreme Court's holding the ambiguity must be resolved in favor of Rhonda Meisner.

The Plaintiff claims that the Defendant is attempting to re-try this matter by raising it for the first time in this motion. This issue is not being raised for the first time; it was raised in the Answer & Counterclaim. The Defendants and counsel were under the impression that these issues had been deferred until after the foreclosure sale and appraisal had been completed, which made sense, as the Court could not issue a declaratory judgment on these issues until after the foreclosure sale and appraisal. Moreover, the issue may have become moot if there was no deficiency, depending on the outcome of the foreclosure sale and appraisal. However, since the April 25, 2012 hearing, the Court signed an order that held Rhonda Meisner personally liable for \$63,734.92 and \$43,220.45, both of which are in excess of the limitations in the Guarantee Agreement.

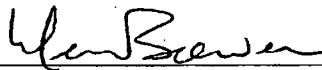
Rule 52, SCRCP, provides that the Court may "amend its findings or make additional findings and may amend the judgment accordingly..." To the extent these issues were not specifically ruled upon during the April 25, 2012 hearing, Rule 60, SCRCP provides that the Defendants may be relieved from the judgment based on: mistake, inadvertence, surprise, or excusable neglect. The Defendants were under the impression that the declaratory judgment on the issues of the rights and liabilities of the parties under the Note, Mortgage and Guarantee Agreement with respect to the amount of the deficiency judgment was being deferred until after the foreclosure sale and appraisal were completed. Rule 60, SCRCP also provides that a party may be relieved from the judgment based on fraud, misrepresentation, or other misconduct of an adverse party. The Plaintiff's actions in forwarding the proposed order to the court without notification to opposing counsel and without providing the Affidavit of Attorney Fees / Affidavit of Costs and Statement of Indebtedness prior to forwarding the proposed order to the court denied the Defendants a meaningful opportunity for input into the order and are the type of actions contemplated by Rule 60, SCRCP that warrant relief from a judgment. The Defendants requested a declaratory judgment on these issues; the ends of justice would not be served by denying the Defendants a declaratory judgment on these issues.

The Plaintiff has engaged in conduct that the Defendants consider to be improper, fraudulent, libelous, abusive and in violation of the Federal Fair Debt Collection Practices Act and the South Carolina Consumer Protection Act including: (1) filing an order with a judgment amount the Plaintiff knew was not correct and/or final, especially when Plaintiff knew it was going to be bidding on the properties at the foreclosure sale and thereby reduce the amount of the judgment by the amount of the bid; (2) filing an order without obtaining the trial court's signature on the order; (3) filing an order in violation of the instructions; (4) failing to notify the Defendants' counsel that the proposed order had been transmitted to the court; (5) failing to notify Defendant's counsel that

the order had been signed and filed; and (6) sending a letter, in an attempt to collect a debt that was in litigation, directly to the Defendants when the Plaintiff knew the Defendants were represented by counsel.

The Defendants request the Court consider the Plaintiff's conduct, which the Defendants contend constitute unclean hands, when deciding the Plaintiff's request for attorney fees and the amount, if any, of the deficiency judgment. As a result of the Plaintiff's conduct, the Defendants have been required to file this motion causing them to incur attorney fees and costs unnecessarily. The Defendants request the court award Defendants' attorney fees and costs and/or make an appropriate adjustment to the attorney fees and costs that may be awarded to the Plaintiff to offset the fees and costs incurred by the Defendants with respect to this motion.

Respectfully submitted,



---

Glenn Bowens, Esq.  
PO Box 424  
Winnsboro, S.C. 29180  
Attorneys for the Plaintiff

July 17, 2012

ROGERS TOWNSEND & THOMAS, PC  
POST OFFICE BOX 100200 (2520)  
220 EXECUTIVE CENTER DRIVE  
COLUMBIA, SOUTH CAROLINA 29210  
P 803.771.7900 F 803.343.7013  
W RTT-LAW.COM

Teri K. Stomski,  
Attorney  
EMAIL Teri.Stomski@rtl-law.com  
P 803.744.1926  
F 803.343.7017



May 17, 2011

Glenn E. Bowens  
The Bowens Law Firm  
P.O. Box 424  
Winnsboro, SC 29180

Re: SCBT, NA v. Sand Dollar 31, LLC;  
Case No.11-CP-40-6318; Richland County  
Our File No. 016555-00039

Dear Glen:

Please be advised that on April 25, 2012 a hearing was held and Judgment of Foreclosure and Sale was entered in the above referenced foreclosure action. Please note that the foreclosure sale has been scheduled for June 4, 2012 or some subsequent sales day. If the currently scheduled foreclosure sale is postponed for any reason, please contact our office at 803-771-7900 to find out the status of the case and/or the next scheduled foreclosure sale date.

For further clarification, please check with the county Clerk of Court to view the original documents or to obtain any copies.

Sincerely,

A handwritten signature in dark ink, appearing to read "Teri", is written over the word "Sincerely,".

Teri K. Stomski





**ROGERS TOWNSEND**  
ATTORNEYS AT LAW

ROGERS TOWNSEND & THOMAS, P.C.  
DEFAULT SERVICES DEPARTMENT

POST OFFICE BOX 100200 (29202)  
220 EXECUTIVE CENTER DRIVE  
COLUMBIA, SOUTH CAROLINA 29210  
P 803 744 4444 F 803 343 7013  
WWW.RTT-LAW.COM

May 29, 2012

Sand Dollar 31, LLC  
8391 Wimsboro Road,  
Blythewood, SC 29016

Rhonda Meisner  
1 Chester Road  
Blythewood, SC 29016

Re: SCBT, N. A. vs.  
Case No. 11-CP-40-6318; Richland County  
Our File No. 016555-00039

Dear Sir/Madam:

Please be advised that on April 25, 2012 a hearing was held and Judgment of Foreclosure and Sale was entered in the above referenced foreclosure action. This Judgment was filed on May 16, 2012. Please note that the foreclosure sale has been scheduled for either June 4, 2012 or some subsequent sales day. If the currently scheduled foreclosure sale is postponed for any reason, please contact our office at 803-744-4444 to find out the status of the case and/or the next scheduled foreclosure sale date.

For further clarification, please check with the county Clerk of Court to view the original documents or to obtain any copies.

Default Services Section

Enclosed: Form 4

**This is an attempt to collect a debt and any information  
obtained will be used for that purpose.**



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

JUDGMENT IN CIVIL CASE

CASE NO. 11-CP-40-6318

SCBT, N. A.

Sand Dollar 31, LLC; Rhonda Meisner;

PLAINTIFF(S)

DEFENDANT(S)

## Submitted by:

Teri K. Stomski (SC Bar#65250)  
Attorneys for the Plaintiff  
Rogers Townsend & Thomas, PC  
220 Executive Center Drive, Suite 109  
Post Office Box 100200  
Columbia, SC 29202  
(803) 771-7900  
(803) 343-7013 - Fax  
info@rtt-law.com

Attorney for : ☒ Plaintiff ☐ Defendant  
or

☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: \_\_\_\_\_

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

As required by statute, a foreclosure sale has been or will be scheduled, which will officially end the case. Also, if a deficiency judgment remains demanded, a separate Order for Deficiency Judgment will be entered at the completion of the foreclosure sale.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To Be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| SCBT, NA                                     | Sand Dollar 31, LLC                      | \$43,220.45                                              |
| SCBT, NA                                     | Rhonda Meisner                           | \$43,220.45                                              |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

TMS: 10100-01-012  
8391 Winnsboro Road  
Blythewood, SC, 29016

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

Circuit Court Judge/Master in Equity/Special Referee

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 16<sup>th</sup> day of May, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 16<sup>th</sup> day of May, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Teri K. Stomski (SC Bar #65250)

Rogers Townsend & Thomas, PC

P.O. Box 100200

Columbia, SC 29202-3400

ATTORNEY(S) FOR THE PLAINTIFF(S)  
016555-00039

ATTORNEY(S) FOR THE DEFENDANT(S)  
*Rhonda Meisner*  
CLERK OF COURT

Sand Dollar 31, LLC

Rhonda Meisner

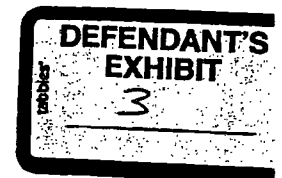
**Court Reporter:**

**FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE**  
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.



9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
DOCKET NO. 2005-CP-40-4750

CitiBank, N.A., as Trustee Under the Pooling  
and Servicing Agreement dated as of November  
30, 2001, Series 2001-I,

Plaintiff,

vs.

Johnny C. Rumsey, also known as Curtis Rumsey,  
individually and as heir at law of Edye Pauline  
Rumsey, Deceased, and any heirs-at-law or  
Distributees or Personal Representatives and  
their spouses, if any they have, and all other  
persons with any right, title or interest in and to  
the real estate commonly known as 4824 Linden  
Street, Columbia, South Carolina; also any  
unknown adults and those persons who may be  
in the military service of the United States of  
America, all of them being a class designated as  
John Doe; and any unknown minors or persons  
under a disability being a class designated as  
Richard Roe; and CitiFinancial, Inc., formerly  
known as Commercial Credit Corporation; and  
Paragon Way, Inc., formerly known as TX Collect,  
Inc.,

Defendants.

MASTER's REPORT

AND

JUDGMENT

OF

FORECLOSURE

AND

SALE

(Deficiency Waived)

Notice: The original of this document was  
filed in the Office of the Clerk of Court for  
Richland County, and copies forwarded  
to the following on the same date to:

Mr. Kevin T. Brown of the firm of McDonald,  
McKenzie, Rubin, Miller and Lybrand, L.L.P.,  
as Attorney for the Plaintiff.

Mr. Pearce W. Fleming of the firm Pearce  
W. Fleming, PA., as Guardian ad Litem for  
the unknown Defendants who are minors  
or under a legal disability and as Attorney  
for unknown Defendants who are in the  
military service of the United States of  
America.

Pursuant to Rule 53 SCRCP, the above-entitled matter was referred to the undersigned to  
make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the  
cause. Any appeal from this Order is to the South Carolina Supreme Court or the South Carolina Court of  
Appeals as appropriate.

Pursuant to the said Order of Reference, a hearing was held, attended by the attorneys of  
record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find,  
conclude, and order as follows:



FINDINGS OF FACT:

1. The Lis Pendens was filed on September 30, 2005.
2. The Summons and Complaint were filed on September 30, 2005.
3. Service was made upon the defendants named in this Report as shown by the proofs of service filed herein.
4. The Defendants Johnny C. Rumsey, also known as Curtis Rumsey, CitiFinancial, Inc., formerly known as Commercial Credit Corporation, and Paragon Way, Inc., formerly known as TX Collect, Inc. are in default as shown by the affidavit filed herein.
5. According to the affidavit filed herein, no defendant in default is in the Military Service of the United States of America as contemplated under the Servicemember's Civil Relief Act of 2003, and any amendments thereto.
6. The Defendants in default, the Guardian ad Litem, and any attorneys of record were notified of the time, date, and place of the hearing in this matter.
7. For value received, Edye P. Rumsey and the Defendant Johnny C. Rumsey made, executed and delivered a note dated November 17, 1999, promising thereby to pay to the order of First Union Home Equity Bank, N.A., the sum of \$28,000.00, with interest at 9.96% per annum. Other terms and conditions are stated in the Note which is of record herein.
8. To better secure the payment of the Note described above, Edye P. Rumsey and the Defendant Johnny C. Rumsey made, executed and delivered to First Union Home Equity Bank, N.A., its successors and assigns, a mortgage in writing, dated November 17, 1999, covering real property in Richland County, which is the same as that described in the Complaint. The mortgage was filed on January 4, 2000, and is of record in the Office of the Register of Deeds for Richland County in Record Book R0373 at page 2413.
9. This mortgage constitutes a first lien on the subject property however it is not a purchase money mortgage.

10. On June 27, 2000, First Union Home Equity Bank, N.A., merged into First Union Bank of Delaware, with First Union Bank of Delaware being the surviving corporation, as shown by records on file with the Federal Reserve System.

11. On June 27, 2000, First Union Bank of Delaware, changed its name to First Union National Bank of Delaware.

12. On April 1, 2002, First Union National Bank of Delaware changed its name to Wachovia Bank of Delaware, N.A.

13. Upon information and belief Edye Pauline Rumsey died intestate on January 10, 2005, and leaving surviving her as her sole heir at law the Defendant Johnny C. Rumsey, also known as Curtis Rumsey.

14. Plaintiff has acknowledged that it has no knowledge of all of the actual heirs-at-law, next of kin, or devisees of Edye Pauline Rumsey, deceased, and therefore this action is directed to her administrators, executors, representatives, heirs-at-law, next of kin, and devisees, and all persons known and unknown who may claim an interest in or lien upon the subject property, and including those person who may be minors, under disability, or in the Military Service of the United States of America, for the purpose of litigating the title thereof. One or more of said Defendants may be deceased and any interest in or lien upon the subject property that they may have had or claimed to have had may have passed to administrators, executors, representatives, heirs-at-law, next of kin, and devisees, none of whom are known to the Plaintiff. There may be other persons unknown to the Plaintiff claiming rights, titles, estates, interest in or liens upon the subject property. All such unknown persons have been made parties defendant herein and all minors, and persons otherwise under disability, among them have been as a class designated as Richard Roe and persons in the Military Service of the United States of America among them are a class designated herein as Defendant John Doe, so that they can present and prove any such adverse claim or be forever barred from doing so. No one had come forward to present and prove an adverse claim.

15. By Assignment dated September 26, 2005, recorded October 4, 2005, in Record Book 1105 at page 1533, in the Office of the Register of Deeds for Richland County, Wachovia Bank of Delaware, N.A., assigned and transferred the subject Note and Mortgage to CitiBank, N.A., as Trustee

under the Pooling and Servicing Agreement dated as of November 30, 2001, Series 2001-I; by virtue of said Assignment, the Plaintiff is now the owner and holder of said Note and Mortgage

16. The titleholders of record in and to the subject property as of the filing of the Lis Pendens in this action are Edye P. Rumsey and the Defendant Johnny C. Rumsey, also known as Curtis Rumsey, who are the original mortgagor.

17. Payment due on the note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the note and mortgage in the hands of the attorney herein for collection. A Notice to Cure pursuant to The South Carolina Consumer Protection Code was sent to the Mortgagor on July 6, 2005.

18. The sum of \$2,900.00 is a reasonable fee to allow as attorney fees for plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Note and Mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

19. The amount due and owing on the note, with interest at the rate provided in the Note, and all other costs and expenses of collection, including an attorney's fee, secured by the note and mortgage, is as follows:

|                                                                              |                                                                                |                   |
|------------------------------------------------------------------------------|--------------------------------------------------------------------------------|-------------------|
| (a)                                                                          | Principal balance due as of May 22, 2005.                                      | \$24,455.49       |
| (b)                                                                          | Interest from April 22, 2005,<br>to April 22, 2006, at 9.96% per annum.        | 2,435.77          |
| (c)                                                                          | Property inspections                                                           | 58.40             |
| (d)                                                                          | Property appraisal                                                             | 300.00            |
| (e)                                                                          | LESS: Unapplied funds                                                          | -100.00           |
| (f)                                                                          | Late charges before being sent to<br>attorney for collection                   | 1.26              |
| (g)                                                                          | Costs of collection prior to hearing<br>(service, filing, reference fee, etc.) | 1,545.58          |
| (h)                                                                          | Attorney's fee                                                                 | 2,900.00          |
| TOTAL DEBT secured by note and mortgage,<br>including interest to date shown |                                                                                | <hr/> \$31,596.50 |

Interest for the period from the date shown in (b) above through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt" to comprise the amount of judgment debt entered

herein, and interest after the date of judgment at the rate of 9.96% per annum (pursuant to the terms of the note and mortgage), on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

20. The Plaintiff is seeking foreclosure of the mortgage and has in writing expressly waived the right to a personal or deficiency judgment pursuant to Rule 71(b) SCRPC.

21. The Defendant CitiFinancial, Inc., formerly known as Commercial Credit Corporation, has or may claim to have some interest in or lien upon the subject property by virtue of that certain Mortgage in the amount of \$15,395.84 given to Commercial Credit by J. Curtis Rumsey and Edye P. Rumsey, dated May 18, 1994, recorded May 18, 1994, in the Office of the Register of Deeds for Richland County in Mortgage Book M1738 at page 155; in the Complaint, the Plaintiff alleged that the debt secured by said mortgage has been paid in full and that said mortgage no longer constitutes a lien on the subject property; the Defendant CitiFinancial, Inc., formerly known as Commercial Credit Corporation, has not appeared in this action to contest said allegations which are deemed to be correct.

22. The Defendant Paragon Way, Inc., formerly known as TX Collect, Inc., has or may claim to have some interest in or lien upon the subject property by virtue of that certain judgment in the amount of \$1,614.24, obtained by TX Collect, Inc., against Edye Rumsey, filed August 17, 2004, in Judgment Roll Number 255663, in the Office of the Clerk of Court for Richland County; the interest or lien of the Defendant Paragon Way, Inc., formerly known as TX Collect, Inc., if any, is junior and subordinate to the lien of the Plaintiff's mortgage.

23. Pearce W. Fleming, Esquire, a member of South Carolina Bar, has been appointed attorney for each unknown Defendant who is in the military service within the meaning of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and he has filed an Answer, appeared, and actively participated herein for such unknown Defendants. The sum of \$150.00 is a reasonable fee to allow for such attorney's services rendered herein until final adjudication of the within action.

24. Pearce W. Fleming, Esquire, a member of the South Carolina Bar, has been appointed Guardian ad Litem for each unknown Defendant who is a minor or otherwise under disability, and has filed an Answer, appeared and actively participated herein. The sum of \$150.00 is a

reasonable fee to allow such Guardian ad Litem for services rendered and to be rendered herein until final adjudication of the within action.

#### CONCLUSIONS OF LAW

I, therefore, conclude that the Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement. I further conclude that the mortgage described in paragraph twenty-one (21) supra, no longer constitutes a lien on the subject property.

#### IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$31,596.50, representing the total debt due Plaintiff as set out in paragraph nineteen (19) supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof. Any sums advanced by the Plaintiff for real estate taxes on the subject property subsequent to the date of the hearing in this action shall be added to the judgment debt without further hearing.
2. The amount due in the preceding paragraph (the "total debt" as set forth in the paragraph nineteen (19) supra, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 9.96% per annum.
3. That the Defendants liable for the aforesaid mortgage debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.
4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned Master in Equity, at public auction, at the Richland County Judicial Center, in the City of Columbia, County and State aforesaid, on some convenient salesday hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the salesday shall be on the Tuesday next succeeding such holiday), on the following terms, that is to say:

A. FOR CASH: The undersigned Master in Equity, will require a deposit of 5% on the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within twenty (20) days same to be forfeited and applied to the costs and plaintiff's debt.

B. Purchaser to pay interest on his bid from the date of sale to the date of compliance at the rate of 9.96% per annum.

C. The sale shall be subject to taxes and assessments, to existing easements and restrictions, and to any other senior encumbrances.

D. Purchaser to pay for all costs of recording the deed.

E. Should the Plaintiff or the Plaintiff's attorney or agent fail to appear on sales day, the property shall not be sold, and in that event any such sale shall be null and void and of no force and effect; the property shall be readvertised and sold at some convenient sales day thereafter when the Plaintiff or the Plaintiff's attorney or agent is present.

5. If Plaintiff is the successful bidder at said sale for a sum not exceeding the amount of costs, disbursements, expenses and the indebtedness of the Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs, disbursements and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

6. Personal or deficiency judgment being waived, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

7. That the undersigned Master in Equity, will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and the Master in Equity will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within twenty (20) days after date of the sale, then the undersigned Master in Equity may advertise the said premises for sale on the next or some other subsequent salesday, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured.

8. That the undersigned Master in Equity will apply the proceeds of the sale as follows:

FIRST: To payment of the amount of the costs and expenses of this action, including any Guardian ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchaser money will pay on the same;

NEXT: Any surplus will be held pending the further Order of this Court.

9. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the defendants in possession herein, the Sheriff of Richland County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

10. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

11. IT IS FURTHER ORDERED that, pursuant to S.C. CODE Ann. §30-9-31 (Supp. 1987), the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Register of Deeds for Richland County in the name of the owner of record of the subject property immediately prior to execution of the deed, as well as in the name of the undersigned Master in Equity who executes such deed as grantor.

12. Upon completion of this action, the Register of Deeds will cancel of record the mortgage described in paragraph twenty-one (21) supra.

13. The undersigned Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c) SCRCP.



**RICHLAND COUNTY**  
POST OFFICE BOX 11947  
COLUMBIA, SC 29211

Treasurer  
803-576-2250  
treasurer@rcgov.us

PRINTED: 7/17/2012 \*\*\*\*\* REAL ESTATE TAXES \*\*\*\*\*  
CLERK: LEVY-YEAR 2011

TY-YEAR-RECEIPT MAP-BLOCK-PARCEL  
R-2011-140375 -D 10100-01-12.

|        |               |        |
|--------|---------------|--------|
| 473.30 | CNTY-TAX      | 279.25 |
|        | CNTY-SALES    | 12.64  |
|        | RESID-CR      | .00    |
|        | PEN/COST      | 157.34 |
|        | CNTY-TOT      | 423.95 |
|        | CITY-TAX      | .00    |
|        | CITY-PEN      | .00    |
|        | GARB          | 249.00 |
|        | PYMTS-TO-DATE | .00    |
|        | ADJ-TO-DATE   | .00    |
|        | BALANCE-DUE   | 672.95 |

LOC: 8391 WINNSBORO RD

RMKS:  
DIGEST 590  
CHANGE 0  
NET-ASSM 590

R-2011-140375 D  
SANDDOLLAR 31 LLC

DIST-NO:  
2DP

PO BOX 689  
BLYTHEWOOD

SC 29016



**RICHLAND COUNTY**  
POST OFFICE BOX 11947  
COLUMBIA, SC 29211

David A. Adams  
Treasurer  
803-576-2250  
treasurer@rcgov.us

PRINTED: 7/17/2012 \*\*\*\*\* REAL ESTATE TAXES \*\*\*\*\*  
CLERK: LEVY-YEAR 2011

TY-YEAR-RECEIPT MAP-BLOCK-PARCEL  
R-2011-140375 -D 10100-01-12.

|        |               |        |
|--------|---------------|--------|
| 473.30 | CNTY-TAX      | 279.25 |
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|        | CITY-TAX      | .00    |
|        | CITY-PEN      | .00    |
|        | GARB          | 249.00 |
|        | PYMTS-TO-DATE | .00    |
|        | ADJ-TO-DATE   | .00    |
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LOC: 8391 WINNSBORO RD

RMKS:  
DIGEST 590  
CHANGE 0  
NET-ASSM 590

R-2011-140375 D  
SANDDOLLAR 31 LLC

DIST-NO:  
2DP

PO BOX 689  
BLYTHEWOOD

SC 29016

DEFENDANT'S  
EXHIBIT

5



**RICHLAND COUNTY**  
POST OFFICE BOX 11947  
COLUMBIA, SC 29211

Treasurer  
803-576-2250  
treasurer@rcgov.us

PRINTED: 7/17/2012

\*\*\*\*\* REAL ESTATE TAXES \*\*\*\*\*  
LEVY YEAR 2011

CLERK  
TY YEAR RECEIPT MAP-BLOCK-PARCEL  
R-2011-125244-D 09313-03-21

LOC 4824 LINDEN ST  
RMKS  
DIGEST 2,920  
CHANGE 0  
NET-ASSM 2,920

R-2011-125244-D  
PEGASUS-LLC

DIST-NO  
1UR

PO BOX 689  
BLYTHEWOOD SC 29016

|        |               |          |
|--------|---------------|----------|
| 413.60 | CNTY TAX      | 1,207.71 |
|        | CNTY SALES    | 62.82    |
|        | RESID CR      | 00       |
|        | PEN/COST      | 289.08   |
|        | CNTY TOT      | 1,433.97 |
|        | CITY TAX      | 00       |
|        | CITY PEN      | 00       |
|        | GARB          | 249.00   |
|        | PYMTS TO DATE | 00       |
|        | ADJ TO DATE   | 00       |
|        | BALANCE DUE   | 1,582.97 |



**RICHLAND COUNTY**  
POST OFFICE BOX 11947  
COLUMBIA, SC 29211

David A. Adams  
Treasurer  
803-576-2250  
treasurer@rcgov.us

PRINTED: 7/17/2012

\*\*\*\*\* REAL ESTATE TAXES \*\*\*\*\*  
LEVY YEAR 2011

CLERK  
TY YEAR RECEIPT MAP-BLOCK-PARCEL  
R-2011-125244-D 09313-03-21

LOC 4824 LINDEN ST  
RMKS  
DIGEST 2,920  
CHANGE 0  
NET-ASSM 2,920

R-2011-125244-D  
PEGASUS-LLC

DIST-NO  
1UR

PO BOX 689  
BLYTHEWOOD SC 29016

|        |               |          |
|--------|---------------|----------|
| 413.60 | CNTY TAX      | 1,207.71 |
|        | CNTY SALES    | 62.82    |
|        | RESID CR      | 00       |
|        | PEN/COST      | 289.08   |
|        | CNTY TOT      | 1,433.97 |
|        | CITY TAX      | 00       |
|        | CITY PEN      | 00       |
|        | GARB          | 249.00   |
|        | PYMTS TO DATE | 00       |
|        | ADJ TO DATE   | 00       |
|        | BALANCE DUE   | 1,582.97 |

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

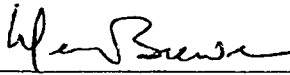
IN THE COURT OF COMMON PLEAS  
DOCKET NO. 11-CP-40-6317  
DOCKET NO. 11-CP-40-6318

CERTIFICATE OF SERVICE

I, Glenn Bowens, attorney for the Plaintiff, do hereby certify that I have this day served a copy of the foregoing **Memorandum in Support of Defendants' Motion to Alter or Amend** in connection with the above referenced case by hand delivery to:

Terri Stomski  
Rogers Townsend & Thomas, PC  
220 Executive Center Dr.  
Columbia, SC 29210

This the 18<sup>th</sup> Day of July 2012 A.D.

  
Glenn Bowens

RICHLAND COUNTY  
FILED  
2012 JUL 18 PM 12:50  
JEANETTE WENGBRIDE  
Clerk of Court  
C.O.P. & S.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, NA,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

DOCKET NO. 11-CP-40-6318

PLAINTIFF'S MEMORANDUM OF LAW  
GUARANTY AGREEMENT

(016555-00039/40)

At the hearing on the Defendants' Motion to Alter or Amend, Defendants Sand Dollar 31, LLC (Sand Dollar), the Borrower, and Rhonda Meisner, (Meisner), the Guarantor, raised, for the first time in said Motion, issues and defenses they could have presented at trial but did not, including but not limited to issues related to the limitation of the Guaranties executed by Meisner. The Court denied Defendants' Motion to Alter or Amend and Defendants have not appealed, thereby making the Judgment of Foreclosure and Sale the final adjudication of the issues in this case. After denying Defendants' Motion at the hearing, the Court ordered that the parties brief the issue of the application of guaranty agreement and Meisner's resulting liability, overruling Plaintiff's objections to same. Plaintiff, through its counsel, presents this Memorandum of Law in response to Defendants' Memorandum of Law in the above-captioned cases.

There are several issues upon which Plaintiff and Defendants agree: (1) all of the guaranties signed by Meisner are "pre-printed forms and are identical with the exception of the dates and dollar amounts,"<sup>1</sup> (2) guaranty agreements are contracts and their interpretation is governed by the same contract law principles as any other contract<sup>2</sup> and (3) when interpreting a contract, the contract must be read as a whole and that a certain provision cannot be used to determine the entire contract's meaning.<sup>3</sup> However, Defendants, in their Memorandum of Law, ask the Court to do just that. Further, Defendants' Memorandum of Law contains several material misstatements and omissions of fact. Each of which will be discussed individually so as to clarify the record.

<sup>1</sup> Defendants' Memorandum of Law, Page 4

<sup>2</sup> *Transouth Financial Corp. v. Cochran*, 324 S.C. 290, 478 S.E.2d 63 (Ct. App. 1996)

<sup>3</sup> *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009)

First, Defendants misstate that there are only two (2) guaranties, when Defendants know and acknowledge that there are three (3) guaranties executed by Meisner. The first two (2) guaranties were executed on July 24, 2006: one refers to a "Note Dated 07-24-2006 in the amount of \$36,000.00 in the name of Sand Dollar 31, LLC" (Exhibit 1) and the other refers to a "Note Dated 07-24-2006 in the amount of \$31,140.00 in the name of Sand Dollar 31, LLC" (Exhibit 2). The third guaranty was executed on July 31, 2007- when the \$31,140 Note was renewed and increased from \$31,140 to \$50,000- and refers to a "Note Dated 07-31-2007" I/A/O \$50,000.00 I/N/O Sand Dollar 31, LLC" (Exhibit 3). It is clear by even a cursory reading of Meisner's guaranties that the date and dollar amount shown on each guaranty correspond with a Note of the same date and dollar amount.

Second, Defendants misstate that Plaintiff did not loan Sand Dollar more than \$36,000. It is undisputed that Plaintiff loaned Sand Dollar \$50,000 on July 31, 2007, as referenced in Exhibit A of Plaintiff's Amended Complaint (filed 09/27/2011), and that also on July 31, 2007, Meisner signed a guaranty, which states that her liability is limited to the principal amount of \$50,000 plus accrued interest, fees and costs, as shown in Exhibit 3 attached hereto.

Third, Plaintiff does **not** contend that Meisner's guaranties were "unlimited" as Defendants' Memorandum states. Plaintiff acknowledges that the guaranty states unambiguously in Paragraph A that it is limited to a particular indebtedness and in Paragraph 4 that the liability shall be limited to the principal amount of that indebtedness plus interest, fees and costs. It is Paragraph B, which was not checked in any of the three (3) Meisner guaranties, that would have made Meisner's liability unlimited because "Indebtedness" in Paragraph B is defined, not as a single Note as in Paragraph A, but as "each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender...."

Fourth, Defendants state that "Meisner bases her claim that the Guaranty Agreements limit her liability" because the "Guaranty Agreements specifically state the *maximum* dollar amount in paragraph A."<sup>4</sup> However, Defendants misrepresent what Paragraph A says. Nowhere in Paragraph A is the word "maximum" used, nor is there any mention of limiting liability. Paragraph A states:

...the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise of the debts, liabilities and obligations described as follows:

A. If this [X] is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: NOTE DATED 07-31-2007 I/A/O \$50,000 I/N/O SAND DOLLAR 31, LLC and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").<sup>5</sup>

\*NOTE: Each of the three (3) guaranties has a different Note listed in the blank. This is an excerpt from Exhibit 3.

<sup>4</sup> Defendants' Memorandum of Law, Page 2 (emphasis added).

<sup>5</sup> Exhibit #3

Not only does Paragraph A not mention a maximum liability as Defendants claim, it actually says the opposite, stating the guarantor “absolutely and unconditionally guarantees to Lender the full and prompt payment of...the debts, liabilities and obligations described as follows:” at which point it describes the guaranteed “Indebtedness” as a particular Note, by referencing that Note’s date and amount (emphasis added).

Paragraph 4 likewise limits the guarantor’s liability to the principal amount of the particular indebtedness plus accrued interest, fees and costs, which is consistent with the description of the indebtedness in Paragraph A. However, in Defendants’ Memorandum of Law, they hone in on a limited portion of Paragraph 4, in contravention of their assertion that one must look at the guaranty contract in its totality, and fail to refer to the pivotal language that follows it. The following is Paragraph 4 as stated in the Guaranty:

\*4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$50,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys’ fees, collection costs and enforcement expenses referable thereto.\*\*6

\*NOTE: Each of the guaranties has a different amount listed in the blank that corresponds to the Note listed therein that is being guaranteed. This is an excerpt from Exhibit 3.

To read Paragraph 4 as saying Meisner’s liability “is limited to those amounts”<sup>7</sup> listed in that paragraph *without mentioning* that the adjacent phrase adds “plus accrued interest thereon and all other costs, fees, and expenses...and all attorney’s fees, collection costs and enforcement expenses referable thereto....” is disingenuous and flies in the face of relevant case law.

Fifth, Defendants claim that Paragraph A and Paragraph 4 are in conflict and an ambiguity exists. For the reasons set forth above, this is clearly not the case. The dollar amount listed in Paragraph A is the exact dollar amount listed in Paragraph 4 in all three (3) guaranties, so there is no conflict there. Paragraph A guarantees the full and prompt payment of the Indebtedness and Paragraph 4 requires payment of the principal amount of the indebtedness plus accrued interest, fees and costs, so there is no conflict there.

Defendants ask the Court to ignore the “cardinal rule of contract interpretation”<sup>8</sup> which is to “ascertain and give effect to the intentions of the parties. To determine the intention of the parties, the

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<sup>6</sup> Exhibit #3 (emphasis added)

<sup>7</sup> Defendants’ Memorandum of Law, Page 2

<sup>8</sup> *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003)

court must first look at the language of the contract."<sup>9</sup> "Where the language of a contract is clear and unambiguous, it alone determines the contract's force and effect. 'This [c]ourt must give policy language its plain, ordinary and popular meaning.'"<sup>10</sup>

Here, the language in Paragraph 4, referring to a "limitation" of the guaranty does not have a "period" punctuation after the dollar amount listed therein. The sentence continues and is followed by the word "plus." The plain, ordinary and popular meaning of the word "plus" is "increased by"<sup>11</sup> or "used when adding something."<sup>12</sup> The language is clear that the dollar amount listed in Paragraph 4 was not *the* limit of liability because it is "increased by" accrued interest thereon and all other costs, fees and expenses...and attorney's fees, collection costs and enforcement expenses..." which follows it. As the court is "constrained by the plain and unambiguous language" of the guaranty contract, it is bound to interpret the phrase found in the guaranty as not limiting the guarantor's liability just to the principal amount but also the accrued interest, fees and costs.<sup>13</sup>

Even if there was an ambiguity in the guaranty, which is to be strictly construed against Plaintiff as the party seeking to enforce it, "the rule of strict construction should not be applied so as to defeat the plain and obvious purpose of the instrument."<sup>14</sup> The obvious purpose of a guaranty is for the lender to be repaid the sums they loaned. The amounts loaned are undisputed, as is the fact that neither the borrower nor the guarantor has repaid those sums.

Defendants are unable to point to any language in the entire 2-page guaranty that says Meisner's liability cannot exceed a fixed dollar amount because there is nowhere in the guaranty where it does. If it was the true intent of the parties to set a fixed maximum dollar amount of liability for the guaranty, they certainly could have done that but did not. Further, Defendants attempt to slip in a reference to "representations made by the Plaintiff to the effect that the amount guaranteed was the dollar amount stated in the agreement"<sup>15</sup> but there is no evidence in the record of such a representation and even if there was, "extrinsic evidence cannot be used to give the contract a meaning different from that indicated by its plain terms."<sup>16</sup>

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<sup>9</sup> *S.C. Dep't of Transp. v. M & T Enters. of Mount Pleasant, LLC*, 379 S.C. 645, 655, 667 S.E.2d 7, 12 (Ct. App. 2008) (citation omitted)

<sup>10</sup> *BMW of North America, LLC, v. Complete Auto Recon Services, Inc.*, Appellate Case No. 2009-137207, Opinion No. 5012 (Filed August 01, 2012) (emphasis added) (citation omitted); *See also, B.L.G. Enterprises, Inc. v. First Financial Ins. Co.*, 334 S.C. 529, 514 S.E.2d 327 (1999)

<sup>11</sup> Merriam-Webster Dictionary

<sup>12</sup> Macmillan Dictionary

<sup>13</sup> *Jones v. SCDOT*, 360 S.C. 149, 154, 600 S.E.2d 543, 546 (Ct. App. 2004)

<sup>14</sup> *Palmetto Dunes Resort, Div. of Greenwood Dev. Corp. v. Brown*, 287 S.C. 1, 6, 336 S.E.2d 15, 18-19 (Ct. App. 1985)

<sup>15</sup> Defendants' Memorandum of Law, Page 2

<sup>16</sup> *Moser. v. Gosnell*, 334 S.C. 425; 513 S.E.2d 123 (Ct. App. 1999)

Sixth, Defendants claim that Plaintiff is seeking reimbursement for real estate taxes it did not pay, claiming "there is evidence the taxes were not paid."<sup>17</sup> What the Defendants neglect to disclose, however, is that not only did Sand Dollar fail to pay its real estate taxes for 2010, which Plaintiff *did pay* to avoid a tax sale, it also did not pay its 2011 taxes, which are still due and owing and not included in Plaintiff's advances for reimbursement.

Seventh, Defendants state Plaintiff has not provided affidavits of attorney fees. Affidavits of attorney's fees were not only available to the parties at the foreclosure hearing, they were also mailed to Defendants' counsel and the Court pursuant to an agreement at the hearing on the Motion to Alter or Amend on July 18, 2012. At no time have Defendants have not disputed any amounts listed therein, nor did they appeal the attorney's fees awarded in the Master's Judgment of Foreclosure and Sale, which is thereby the final law of the case. Further, with regard to the attorney's fees awarded to Plaintiff, Defendants compare this heavily contested foreclosure to the prior foreclosure but fail to disclose that the previous foreclosure was uncontested and that there were no post-sale motions or petitions. Clearly, the distinctions between these two (2) actions explain the difference in attorney's fees already awarded and that continue to accrue.

Eighth, at the foreclosure hearing, Plaintiff's Vice President testified to the debt and associated fees and costs. Defendants through counsel had ample opportunity to call witnesses and cross-examine Plaintiff's representative to seek more definitive information, if any was needed, or to establish challenges to the guaranty but failed to do so. Accordingly, they are estopped to do so now.<sup>18</sup>

Ninth, Defendants also fail to disclose in their Memorandum that the principal amounts stated in the unappealed Judgments of Foreclosure and Sale of \$48,698.20 (11-CP-40-6317) and \$31,535.04 ((11-CP-40-6318) are under the principal amount listed in the guaranties executed by Meisner. Accordingly, as the amounts are below the \$50,000 and \$36,000 "principal amount" limits set forth therein, Meisner's argument that the judgments sought exceed her liability is without merit on its face.

Lastly, Sand Dollar does not dispute that it borrowed and received the loan proceeds set forth in the Notes nor does Meisner dispute that she is a guarantor on the loans. Only now after the Notes, Mortgages and Guaranties are in default and the properties at "a figure significantly beneath its appraised value"<sup>19</sup> do Meisner come to a court of equity asking that she not be liable under the plain language of the three (3) guaranties she executed. Ms. Meisner owes a legitimate debt to SCBT and she should not be allowed to avoid that debt.

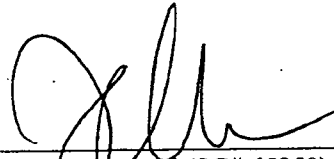
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<sup>17</sup> Defendants' Memorandum of Law, Page 6

<sup>18</sup> *Pollard v. County of Florence*, 314 S.C. 397, \_\_\_, 444 S.E.2d 534, 536 (Ct. App. 1994); *C.A.H. v L.H.*, 315 S.C. 389, \_\_\_, 434 S.E.2d 268, 270 (1993)

<sup>19</sup> Petitions for Appraisal, filed July 31, 2012 with the Richland County Clerk of Court

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Teri K. Stomski', written over a horizontal line.

Teri K. Stomski (SC# 65250)  
Rogers Townsend & Thomas  
220 Executive Center Drive  
Columbia, SC 29210  
(803) 771-7900

August 24, 2012

# GUARANTY

ORANGEBURG

(City)

SOUTH CAROLINA

(State)

JULY 24 2008

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce SOUTH CAROLINA BANK AND TRUST NA (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of SAND DOLLAR 31 LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: NOTE DATED 07-24-2008 IN THE AMOUNT OF \$36,000.00 IN THE NAME OF SAND DOLLAR 31 LLC and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s):

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 36,000.00 (If unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated \_\_\_\_\_  
☐ secured by \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

Prinda Meisner  
 PRINDA MEISNER

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly.



#### ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. Until the obligations of the Borrower to Lender have been paid in full, the Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

Page 2 of 21

# GUARANTY

ORANGEBURG

(City)

SOUTH CAROLINA

(State)

JULY 24, 2006

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce SOUTH CAROLINA BANK AND TRUST, NA (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of SAND DOLLAR 31, LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: NOTE DATED 07-24-2006 IN THE AMOUNT OF \$31,140.00 IN THE NAME OF SAND DOLLAR 31, LLC and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s): \_\_\_\_\_

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 31,140.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated \_\_\_\_\_  
☐ secured by \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

RHONDA MEISNER

\*Undersigned shall refer to all persons who sign this guaranty, severally and jointly.

PLAINTIFF'S  
EXHIBIT

2

#### ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution thereof; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. Until the obligations of the Borrower to Lender have been paid in full, the Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

(page 2 of 2)

# GUARANTY

ORANGEBURG

(City)

SOUTH CAROLINA

(State)

JULY 31 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce SOUTH CAROLINA BANK AND TRUST NA (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of SAND DOLLAR 31 LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: NOTE DATED 07-31-2007 WAO \$50,000.00 KNO SAND DOLLAR 31 LLC and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s):

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 50,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, effect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated \_\_\_\_\_; ☐ secured by \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

RHONDA L. WEISNER

Undersigned shall refer to all persons who sign this guaranty, severally and jointly.



#### ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. Until the obligations of the Borrower to Lender have been paid in full, the Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

(page 2 of 2)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N. A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

**CERTIFICATE OF SERVICE**

(016555-00039/40)

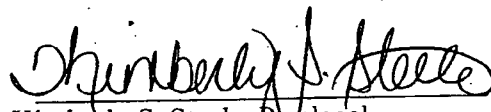
I, Kimberly S. Steele, an employee with the Law Firm of Rogers Townsend & Thomas, PC, attorneys for the Plaintiff, SCBT, N.A. hereby certify that I have served or caused to be served a copy of the foregoing documents upon the below named individuals and/or counsel this the 30 day of August, 2012 via U.S. Mail:

**DOCUMENTS SERVED**

*Plaintiff's Memorandum of Law, Guaranty Agreement*

**PARTIES SERVED**

Glenn Bowens, Esq.  
Post Office Box 424  
Winnsboro, South Carolina 29180  
Attorney for the Defendants

  
Kimberly S. Steele, Paralegal

Columbia, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS  
DOCKET NO. 11-CP-40-6317  
DOCKET NO. 11-CP-40-6318

MEMORANDUM OF LAW  
GUARANTY AGREEMENT

During a hearing held on July 18, 2012, the Court requested the parties brief the issue of the application of the Guaranty Agreements with regard to the liability of Rhonda Meisner (Meisner) on any deficiency judgment. Meisner presents this Memorandum of Law regarding the interpretation and application of the Guaranty Agreements in the above captioned cases.

The Defendants' Answer & Counter Claim asked for a declaratory judgment to determine the parties' rights and liabilities under the Note, Mortgage and Guaranty Agreement and to determine the rights and obligations of the parties with respect to the amount of the deficiency judgment requested by the Plaintiff. The Guaranty Agreements placed monetary limitations on Meisner's personal liability. Meisner sought this declaratory judgment because she wanted to make certain that, should there be a deficiency judgment, her liability did not exceed those limitations.

During the trial of Civil Action 11-CP-40-6317 and 11-CP-40-6318, held on April 25, 2012, the Plaintiff presented two Guaranty Agreements executed by Meisner guaranteeing payment of the two promissory notes between the Plaintiff and Sand Dollar 31, LLC. Meisner claims her maximum liability for a deficiency judgment based on these Guaranty Agreements is \$31,140.00 for the loan in 11-CP-40-6317 (**Exhibit 1**) and \$36,000.00 for the loan in 11-CP-40-6318 (**Exhibit 2**), as provided in the two respective Guaranty Agreements; Meisner requests the Court issue a declaratory judgment to that effect and order that the indexing of any judgment against Meisner in the public record reflect these monetary limits.

Meisner claims that the purpose of the Guaranty Agreements and the intent of the parties was to guarantee the Plaintiff received a minimum of \$31,140.00 for the loan in 11-CP-40-6317 and a minimum of \$36,000.00 for the loan in 11-CP-40-6318. These amounts represent the money actually loaned by the Plaintiff to Sand Dollar 31, LLC. Meisner also claims that if the high bid at the foreclosure sale or the appraised value equal or exceed those amounts, then her liability under the Guaranty Agreements will be satisfied as the Plaintiff will have received the minimum amounts provided in those agreements.

Meisner bases her claim that the Guaranty Agreements limit her liability to \$36,000.00 and \$31,140.00 on three basic grounds. First, the Guaranty Agreements specifically state the maximum dollar amount in paragraph A. Second, paragraph 4 provides that the guarantor is liable for "all indebtedness, without limitation as to amount" if "no amount is stated." However, since an amount is stated, i.e. \$31,140.00 and \$36,000.00, then the guaranty is limited to those amounts. Third, this was the understanding of the parties at the time the Guaranty Agreements were made, based on representations made by the Plaintiff to the effect that the amount guaranteed was the dollar amount stated in the agreement.

The Plaintiff disagrees with Meisner's interpretation of the Guaranty Agreements and claims she owes \$63,734.92 in 11-CP-40-6317<sup>1</sup> and \$43,220.45 in 11-CP-40-6318; these amounts represent the money actually loaned to Sand Dollar **plus** other debts allegedly incurred by Sand Dollar in the form of attorney fees, interest, corporate charges, late charges, taxes, escrow advances, costs of litigation and other charges.<sup>2</sup> The Plaintiff bases these claims on its interpretation of paragraph 4 of the guaranty; however, paragraph 4 is in conflict with paragraph A. The Plaintiff's interpretation of Paragraph 4 reveals an inherent ambiguity between paragraph 4 and paragraph A.

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<sup>1</sup> This amount represents more than double the amount identified in the Guarantee Agreement.

<sup>2</sup> Meisner not only claims that she is not liable for these debts, but that no evidence was introduced for many of these debts at the hearing on April 25, 2012.

Guaranty agreements are contracts<sup>3</sup> and their interpretation is governed by the same contract law principles as any other contract. The South Carolina Court of Appeals has held:

A contract is ambiguous when the terms of the contract are reasonably susceptible to more than one interpretation.

The uncertainty in interpretation can arise from the words of the instrument, or in the application of the words to the object they describe.

Whether a contract is ambiguous must be determined from the entire contract and not from any isolated clause of the agreement. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 672 S.E.2d 799 (Ct.App.2009) (internal citations omitted)

When a contract is susceptible of more than one interpretation, the non-drafting party is given the benefit of the ambiguity. The South Carolina Supreme Court has held:

It is generally held that an ambiguity in a written contract should be construed most strongly against the drafters. We quote, with approval, the following from 17A C.J.S. Contracts § 324:

"(A)mbiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage.

The reason for the rule of strict construction against the party preparing the contract is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes in meaning more than one with whom he is dealing, and that he who has brought the agreement into existence and is thus primarily responsible for its inadequacy should justly suffer for its shortcomings."

Myrtle Beach Lumber Company, Inc. v. Willoughby, 276 S.C. 3, 274 S.E.2d 423 (S.C. 1981).

There is no dispute that the Guaranty Agreements at issue were drafted and prepared by the Plaintiff. Based on the Supreme Court's holding, the ambiguity must be resolved in favor of Meisner. The parties' conflicting interpretations requires the Court to interpret the agreement and issue a declaratory judgment. When a written contract is ambiguous extrinsic evidence may be admitted to determine the parties' intent. Duncan v. Little, 384 S.C. 420, 682, S.E.2d 788 (2009).

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<sup>3</sup> Transouth Financial Corp. v. Cochran, 324 S.C. 290, 478 S.E.2d 63 (Ct. App. 1996)

The Guaranty Agreements in the two cases are pre-printed forms and are identical with the exception of the dates and dollar amounts. Both Guaranty Agreements contain two options, Paragraph A and B, with a box beside each paragraph, one of which is to be marked with an "X". Paragraph A was marked in both 11-CP-40-6317 and 11-CP-40-6318. Importantly, Paragraph A limited the amount guaranteed to \$31,140.00 (11-CP-40-6317) and \$36,000.00 (11-CP-40-6318) respectively. On the other hand, Paragraph B, which was **not checked**, required payment by the guarantor of:

...each and every debt, liability and obligation of **every type and description** which Borrower may now or at any time hereafter owe to lender (**whether such debt, liability or obligation now exists or is hereafter created or incurred**, and whether it is or may be direct or indirect, due or to become due, **absolute or contingent**, primary or secondary, liquidated or unliquidated, or joint, several or joint and several; all such debts, liabilities and obligations being hereinafter collective referred to as the "indebtedness"). (emphasis added)

The Plaintiff's claim that Meisner is liable for payment of Sand Dollar's debts beyond the \$31,140.00 and \$36,000.00 stated in the guaranty are exactly the type of debts contemplated by Paragraph B; at the time the Guaranty Agreement was executed these other debts:

- (1) did not exist;
- (2) they were neither created nor incurred;
- (3) were indirect and secondary to the amount borrowed;
- (4) were contingent and had not yet become due.

The Plaintiff wants to focus just on paragraph 4; however, when interpreting a contract the contract must be read as a whole, without focusing on any single provision to determine the contract's meaning. Pee Dee Stores, at 242. Paragraph 4 must be interpreted in light of paragraphs A and B. The Plaintiff's argument that paragraph 4 makes Meisner liable for these additional debts would make more sense if Paragraph B had been checked; however, the parties did not check Paragraph B. Even under the Plaintiff's interpretation that the specific dollar amount stated in the Guaranty

Agreement referred to the amount of "principal" guaranteed, the Plaintiff still claims \$48,698.20 is due in principal in 11-CP-40-6317, when the Guaranty Agreement only provided for \$31,140.00, which is over \$17,000.00 more in principal than the Plaintiff is allowed under its own interpretation of the agreement.

The question before the Court is whether the Guaranty Agreements place a monetary limitation on Meisner's personal liability (as claimed by Meisner) or whether Meisner's liability is unlimited (as claimed by the Plaintiff). The South Carolina Court of Appeals has held:

Although not yet decided in South Carolina, in the absence of an express limitation of an amount of a guaranty as a general rule the amount of the liability, or, in other words, the measure of damages, on a default by the principal obligor is that amount of loss which the guarantee has sustained by reason of such default ... PPG Industries, Inc. v. Orangeburg Paint Center, Inc., 297 S.C. 176, 375 S.E.2d 331 (Ct. App. 1988)

The Guaranty Agreements in these cases do place "an express limitation of an amount" i.e. \$36,000.00 and \$31,140.00. If the parties intended for her liability to extend beyond the stated dollar amounts then paragraph B would have been marked. Based on the holding in PPG Industries, and Myrtle Beach Lumber Company, the ambiguity created by paragraph 4 and paragraph A must be resolved in Meisner's favor.

#### **Amount of Personal Liability for a Deficiency Judgment**

The Court must also enter a deficiency judgment if the appraisal values the property less than the amount of the Guaranty Agreements. Meisner requests the Court take the following factors into consideration when deciding the amount of any deficiency judgment.

In 11-CP-40-6317, the Plaintiff claims attorney fees in the following amounts: (1) \$3,321.00; (2) \$2,679.00; and (3) an undisclosed amount for attorney fees under the category of "Allowable Advances." The Plaintiff claims over \$6,000.00 in attorney fees related to the Linden Street property. This same property was previously foreclosed upon and this Court awarded \$2,900.00 in attorney fees, less than one half the amount being claimed in the present case.

Moreover, the Plaintiff has not filed an affidavit of attorney fees with an itemized statement so that the Court can evaluate the reasonableness of the fees as required by Supreme Court's holding in Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997).

The Plaintiff also claims \$4,303.80 under the category of "Allowable Advances." The Plaintiff lists as "Allowable Advances": "escrow advances," "corporate charges," "paid costs and expenses from the foreclosure action," and an ambiguous charge for "other charges." The Plaintiff did not separately identify the amounts allocated from the \$4,303.80 for each of these charges. There was no evidence at the hearing that supports the claims for "corporate charges" or "other charges." The Plaintiff also claims reimbursement for taxes in the amount of \$1,681.42. This claim appears to be duplicative with the claim for "escrow advances" in that the "escrow" is typically for taxes and insurance. Moreover, there is evidence that the taxes were not paid.

Second, in Civil Action # 11-CP-40-6318 the Plaintiff claims attorney fees in the following amounts: (1) \$4,924.00; (2) \$3,0760.00; and (3) an undisclosed amount for attorney fees under the category of "Allowable Advances." The Plaintiff lists as "Allowable Advances": "escrow advances," "corporate charges," "expenses from the foreclosure action" and an ambiguous charge for "other charges." The Plaintiff did not separately identify the amounts allocated from the \$6,263.60 for each of these charges. Moreover, there was no evidence at the hearing that supports the claims for "corporate charges" or "other charges." Without an affidavit of attorney fees and an itemized statement it is impossible for the Court to evaluate the propriety and reasonableness of these claimed charges as required by the Supreme Court's holding in Jackson, Id.

## Conclusion

The differing interpretations of the parties shows there is an ambiguity in the Guaranty Agreement between paragraph 4 and paragraphs A and B. Under South Carolina law, when a contract is ambiguous, as is the case with these Guaranty Agreements, the ambiguity is construed most strongly against the party that drafted the agreement. Since there is no dispute that the Plaintiff drafted the Guaranty Agreement the ambiguity must be resolved in Meisner's favor. The Court should issue a declaratory judgment that the Guaranty Agreements and Meisner's personal liability are limited to \$31,140.00 and \$36,000.00 respectively and that if the appraisal values the property at an amount equal to or greater than these amounts that Meisner's personal liability under the Guaranty Agreement is satisfied.

The Plaintiff has not filed an affidavit of attorney fees or an itemized statement of the attorney fees and costs with the Court. Under these circumstances, the Court cannot evaluate the reasonableness of those fees and costs. The Court should require the Plaintiff to file an affidavit of attorney fees and costs and give the Defendant an opportunity to object as to the reasonableness of the Plaintiff's claim before awarding any attorney fees and costs as part of the deficiency judgment. Respectfully submitted,

  
\_\_\_\_\_  
Glenn Bowens, Esq.  
PO Box 424  
Winnsboro, S.C. 29180  
Attorneys for Defendant

August 10, 2012

# GUARANTY

ORANGEBURG

(City)

SOUTH CAROLINA

(State)

JULY 24, 2008

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce SOUTH CAROLINA BANK AND TRUST, NA (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of BAND DOLLAR 31 LLC (herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: NOTE DATED 07-24-2008 IN THE AMOUNT OF \$31,140.00 IN THE NAME OF BAND DOLLAR 31 LLC and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s): \_\_\_\_\_

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all Indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 31,140.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements, evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated \_\_\_\_\_  
☐ secured by \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

RHONDA MEISNER

"Undersigned" shall refer to all persons who sign this guaranty, separately and jointly.



# ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all indebtedness; (ii) any one or more extensions or renewals of indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any indebtedness; (v) any discharge of any evidence of indebtedness or the acceptance of any instrument in renewal thereof or substitution thereof; (vi) any failure to obtain collateral security (including rights of setoff) for indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay indebtedness even though any other person obligated to pay indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such indebtedness as fully as if such application had never been made.

10. Until the obligations of the Borrower to Lender have been paid in full, the Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing indebtedness. Lender shall not be required first to resort for payment of the indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, and shall bind upon the Undersigned and his heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this and the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

page 2 of 2

GUARANTY

Orangeburg Cola SOUTH CAROLINA  
(City) (State)

JULY 24, 2008

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce SOUTH CAROLINA BANK AND TRUST, NA therein, with its participants, successors and assigns, called "Lender", at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of SAND DOLLAR 31, LLC

herein called "Borrower" or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: NOTE DATED 07-24-2006 IN THE AMOUNT OF \$38,000.00 IN THE NAME OF SAND DOLLAR 31, LLC and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s): \_\_\_\_\_

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke the guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 38,000.00 (If unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

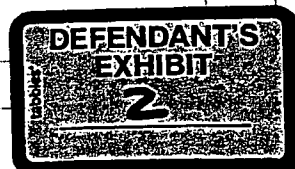
This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated \_\_\_\_\_  
☐ secured by \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned, the day and year first above written.

Rhonda Meisner  
RHONDA MEISNER

"Undersigned" shall refer to all persons who sign this guaranty, jointly and jointly.



# ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all indebtedness; (ii) any one or more extensions or renewals of indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of indebtedness, or any failure to institute proceedings, file a claim, give any required notice or otherwise protect any indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any indebtedness; (v) any discharge of any evidence of indebtedness or the acceptance of any instrument in renewal thereof or substitution thereof; (vi) any failure to obtain collateral security (including rights of setoff) for indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not an account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay indebtedness even though any other person obligated to pay indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy portion interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such indebtedness as fully as if such application had never been made.

10. Until the obligations of the Borrower to Lender have been paid in full, the Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing indebtedness. Lender shall not be required first to resort for payment of the indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, and shall bind upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this extent the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

Page 2 of 21

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS  
DOCKET NO. 11-CP-40-6317  
DOCKET NO. 11-CP-40-6318

CERTIFICATE OF SERVICE

2012 AUG 10 PM 4:04  
JEANE W. McBRIDE  
Clerk of Court  
S.C. & G.S.

FILED

I, Glenn Bowens, attorney for the Defendant, do hereby certify that I have this day served a copy of the foregoing **Memorandum of Law** in connection with the above referenced case by hand delivery to:

Terri Stomski  
Rogers Townsend & Thomas, PC  
220 Executive Center Dr.  
Columbia, SC 29210

This the 10<sup>th</sup> Day of August 2012 A.D.

  
\_\_\_\_\_  
Glenn Bowens

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
CASE NO. 11-CP-40-6317

**MOTION AND ORDER  
INFORMATION FORM  
AND COVER SHEET**

SCBT, N. A. ☒ Plaintiff  
v.

Sand Dollar 31, LLC; Rhonda Meisner; ☐ Defendant

Check box above indicating submitting party

name, S.C. Bar no. and address of plaintiff's attorney  
Teri K. Stomski (SC Bar# 65250)  
220 Executive Center Drive, Columbia, SC 29210  
telephone: 803-771-7900 fax: 803-343-7013

name, S.C. Bar no. and address of  
Defendant's attorney  
Glenn Bowens, Esq.  
Post Office Box 424  
Winnsboro, South Carolina 29180  
telephone: 803-714-7766  
email: gbowens@popebowens.com

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and II**)  
☐ **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 TO VACATE SALE

Estimated Time Needed: \_\_\_\_\_

Court Reporter Needed: \_\_\_\_\_

**SECTION II: Motion Fee**

- ☒ **PAID**—AMOUNT: \$25.00 \_\_\_\_\_  
☐ **EXEMPT**: ☐ Rule to Show Cause in Child or Spousal Support  
☐ Domestic Abuse or Abuse and Neglect  
☐ Indigent status ☐ State Agency v. Indigent Party  
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief  
☐ Motion for Stay in Bankruptcy  
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)  
☐ Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter: \_\_\_\_\_  
☐ Other: Referred to Master by Motion and Order of Court

**SECTION III: Motion Type**

- ☒ Written motion attached  
☐ Form Motion —

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff/Defendant

August 30, 2012  
Date submitted

**JUDGE'S SECTION**

- ☐ Motion Fee to be paid upon filing of the attached order.  
☐ Other \_\_\_\_\_

JUDGE  
CODE: \_\_\_\_\_

Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: metz  
(print name)

DATE FILED  
9/10/12

- ☐ **MOTION FEE COLLECTED**: \_\_\_\_\_  
☐ **CONTESTED—AMOUNT DUE**: \_\_\_\_\_

SCCA/233 (1/2003)

**SCANNED**

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS  
DOCKET NO. 11-CP-40-6317  
DOCKET NO. 11-CP-40-6318

MEMORANDUM OF LAW  
GUARANTY AGREEMENT

2012 AUG 10 PM 4:04  
FILED  
CLERK OF COURT  
C.C.P. & G.S.

During a hearing held on July 18, 2012, the Court requested the parties brief the issue of the application of the Guaranty Agreements with regard to the liability of Rhonda Meisner ("Meisner") on any deficiency judgment. Meisner presents this Memorandum of Law regarding the interpretation and application of the Guaranty Agreements in the above captioned cases.

The Defendants' Answer & Counter Claim asked for a declaratory judgment to determine the parties' rights and liabilities under the Note, Mortgage and Guaranty Agreement and to determine the rights and obligations of the parties with respect to the amount of the deficiency judgment requested by the Plaintiff. The Guaranty Agreements placed monetary limitations on Meisner's personal liability. Meisner sought this declaratory judgment because she wanted to make certain that, should there be a deficiency judgment, her liability did not exceed those limitations.

During the trial of Civil Action 11-CP-40-6317 and 11-CP-40-6318, held on April 25, 2012, the Plaintiff presented two Guaranty Agreements executed by Meisner guaranteeing payment of the two promissory notes between the Plaintiff and Sand Dollar 31, LLC. Meisner claims her maximum liability for a deficiency judgment based on these Guaranty Agreements is \$31,140.00 for the loan in 11-CP-40-6317 (Exhibit 1) and \$36,000.00 for the loan in 11-CP-40-6318 (Exhibit 2), as provided in the two respective Guaranty Agreements; Meisner requests the Court issue a declaratory judgment to that effect and order that the indexing of any judgment against Meisner in the public record reflect these monetary limits.

Meisner claims that the purpose of the Guaranty Agreements and the intent of the parties was to guarantee the Plaintiff received a minimum of \$31,140.00 for the loan in 11-CP-40-6317 and a minimum of \$36,000.00 for the loan in 11-CP-40-6318. These amounts represent the money actually loaned by the Plaintiff to Sand Dollar 31, LLC. Meisner also claims that if the high bid at the foreclosure sale or the appraised value equal or exceed those amounts, then her liability under the Guaranty Agreements will be satisfied as the Plaintiff will have received the minimum amounts provided in those agreements.

Meisner bases her claim that the Guaranty Agreements limit her liability to \$36,000.00 and \$31,140.00 on three basic grounds. First, the Guaranty Agreements specifically state the maximum dollar amount in paragraph A. Second, paragraph 4 provides that the guarantor is liable for "all indebtedness, without limitation as to amount" if "no amount is stated." However, since an amount is stated, i.e. \$31,140.00 and \$36,000.00, then the guaranty is limited to those amounts. Third, this was the understanding of the parties at the time the Guaranty Agreements were made, based on representations made by the Plaintiff to the effect that the amount guaranteed was the dollar amount stated in the agreement.

The Plaintiff disagrees with Meisner's interpretation of the Guaranty Agreements and claims she owes \$63,734.92 in 11-CP-40-6317<sup>1</sup> and \$43,220.45 in 11-CP-40-6318; these amounts represent the money actually loaned to Sand Dollar **plus** other debts allegedly incurred by Sand Dollar in the form of attorney fees, interest, corporate charges, late charges, taxes, escrow advances, costs of litigation and other charges.<sup>2</sup> The Plaintiff bases these claims on its interpretation of paragraph 4 of the guaranty; however, paragraph 4 is in conflict with paragraph A. The Plaintiff's interpretation of Paragraph 4 reveals an inherent ambiguity between paragraph 4 and paragraph A.

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<sup>1</sup> This amount represents more than double the amount identified in the Guarantee Agreement.

<sup>2</sup> Meisner not only claims that she is not liable for these debts, but that no evidence was introduced for many of these debts at the hearing on April 25, 2012.

Guaranty agreements are contracts<sup>3</sup> and their interpretation is governed by the same contract law principles as any other contract. The South Carolina Court of Appeals has held:

A contract is ambiguous when the terms of the contract are reasonably susceptible to more than one interpretation.

The uncertainty in interpretation can arise from the words of the instrument, or in the application of the words to the object they describe.

Whether a contract is ambiguous must be determined from the entire contract and not from any isolated clause of the agreement. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 672 S.E.2d 799 (Ct.App.2009) (internal citations omitted)

When a contract is susceptible of more than one interpretation, the non-drafting party is given the benefit of the ambiguity. The South Carolina Supreme Court has held:

It is generally held that an ambiguity in a written contract should be construed most strongly against the drafters. We quote, with approval, the following from 17A C.J.S. Contracts § 324:

"(A)mbiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage.

The reason for the rule of strict construction against the party preparing the contract is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes in meaning more than one with whom he is dealing, and that he who has brought the agreement into existence and is thus primarily responsible for its inadequacy should justly suffer for its shortcomings."

Myrtle Beach Lumber Company, Inc. v. Willoughby, 276 S.C. 3, 274 S.E.2d 423 (S.C. 1981).

There is no dispute that the Guaranty Agreements at issue were drafted and prepared by the Plaintiff. Based on the Supreme Court's holding, the ambiguity must be resolved in favor of Meisner. The parties' conflicting interpretations requires the Court to interpret the agreement and issue a declaratory judgment. When a written contract is ambiguous extrinsic evidence may be admitted to determine the parties' intent. Duncan v. Little, 384 S.C. 420, 682, S.E.2d 788 (2009).

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<sup>3</sup> Transouth Financial Corp. v. Cochran, 324 S.C. 290, 478 S.E.2d 63 (Ct. App. 1996)

The Guaranty Agreements in the two cases are pre-printed forms and are identical with the exception of the dates and dollar amounts. Both Guaranty Agreements contain two options, Paragraph A and B, with a box beside each paragraph, one of which is to be marked with an "X". Paragraph A was marked in both 11-CP-40-6317 and 11-CP-40-6318. Importantly, Paragraph A limited the amount guaranteed to \$31,140.00 (11-CP-40-6317) and \$36,000.00 (11-CP-40-6318) respectively. On the other hand, Paragraph B, which was **not checked**, required payment by the guarantor of:

...each and every debt, liability and obligation of **every type and description** which Borrower may now or at any time hereafter owe to lender (**whether such debt, liability or obligation now exists or is hereafter created or incurred**, and whether it is or may be direct or indirect, due or to become due, **absolute or contingent**, primary or secondary, liquidated or unliquidated, or joint, several or joint and several; all such debts, liabilities and obligations being hereinafter collective referred to as the "indebtedness"). (emphasis added)

The Plaintiff's claim that Meisner is liable for payment of Sand Dollar's debts beyond the \$31,140.00 and \$36,000.00 stated in the guaranty are exactly the type of debts contemplated by Paragraph B; at the time the Guaranty Agreement was executed these other debts:

- (1) did not exist;
- (2) they were neither created nor incurred;
- (3) were indirect and secondary to the amount borrowed;
- (4) were contingent and had not yet become due.

The Plaintiff wants to focus just on paragraph 4; however, when interpreting a contract the contract must be read as a whole, without focusing on any single provision to determine the contract's meaning. Pee Dee Stores, at 242. Paragraph 4 must be interpreted in light of paragraphs A and B. The Plaintiff's argument that paragraph 4 makes Meisner liable for these additional debts would make more sense if Paragraph B had been checked; however, the parties did not check Paragraph B. Even under the Plaintiff's interpretation that the specific dollar amount stated in the Guaranty

Agreement referred to the amount of "principal" guaranteed, the Plaintiff still claims \$48,698.20 is due in principal in 11-CP-40-6317, when the Guaranty Agreement only provided for \$31,140.00, which is over \$17,000.00 more in principal than the Plaintiff is allowed under its own interpretation of the agreement.

The question before the Court is whether the Guaranty Agreements place a monetary limitation on Meisner's personal liability (as claimed by Meisner) or whether Meisner's liability is unlimited (as claimed by the Plaintiff). The South Carolina Court of Appeals has held:

Although not yet decided in South Carolina, in the absence of an express limitation of an amount of a guaranty as a general rule the amount of the liability, or, in other words, the measure of damages, on a default by the principal obligor is that amount of loss which the guarantee has sustained by reason of such default ... PPG Industries, Inc. v. Orangeburg Paint Center, Inc., 297 S.C. 176, 375 S.E.2d 331 (Ct. App. 1988)

The Guaranty Agreements in these cases do place "an express limitation of an amount" i.e. \$36,000.00 and \$31,140.00. If the parties intended for her liability to extend beyond the stated dollar amounts then paragraph B would have been marked. Based on the holding in PPG Industries, and Myrtle Beach Lumber Company, the ambiguity created by paragraph 4 and paragraph A must be resolved in Meisner's favor.

#### **Amount of Personal Liability for a Deficiency Judgment**

The Court must also enter a deficiency judgment if the appraisal values the property less than the amount of the Guaranty Agreements. Meisner requests the Court take the following factors into consideration when deciding the amount of any deficiency judgment.

In 11-CP-40-6317, the Plaintiff claims attorney fees in the following amounts: (1) \$3,321.00; (2) \$2,679.00; and (3) an undisclosed amount for attorney fees under the category of "Allowable Advances." The Plaintiff claims over \$6,000.00 in attorney fees related to the Linden Street property. This same property was previously foreclosed upon and this Court awarded \$2,900.00 in attorney fees, less than one half the amount being claimed in the present case.

Moreover, the Plaintiff has not filed an affidavit of attorney fees with an itemized statement so that the Court can evaluate the reasonableness of the fees as required by Supreme Court's holding in Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997).

The Plaintiff also claims \$4,303.80 under the category of "Allowable Advances." The Plaintiff lists as "Allowable Advances": "escrow advances," "corporate charges," "paid costs and expenses from the foreclosure action," and an ambiguous charge for "other charges." The Plaintiff did not separately identify the amounts allocated from the \$4,303.80 for each of these charges. There was no evidence at the hearing that supports the claims for "corporate charges" or "other charges." The Plaintiff also claims reimbursement for taxes in the amount of \$1,681.42. This claim appears to be duplicative with the claim for "escrow advances" in that the "escrow" is typically for taxes and insurance. Moreover, there is evidence that the taxes were not paid.

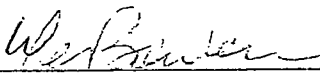
Second, in Civil Action # 11-CP-40-6318 the Plaintiff claims attorney fees in the following amounts: (1) \$4,924.00; (2) \$3,0760.00; and (3) an undisclosed amount for attorney fees under the category of "Allowable Advances." The Plaintiff lists as "Allowable Advances": "escrow advances," "corporate charges," "expenses from the foreclosure action" and an ambiguous charge for "other charges." The Plaintiff did not separately identify the amounts allocated from the \$6,263.60 for each of these charges. Moreover, there was no evidence at the hearing that supports the claims for "corporate charges" or "other charges." Without an affidavit of attorney fees and an itemized statement it is impossible for the Court to evaluate the propriety and reasonableness of these claimed charges as required by the Supreme Court's holding in Jackson, Id.

## Conclusion

The differing interpretations of the parties shows there is an ambiguity in the Guaranty Agreement between paragraph 4 and paragraphs A and B. Under South Carolina law, when a contract is ambiguous, as is the case with these Guaranty Agreements, the ambiguity is construed most strongly against the party that drafted the agreement. Since there is no dispute that the Plaintiff drafted the Guaranty Agreement the ambiguity must be resolved in Meisner's favor. The Court should issue a declaratory judgment that the Guaranty Agreements and Meisner's personal liability are limited to \$31,140.00 and \$36,000.00 respectively and that if the appraisal values the property at an amount equal to or greater than these amounts that Meisner's personal liability under the Guaranty Agreement is satisfied.

The Plaintiff has not filed an affidavit of attorney fees or an itemized statement of the attorney fees and costs with the Court. Under these circumstances, the Court cannot evaluate the reasonableness of those fees and costs. The Court should require the Plaintiff to file an affidavit of attorney fees and costs and give the Defendant an opportunity to object as to the reasonableness of the Plaintiff's claim before awarding any attorney fees and costs as part of the deficiency judgment.

Respectfully submitted,

  
\_\_\_\_\_  
Glenn Bowens, Esq.  
PO Box 424  
Winnsboro, S.C. 29180  
Attorneys for Defendant

August 10, 2012

# GUARANTY

ORANGEBURG

City

SOUTH CAROLINA

(State)

JULY 24, 2006

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce SOUTH CAROLINA BANK AND TRUST NA (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of SAND DOLLAR 31, LLC

herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: NOTE DATED 07-24-2006 IN THE AMOUNT OF \$171,140.00 IN THE NAME OF SAND DOLLAR 31, LLC and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debts:

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 21,140.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

RHONDA MEISNER

"Undersigned" substituted to persons who sign this guaranty, severally and jointly.

DEFENDANT'S  
EXHIBIT

## ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all indebtedness; (ii) any one or more extensions or renewals of indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of indebtedness, or any failure to institute proceedings, file a claim, give any required notice or otherwise protect any indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any indebtedness; (v) any discharge of any evidence of indebtedness or the acceptance of any instrument in renewal thereof or substitution thereof; (vi) any failure to obtain collateral security including rights of setoff for indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay indebtedness even though any other person obligated to pay indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such indebtedness as fully as if such application had never been made.

10. Until the obligations of the Borrower to Lender have been paid in full, the Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing indebtedness. Lender shall not be required first to resort for payment of the indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, and shall bind upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

GUARANTY

ORANGEBURG, Cola SOUTHERN CAROLINA  
(City) (State)

JULY 24, 2008

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce SOUTH CAROLINA DANY AND TRUST, NA herein, with its participants, successors and assigns, called "Lender", at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of SAND DOLLAR 31 LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: NOTE DATED 07-24-2006 IN THE AMOUNT OF \$75,000.00 IN THE NAME OF SAND DOLLAR 31 LLC and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s): \_\_\_\_\_

The Undersigned further acknowledges and agrees with Lender that:  
1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 35,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated \_\_\_\_\_  
☐ secured by \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

Ronda Mesner  
RONDA MESNER

"Undersigned" shall refer to all persons who sign this guaranty, jointly and jointly.

DEFENDANT'S  
EXHIBIT

2

# ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all indebtedness; (ii) any one or more extensions or renewals of indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any indebtedness; (v) any discharge of any evidence of indebtedness or the acceptance of any instrument in renewal thereof or substitution thereof; (vi) any failure to obtain collateral security (including rights of setoff) for indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii), any transfer of any indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay indebtedness even though any other person obligated to pay indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such indebtedness as fully as if such application had never been made.

10. Until the obligations of the Borrower to Lender have been paid in full, the Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing indebtedness. Lender shall not be required first to resort for payment of the indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

Page 2 of 21

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS  
DOCKET NO. 11-CP-40-6317  
DOCKET NO. 11-CP-40-6318

CERTIFICATE OF SERVICE

2012 AUG 10 PM 4:04  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

FILED

I, Glenn Bowens, attorney for the Defendant, do hereby certify that I have this day served a copy of the foregoing **Memorandum of Law** in connection with the above referenced case by hand delivery to:

Terri Stomski  
Rogers Townsend & Thomas, PC  
220 Executive Center Dr.  
Columbia, SC 29210

This the 10<sup>th</sup> Day of August 2012 A.D.

  
\_\_\_\_\_  
Glenn Bowens

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
DOCKET NO. 2005-CP-40-4750

CitiBank, N.A., as Trustee Under the Pooling  
and Servicing Agreement dated as of November  
30, 2001, Series 2001-I,

Plaintiff,

vs.

Johnny C. Rumsey, also known as Curtis Rumsey,  
individually and as heir at law of Edye Pauline  
Rumsey, Deceased, and any heirs-at-law or  
Distributees or Personal Representatives and  
their spouses, if any they have, and all other  
persons with any right, title or interest in and to  
the real estate commonly known as 4824 Linden  
Street, Columbia, South Carolina; also any  
unknown adults and those persons who may be  
in the military service of the United States of  
America, all of them being a class designated as  
John Doe; and any unknown minors or persons  
under a disability being a class designated as  
Richard Roe; and CitiFinancial, Inc., formerly  
known as Commercial Credit Corporation; and  
Paragon Way, Inc., formerly known as TX Collect,  
Inc.,

Defendants.

MASTER'S REPORT

AND

JUDGMENT

OF

FORECLOSURE

AND

SALE

(Deficiency Waived)

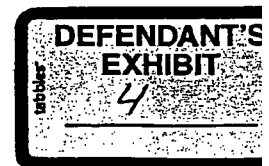
Notice: The original of this document was  
filed in the Office of the Clerk of Court for  
Richland County, and copies forwarded  
to the following on the same date to:

Mr. Kevin T. Brown of the firm of McDonald,  
McKenzie, Rubin, Miller and Lybrand, L.L.P.,  
as Attorney for the Plaintiff.

Mr. Pearce W. Fleming of the firm Pearce  
W. Fleming, PA., as Guardian ad Litem for  
the unknown Defendants who are minors  
or under a legal disability and as Attorney  
for unknown Defendants who are in the  
military service of the United States of  
America.

Pursuant to Rule 53 SCRCP, the above-entitled matter was referred to the undersigned to  
make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the  
cause. Any appeal from this Order is to the South Carolina Supreme Court or the South Carolina Court of  
Appeals as appropriate.

Pursuant to the said Order of Reference, a hearing was held, attended by the attorneys of  
record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find,  
conclude, and order as follows:



10. On June 27, 2000, First Union Home Equity Bank, N.A., merged into First Union Bank of Delaware, with First Union Bank of Delaware being the surviving corporation, as shown by records on file with the Federal Reserve System.

11. On June 27, 2000, First Union Bank of Delaware, changed its name to First Union National Bank of Delaware.

12. On April 1, 2002, First Union National Bank of Delaware changed its name to Wachovia Bank of Delaware, N.A.

13. Upon information and belief Edye Pauline Rumsey died intestate on January 10, 2005, and leaving surviving her as her sole heir at law the Defendant Johnny C. Rumsey, also known as Curtis Rumsey.

14. Plaintiff has acknowledged that it has no knowledge of all of the actual heirs-at-law, next of kin, or devisees of Edye Pauline Rumsey, deceased, and therefore this action is directed to her administrators, executors, representatives, heirs-at-law, next of kin, and devisees, and all persons known and unknown who may claim an interest in or lien upon the subject property, and including those person who may be minors, under disability, or in the Military Service of the United States of America, for the purpose of litigating the title thereof. One or more of said Defendants may be deceased and any interest in or lien upon the subject property that they may have had or claimed to have had may have passed to administrators, executors, representatives, heirs-at-law, next of kin, and devisees, none of whom are known to the Plaintiff. There may be other persons unknown to the Plaintiff claiming rights, titles, estates, interest in or liens upon the subject property. All such unknown persons have been made parties defendant herein and all minors, and persons otherwise under disability, among them have been as a class designated as Richard Roe and persons in the Military Service of the United States of America among them are a class designated herein as Defendant John Doe, so that they can present and prove any such adverse claim or be forever barred from doing so. No one had come forward to present and prove an adverse claim.

15. By Assignment dated September 26, 2005, recorded October 4, 2005, in Record Book 1105 at page 1533, in the Office of the Register of Deeds for Richland County, Wachovia Bank of Delaware, N.A., assigned and transferred the subject Note and Mortgage to CitiBank, N.A., as Trustee

herein, and interest after the date of judgment at the rate of 9.96% per annum (pursuant to the terms of the note and mortgage), on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

20. The Plaintiff is seeking foreclosure of the mortgage and has in writing expressly waived the right to a personal or deficiency judgment pursuant to Rule 71(b) SCRPC.

21. The Defendant CitiFinancial, Inc., formerly known as Commercial Credit Corporation, has or may claim to have some interest in or lien upon the subject property by virtue of that certain Mortgage in the amount of \$15,395.84 given to Commercial Credit by J. Curtis Rumsey and Edye P. Rumsey, dated May 18, 1994, recorded May 18, 1994, in the Office of the Register of Deeds for Richland County in Mortgage Book M1738 at page 155; in the Complaint, the Plaintiff alleged that the debt secured by said mortgage has been paid in full and that said mortgage no longer constitutes a lien on the subject property; the Defendant CitiFinancial, Inc., formerly known as Commercial Credit Corporation, has not appeared in this action to contest said allegations which are deemed to be correct

22. The Defendant Paragon Way, Inc., formerly known as TX Collect, Inc., has or may claim to have some interest in or lien upon the subject property by virtue of that certain judgment in the amount of \$1,614.24, obtained by TX Collect, Inc., against Edye Rumsey, filed August 17, 2004, in Judgment Roll Number 255663, in the Office of the Clerk of Court for Richland County; the interest or lien of the Defendant Paragon Way, Inc., formerly known as TX Collect, Inc., if any, is junior and subordinate to the lien of the Plaintiff's mortgage.

23. Pearce W. Fleming, Esquire, a member of South Carolina Bar, has been appointed attorney for each unknown Defendant who is in the military service within the meaning of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and he has filed an Answer, appeared, and actively participated herein for such unknown Defendants. The sum of \$150.00 is a reasonable fee to allow for such attorney's services rendered herein until final adjudication of the within action.

24. Pearce W. Fleming, Esquire, a member of the South Carolina Bar, has been appointed Guardian ad Litem for each unknown Defendant who is a minor or otherwise under disability, and has filed an Answer, appeared and actively participated herein. The sum of \$150.00 is a

A. FOR CASH: The undersigned Master in Equity, will require a deposit of 5% on the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within twenty (20) days same to be forfeited and applied to the costs and plaintiff's debt.

B. Purchaser to pay interest on his bid from the date of sale to the date of compliance at the rate of 9.96% per annum.

C. The sale shall be subject to taxes and assessments, to existing easements and restrictions, and to any other senior encumbrances.

D. Purchaser to pay for all costs of recording the deed.

E. Should the Plaintiff or the Plaintiff's attorney or agent fail to appear on sales day, the property shall not be sold, and in that event any such sale shall be null and void and of no force and effect; the property shall be readvertised and sold at some convenient sales day thereafter when the Plaintiff or the Plaintiff's attorney or agent is present.

5. If Plaintiff is the successful bidder at said sale for a sum not exceeding the amount of costs, disbursements, expenses and the indebtedness of the Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs, disbursements and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

6. Personal or deficiency judgment being waived, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

7. That the undersigned Master in Equity, will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and the Master in Equity will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within twenty (20) days after date of the sale, then the undersigned Master in Equity may advertise the said premises for sale on the next or some other subsequent salesday, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured.

14. The following is a description of the premises herein ordered to be sold:

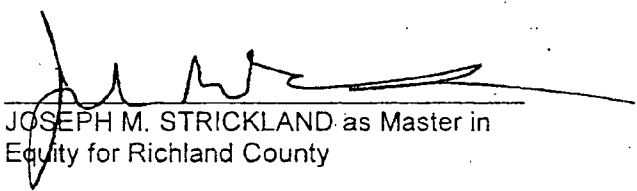
All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being on the eastern side of Linden Street, in or near the Town of Eau Claire in the County of Richland, State of South Carolina; said lot being composed of and embracing Lot No. 12, 13, and 14 in Block 6 upon a plat of College View Subdivision, prepared by surveyors Clodfelder and Schisler, dated August-September, 1927, and recorded in Plat Book F at page 24. TMS# 09313-03-21. •

This being the same property conveyed to Edye P. Rumsey by deed of Peggy H. Ferguson, Byrl M. Warren, Robert G. McLeod, Jr., and Michael H. McLeod dated September 29, 1992, recorded January 27, 1993, in the Office of the Register of Deeds for Richland County in Deed Book D1126 at page 726. Thereafter, Edye P. Rumsey conveyed a one-half interest in said property to Johnny C. Rumsey by deed dated October 30, 1996, recorded November 20, 1996, in Deed Book D1349 at page 756, in the Office of the Register of Deeds for Richland County, South Carolina. Edye Pauline Rumsey died intestate on January 10, 2005, and leaving her as her sole heir at law Johnny C. Rumsey, also known as Curtis Rumsey.

CURRENT ADDRESS OF PROPERTY IS: 4824 Linden Street  
Columbia, South Carolina 29203

Columbia, South Carolina

May 31, 2006

  
JOSEPH M. STRICKLAND as Master in  
Equity for Richland County



**RICHLAND COUNTY**  
POST OFFICE BOX 11947  
COLUMBIA, SC 29211

Treasurer  
803-576-2250  
treasurer@rcgov.us

PRINTED: 7/17/2012

\*\*\*\*\* REAL ESTATE TAXES \*\*\*\*\*

LEVY YEAR 2011

CLERK

TY YEAR RECEIPT MAP BLOCK PARCEL

R-2011-140375 D 10100-01-12

473.30

CNTY TAX

279.25

CNTY SALES

12.64

RESID CR

00

PEN/COST

157.34

CNTY TOT

423.95

CITY TAX

00

CITY PEN

00

CARB

249.00

PYMTS TO DATE

00

ADJ TO DATE

00

BALANCE DUE

672.95

LOC 8391 WINNSBORO RD

DIGEST 590

CHANGE 0

NET ASSM 590

R-2011-140375 D

SANDELLAR 31 LLC

DIST NO

2DP

PO BOX 689

BLYTHEWOOD

SC 29016



**RICHLAND COUNTY**  
POST OFFICE BOX 11947  
COLUMBIA, SC 29211

David A. Adams  
Treasurer  
803-576-2250  
treasurer@rcgov.us

PRINTED: 7/17/2012

\*\*\*\*\* REAL ESTATE TAXES \*\*\*\*\*

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CLERK

TY YEAR RECEIPT MAP BLOCK PARCEL

R-2011-140375 D 10100-01-12

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ADJ TO DATE

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DIGEST 590

CHANGE 0

NET ASSM 590

R-2011-140375 D

SANDELLAR 31 LLC

DIST NO

2DP

PO BOX 689

BLYTHEWOOD

SC 29016

DEFENDANT'S  
EXHIBIT

5

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N. A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner;

Defendant(s).

(016555-00040)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

PLAINTIFF'S MOTION TO VACATE  
FORECLOSURE SALE

JEANETTE W. McBRIDE  
CLERK, P. & G.S.

2012 SEP -6 PM 4:18

RICHLAND COUNTY  
FILED

PLEASE TAKE NOTICE that ten (10) days after the service hereof, or as soon thereafter as counsel may be heard, the Plaintiff, SCBT, N.A., n/k/a SCBT (SCBT), will move before this Honorable Court for an order setting aside the judicial sale held on July 5, 2012, pursuant to the equitable principles propounded by the courts of South Carolina. Specifically, the foreclosure sale should be set aside because the Defendant engaged in a deceptive scheme to extinguish the Plaintiff's lien on the property by purchasing the property at the foreclosure sale through an undisclosed agent for an amount Defendant averred is significantly below appraised value.

#### FACTS

Defendant/Borrower Sand Dollar 31, LLC (Sand Dollar) purchased 4824 Linden Street, the property which is the subject of this action, at a foreclosure sale with a bid of \$34,500 by Master's Deed dated July 20, 2006. Thereafter, on or about July 24, 2006, Sand Dollar executed a Note and granted a Mortgage in favor of SCBT with a maximum obligation of \$62,280 and Defendant/Guarantor Rhonda Meisner executed a guaranty, guaranteeing the indebtedness evidenced by the Note, dated July 24, 2006 in the amount of \$31,140. Defendants failed to make the November 30, 2010 and subsequent payments and the Note matured on July 25, 2011, thereby creating events of default under the Note and Mortgage.

On or about September 27, 2011, SCBT instituted the above-captioned foreclosure action, demanding a deficiency judgment against Sand Dollar and Meisner and this Court issued a Judgment of Foreclosure and Sale on May 14, 2012. After due notice, this Court held a sale on June 4, 2012, which became final on July 5, 2012, at which time SCBT's bid was bested by an upset bid.

On July 31, 2012, Meisner filed a verified Petition for Appraisal, stating therein that the winning bid was "a figure significantly beneath its appraised value." The Master's Report on Sale and

Disbursements and Order of Confirmation, filed August 8, 2012, stated that Meisner through her agent Kevin Nowell was the winning bidder at \$25,001.00. Thereafter, the bid was assigned to South Carolina Operating Room Equipment, LLC, a S.C. limited liability company controlled by Meisner, and on August 16, 2012, a Master's Deed to this entity was recorded. However, it was not until SCBT's counsel received the Master's Order Confirming Sale on August 10, 2012, that SCBT learned Meisner was the winning bidder.

After becoming the winning bidder, Meisner initiated a campaign of directly contacting SCBT's officers and employees, requesting that the deficiency judgments be waived. Meisner's direct communication about matters in the ongoing litigation was acknowledged by Defendants' counsel via written and verbal communications. After Meisner's repeated contacts, Plaintiff's counsel directed Defendants' counsel that Meisner was to have no further contact with anyone at SCBT other than Will Aiken, SVP/Special Assets Manager. Despite this admonishment, Meisner again contacted SCBT's CEO. On August 28, 2012, Plaintiff's counsel emailed Defendants' counsel about his client's repeated improper contact and also to request access to the subject property in order to have it appraised per Meisner's Petition. As of the date of this Motion, Defendant has not provided access to the subject property, despite repeated requests.

#### ARGUMENT

"A judicial sale will be set aside when either: (1) the sale price is so gross as to shock the conscience; or (2) the sale is accompanied by other circumstances warranting the interference of the court." *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008). In cases where the surrounding circumstances tend to show that the foreclosure sale should, in good conscience, be set aside, the court may consider the discrepancy between the accepted bid and the fair market value of the property as evidence to aid the court in arriving at the correct decision. *Spillers v. Clay*, 233 S.C. 99, 104, 103 S.E.2d 759, 761 (1958). Thus, the critical question in this case is whether circumstances surrounding the foreclosure sale warrant the interference of the court.

Although there are few cases that provide guidance on what types of circumstances necessitate the intervention of the court in a foreclosure case, this case presents facts that warrant such intervention. Here, Ms. Meisner has engaged in a deliberate scheme to avoid her obligations under her Mortgage agreement with SCBT. Although courts in this state have not addressed this fact pattern in the context of a foreclosure sale, the South Carolina Supreme Court has clearly stated that equitable intervention is necessary in similar circumstances in the context of a tax sale. See *Interstate Building & Loan Ass'n v. Waters*, 50 S.C. 459, 27 S.E. 948 (1897).

In *Interstate Building*, the court examined whether a mortgagor (and delinquent taxpayer) could successfully defeat a mortgagee's lien on his property by developing a plan to avoid the mortgage by sending his wife to purchase his home at a tax sale. *Id.* at 27 S.E. at 950. At that time, state law allowed a purchaser at a tax sale to take the property free and clear of all liens when certain requirements were met. *Id.* at 27 S.E. at 951. Thus, the mortgagor refused to pay his taxes and then had his wife purchase his home at the tax sale free and clear of the mortgage. *Id.* at 27 S.E. at 949.

One of the issues in the case was whether the court could allow the sale to stand as a matter of equity. *Id.* at 27 S.E. at 951. The Court held that a court of equity could not tolerate such a transaction. *Id.* "What cannot be done directly will not be permitted to be done indirectly." *Id.* (emphasis added). A court of equity may not permit "the wife of the mortgagor *or any other person* to acquire such title, to the detriment of the mortgagee, as the result of a *deliberate scheme* between the purchaser and the mortgagor to defeat the lien of the mortgage." *Id.* (emphasis added). Participation in such a deliberate scheme will estop the purchaser from asserting title to the detriment of the mortgagee. *Id.*

By the same analogy, Meisner cannot indirectly defeat SCBT's statutory right to a deficiency judgment by deliberately bidding on the subject property through an undisclosed agent in an amount less than the original purchase price and the loan amount she borrowed, while at the same time scheming to use her appraisal rights to eliminate/reduce the deficiency judgment based on the very bid price she herself claims is "significantly beneath its appraised value."

Essentially, Ms. Meisner is pursuing double recovery by way of this foreclosure sale. The purpose of the judicial sale in a mortgage foreclosure is to "remove the mortgage encumbrance from the property, and therefore, the amount of the mortgage is a fair gauge of the property's value in the hands of the buyer." *Arrow Bonding Company v. Warren*, Opinion #27166 (S.C. Sup. Ct. - Filed August 29, 2012), citing *Investors Savings Bank v. Phelps*, 303 S.C. 15, 397 S.E.2d 780 (Ct. App. 1990); *See also Wells Fargo, supra* (mortgage value is evidence of property's value). The purpose of the judicial sale is *not* to provide the borrower an opportunity to "buy low" and then use that low price to "cry foul" to get out of the deficiency judgment.

Just as in *Interstate Building*, such a transaction as this cannot be tolerated. In the most general sense, equity "is founded in natural justice in honesty and in right." 12 S.C. Jur. Equity § 2 (quoting J. Story, commentaries on Equity Jurisprudence 1 (2d ed. 1839)). Here, Meisner has not been honest or forthright. The current case involves circumstances in which the Defendant was intentionally deceptive and thus warrants the intervention of the court.

Meisner has orchestrated a deliberate scheme to avoid her obligations under the mortgage agreement by (1) having her agent bid on the subject property for her at the foreclosure sale, (2) having her agent submit a bid she avers is grossly under appraised value, (3) using her appraisal rights in an

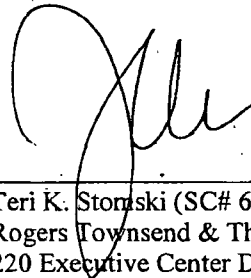
attempt to lower the deficiency judgment while receiving the equity in the property, (4) titling the property in a limited liability company (LLC) she controls in an attempt to hide her ultimate gain, (5) having direct communications with a represented party about matters in litigation in an attempt to have the deficiency judgment waived and (6) failing to cooperate by giving access to the property she won at the sale so that SCBT can get an appraisal completed as required by statute.

It is inequitable to allow Meisner to take the position that the house is worth one price when she is borrowing money and to then to take a contrary position that the price is insufficient in order to avoid a deficiency judgment, and Meisner's participation in such a deliberate scheme estops her from doing so to the Plaintiff's detriment. Ms. Meisner owes a legitimate debt to SCBT and she should not be allowed to avoid that debt by exploiting the court system for her own personal gain.

#### CONCLUSION

This court should hold that the Defendant's deliberate manipulation of the court system is impermissible based on case law and clear equitable principles and should set aside the foreclosure sale that is the subject of this motion.

Respectfully submitted,



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Teri K. Stomski (SC# 65250)  
Rogers Townsend & Thomas  
220 Executive Center Drive  
Columbia, SC 29210  
(803) 771-7900

August 24, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N. A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner;

Defendant(s).

(016555-00039/40)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

**CERTIFICATE OF SERVICE**

RICHLAND COUNTY  
FILED  
2012 SEP - 6 PM 4:18  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

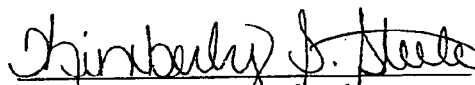
I, Kimberly S. Steele, an employee with the Law Firm of Rogers Townsend & Thomas, PC, attorneys for the Plaintiff, SCBT, N.A. hereby certify that I have served or caused to be served a copy of the foregoing documents upon the below named individuals and/or counsel this the 6<sup>th</sup> day of September, 2012 via U.S. Mail:

**DOCUMENT SERVED**

*Motion to Vacate The Sale*

**PARTIES SERVED**

Glenn Bowens, Esq.  
Post Office Box 424  
Winnsboro, South Carolina 29180  
Attorney for the Defendants

  
Kimberly S. Steele, Paralegal

Columbia, South Carolina

IN THE STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

South Carolina Bank and Trust, N.A.

Plaintiff,

vs.

Rhonda Meisner and Sand Dollar 31, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-06

NOTICE OF APPEARANCE

RICHLAND COUNTY  
FILED  
2012 OCT -1 AM 11:10  
CLARENCE W. MCBRIDE  
C.S.P. & G.S.

The undersigned attorney, being duly licensed to practice law in the State of South Carolina, does hereby provide notice of his appearance in the above-captioned matter representing the purchaser of the real property at the foreclosure sale that occurred as part of this matter, South Carolina Operating Room Equipment, LLC ("SCORE"). SCORE has not previously made an appearance in this litigation and has not been served with any pleading or motion. However, SCORE is informed and believes that after placing a bid on the property, for more than a nominal amount, and finding out that SCORE was the successful bidder at the foreclosure sale, that South Carolina Bank and Trust, N.A. ("SCBT") has moved to vacate the deed to SCORE. Thus, SCORE is an interested party to the motion and the undersigned attorney has been retained to represent the purchaser in this matter.



Richard R. Gleissner, Esquire  
S.C. Bar Number 15139  
Gleissner Law Firm, L.L.C.  
3610 Landmark Drive, Suite G  
Columbia, South Carolina 29204  
(803) 787-0505  
Attorneys for the Purchaser  
South Carolina Operating Room Equipment, LLC

SCANNED

IN THE STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

South Carolina Bank and Trust, N.A.

Plaintiff,

vs.

Rhonda Meisner and Sand Dollar 31, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-063

**CERTIFICATE OF SERVICE**

RICHLAND COUNTY  
FILED  
2012 OCT -1 AM 11:10  
JEANETTE W. HECBRIDE  
C.C.P. & C.D.

I, the undersigned employee of the Gleissner Law Firm, LLC, attorneys for the interested party, South Carolina Operating Room Equipment, LLC, do hereby certify that I have served a copy of the documents listed below in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

**Documents served**

Notice of Appearance on behalf of South Carolina Operating Room Equipment, LLC

**Counsel served**

Glenn E. Bowens, Esquire  
Post Office Box 424  
Winnsboro, SC 29180

Teri Lee Kimball-Callen, Esquire  
Rogers Townsend & Thomas, PC  
Post Office Box 100200  
Columbia, SC 29202

  
Anissa Terpstra, Paralegal to  
Richard R. Gleissner, Esquire

September 28, 2012

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,  
v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

DOCKET NO. 11-CP-40-6318

DEFENDANTS'  
MEMORANDUM ON JUDICIAL  
ESTOPPEL AND APPRAISAL STATE

RICHLAND COUNTY  
FILED  
2012 NOV -2 PM 2:09  
JANETTE W. MARRIDG  
C.C.P. & G.S.

The Defendants submit this Memorandum on Judicial Estoppel and Appraisal State.

The Bank filed a Motion to Vacate the Foreclosure Sale in the above captioned cases. The Bank asserts, "the amount of the mortgage is a fair gauge of the property's value" and asks the Court to value the properties at the mortgage value (i.e. \$62,280.00 for # 6317 and \$36,000.00 for # 6318). The Defendants agree with the Bank and join in the Bank's request that the Court find the value of the properties to be same as the values asserted in the Bank's Motion to Vacate the Foreclosure Sale.

The Bank was not prejudiced by the foreclosure sale or Meisner's Petition for Appraisal under S.C. Code §29-3-680 *et. seq.* - both are designed to protect the borrower and the Guarantor by making sure the amount of the deficiency judgment is appropriate. The borrower and the Guarantor are not required to elect between a foreclosure sale or their appraisal rights - they get the benefit of both. It is significant to note that it was the Bank's initiation of the foreclosure proceedings that triggered the requirement for a foreclosure sale and the Bank's insistence on a deficiency judgment following the foreclosure sale that triggered the application of S.C. Code §29-3-680 *et. seq.* The bank has no legal or equitable basis to complain. The sale of the property under the threat of a deficiency judgment gives both the borrower and the Guarantor the protection of S.C. Code §29-3-680 *et. seq.* and the right to petition for an appraisal. The purchase

by a third- party at the foreclosure sale does not affect Meisner's rights as the Guarantor under S.C. Code §29-3-680.

### **Judicial Estoppel**

The amount of the deficiency judgment is still under consideration by the Court. In order to increase the amount of the deficiency judgment against Sand Dollar and Meisner, the Bank intends to submit a lower value for the properties under the Appraisal Statute. The Bank is asking the Court to determine the amount owed in the deficiency judgment based on these **lower** property values when it previously asked the Court to set aside the foreclosure sale by valuing the properties at the market property values represented by their respective mortgages (i.e. \$62,280.00 for # 6317 and \$36,000.00 for # 6318).

The Bank is judicially estopped from changing its position on the facts regarding the value of the property between the Motion to Vacate the Foreclosure Sale and the Motion for a Deficiency Judgment. The Bank asserted the value of the properties was the value of the mortgage in order to attempt to set aside the foreclosure sale, it cannot now claim a different property value for same properties in order to increase the amount of the deficiency judgment. The South Carolina Court of Appeals has held:

"[j]udicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation."

When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him

Cothran v. Brown, 350 S.C. 352, 566 S.E.2d 548 (S.C.App. 2002).

The Bank bid low at the judicial sale in order to get the properties so that it could turn around and sell them at a higher price and make a profit while at the same time pursuing a deficiency judgment against Sand Dollar and Meisner. The Bank is seeking to increase the amount of the

deficiency judgment by changing its position on the value of the property and is asking the Court to aid it in its scheme to both make a profit on the property and increase the amount of the deficiency judgment; the Bank's scheme is not equitable.

The Appraisal Statute was enacted for the protection of the borrower and guarantor –not for the protection of the bank. The legislature wanted to make sure the property was not sacrificed at a foreclosure sale leaving the borrower and guarantor with an unreasonably high deficiency judgment. In other words, the legislature did not want the Bank to be able to purchase the property below fair market value at a foreclosure sale and thereby cause the amount of the deficiency judgment to be greater than it would be had the bank made a bid consistent with the actual value of the property. The bank is attempting to do the very thing the legislature was trying to prevent and is seeking this Court's assistance in circumventing the will of the legislature. The Bank received more than its own bid and has no basis to complain.

#### **Guaranty Agreement**

The Bank continues to claim that Meisner, as Guarantor, is liable for amounts greater than the two Guaranty Agreements that are in the record. The Bank introduced the Guaranty Agreements for \$31,140.00 in case # 6317 and \$36,000.00 in case # 6318. The Bank has now interjected a third Guaranty Agreement in the amount of \$50,000.00.<sup>1</sup> However, the Bank did not introduce this Guaranty Agreement into evidence at the Foreclosure Hearing on April 25, 2012 nor was this third Guaranty Agreement included in the Bank's Amended Complaint.

The Bank erroneously asserts that the Defendants have not disputed its claim for attorney fees. The Defendants thoroughly briefed their objections to the Bank's claim for attorney fees in their Motion to Alter or Amend and argued their objections during the hearing on the motion.

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<sup>1</sup> The third Guaranty Agreement is attached as Exhibit 3 to the "Plaintiff's Memorandum of Law Guaranty Agreement."

The Bank also claims the Defendants have not appealed the attorney fees or the principal amounts awarded in the Master's Judgment of Foreclosure and Sale. The Bank is correct that these awards have not been appealed. However, as the Bank is well aware, the Defendant's filed a Motion to Alter or Amend the Master's Judgment of Foreclosure and Sale. When a Motion to Alter or Amend has been filed the time for appeal does not begin until thirty (30) days after the receipt of written notice of the entry of the order on the Motion to Alter or Amend.<sup>2</sup> The Court has not yet entered an order on the Motion to Alter or Amend, nor has the Defendants received written notice of the entry of the order.

The Bank also indicated in its "Memorandum of Law Guaranty Agreement" that attorney fees "continue to accrue." However, the Bank has not submitted a formal claim for attorney fees that describe the nature of the fees or the amounts charged that "continue to accrue." The Bank should not be allowed to claim attorney fees and costs that relate to the Motion to Vacate the Foreclosure Sale. The Defendants continue to object to the award of attorney fees and costs to the Bank in these cases. The Bank has not filed an affidavit of attorney fees or an itemized statement of the attorney fees and costs with the Court.<sup>3</sup> The Bank did submit an affidavit; however, the key component of the affidavit is an itemized statement of the fees, which has never been provided. Neither the Court nor the Defendants can reasonably evaluate the Bank's claim without an itemized statement. Much of the effort expended by the Bank was to deny the Defendants their rights under the law. The Court should require the Bank to file an affidavit of attorney fees and costs, including an itemized statement, and give the Defendants an opportunity to object as to the reasonableness of the Bank's claim before awarding any attorney fees and costs as part of the deficiency judgment.

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<sup>2</sup> See Rule 59(f), SCRPC and Rule 203(b)(1), SCACR.

<sup>3</sup> The Defendants have not received a copy of a filed affidavit.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS  
DOCKET NO. 11-CP-40-6317  
DOCKET NO. 11-CP-40-6318

CERTIFICATE OF SERVICE

2012 NOV -2 PM 2:09  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

RICHLAND COUNTY  
FILED

I, Glenn Bowens, attorney for the Defendant, do hereby certify that I have this day served a copy of the foregoing **Defendants' Memorandum on Judicial Estoppel and Appraisal Statute** in connection with the above referenced case by placing a copy of the same in the United States

Mail, postage prepaid, to the following Address:

Terri Stomski  
Rogers Townsend & Thomas, PC  
220 Executive Center Dr.  
Columbia, SC 29210

This the 2<sup>nd</sup> Day of November 2012 A.D.

  
Glenn Bowens

IN THE STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

South Carolina Bank and Trust, N.A.

Plaintiff,

vs.

Rhonda Meisner and Sand Dollar 31, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-06317

**MEMORANDUM IN OPPOSITION TO  
MOTION TO VACATE SALE**

RICHLAND COUNTY  
FILED  
2012 NOV 5 AM 11:09  
JEANETTE L. MCBRIDE  
C.C. JUDGE

South Carolina Operating Room Equipment, LLC ("SCORE"), by and through its undersigned counsel, does hereby file its memorandum in opposition to the motion to vacate the sale of the property to SCORE, pursuant to the foreclosure sale. The motion to vacate the sale was filed by South Carolina Bank and Trust, N.A. ("SCBT").

In opposing this motion, SCORE would point out that there is no factual basis to set aside the sale and there is no legal basis to set aside the sale. Contrary to the positions taken by SCBT, (1) this Court made no error and engaged in no misconduct, (2) the sale of the property was for more than SCBT was willing to bid for the property, thus must be presumptively for an adequate price and not so insufficient as to shock the conscience of anyone and (3) there is no "scheme" unless SCBT is arguing that the South Carolina legislature has participated and authorized a "scheme." Further, in reliance upon this court's deed, SCORE has rented the property and made improvements to the property. Thus, to set aside the sale would substantially damage SCORE.

**FACTS**

This matter involves three separate and distinct legal entities, (1) Sand dollar 31, LLC (the "Borrower"), Rhonda Meisner (the "Guarantor") and South Carolina Operating Room Equipment,

LLC ("SCORE"). Chronologically, the facts associated with this matter are as follows:

1. The initial foreclosure sale was scheduled for June 4, 2012. SCBT through their agent bid at the initial foreclosure sale. For the property subject to the foreclosure sale in civil action number 11-CP-40-6317, SCBT submitted a bid of \$10,000. For the property subject to the foreclosure sale in civil action number 11-CP-40-6318, SCBT submitted a bid for \$25,000. Because SCBT was demanding a deficiency, statutorily, the bidding remained open for thirty (30) days. Because thirty (30) days fell on a holiday (July 4, 2012), the bidding remained opened until July 5, 2012.
2. While everyone agrees that this bid is below fair market value, whether the price was below fair market value is not the test. SCBT made the decision, without coercion, without threat, without any compulsion and without any representation by the Borrower, the Guarantor or SCORE. SCBT was presumably making this bid in good faith with full knowledge of the property and upon its completion of its due diligence as to the value of the property. This Court acting in good faith, accepted the bid on July 4, 2012 and properly acted in keeping the bidding open until July 5, 2012. This Court made no misrepresentations or errors.
3. Prior to the deficiency sale on July 5, 2012, the Borrower through its attorney Glenn Bowens (the "Borrower's Attorney") requested the court to delay the deficiency sale to prevent the injury to any third party purchasers of the properties. A conference call was arranged on July 5<sup>th</sup>, 2012 between Borrower's Counsel, this honorable court, and counsel for SCBT, Teri Stomski ("Lender's Counsel"). Lender's Counsel successfully argued on the conference call that SCBT would be highly prejudiced by delaying the sale for any reason and requested the court to order the sale to continue as scheduled for later in the day on July 5, 2012.
4. On July 5, 2012, SCORE bid an amount higher than the amount bid by SCBT and SCORE deposited the required 5% of the bid amount into this Court in both foreclosure actions. Thereafter, within the statutory time required, SCORE fully complied with the terms of the judicial sale and received the Master's deed for both properties. It is important to note that SCBT has not argued any irregularities of the bidding process or that the Court did anything improper or anything in error in executing the Deed to the successful bidder.
5. Regarding the Sale on July 5<sup>th</sup>, 2012, contrary to the representation of SCBT, Kevin Knowles never acted on behalf of Rhonda Meisner in her personal capacity. Knowles instructions for bidding were relayed specifically in the name of SCORE. Thus, it was SCORE who submitted both the 5% deposit and the final payment and it was SCORE that became a bonafide purchaser for value.
6. Further, SCBT established the opening bid and SCBT established the bidding

procedures by not waiving the deficiency demanded. SCORE had nothing to do with the bidding procedures or SCBT's decision on the amount to bid. SCORE had no duty to pay more than necessary to purchase the property regardless of any opinion of value they or anyone else had.

In its clear from the facts, that SCBT wants to blur the lines of legal entities, tell the court who can and who cannot purchase property, interfere with commerce all the while simultaneously arguing that they have been damaged because SCBT bid too low and now SCBT contrary to laws regarding deficiency judgement cases wants another chance to bid again.

### ARGUMENT

South Carolina recognizes only two reasons to set aside a judicial sale. Specifically, the court will set aside a judicial sale when "(1) the sale price 'is so gross as to shock the conscience[;]' or (2) the sale 'is accompanied by other circumstances warranting the interference of the court.'" *Wells Fargo Bank N.A. v. Turner*, 378 S.C. 147, 150, 667 S.E. 2d 424, 425 (Ct. App. 2008) (citing *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 157, 177 S.E. 24, 27 (1934)). In this case, (1) this Court made no error and engaged in no misconduct, (2) the sale of the property was for more than SCBT was willing to bid for the property, thus must be presumptively for an adequate price and not so insufficient as to shock the conscience of anyone and (3) there is no "scheme" unless SCBT is arguing that the South Carolina legislature has participated and authorized a "scheme."

#### 1. This Court made no error and engaged in no misconduct.

In the case of *Spillers v. Clay*, 233 S.C. 99, 103 S.E.2d 759 (1958), the Court goes to great length to discuss the "other circumstances warranting the interference of the court." Specifically, in *Spillers*, the sale was conducted on a busy day. The person conducting the auction confirmed a bid on the property of \$2,500. In fact, two different bidders thought they had bid the \$2,500. When the attorney for one realized that the auctioneer had selected the other bidder as the successful bidder,

he immediately raised an objection. Thus, it was the confusion created at the sale and the conduct of the auctioneer that constituted the "other circumstances." The Court went further and stated:

A judicial sale should not be set aside except for cogent reasons. The purpose of the law and of the proceedings in which a sale has been decreed is that it shall be final. As was said in Farrow v. Farrow, 88 S.C. 333, 70 S.E. 459, the successful bidder makes himself a party to the cause, and, except where title to the property is defective, or where he can show fraud, misrepresentation, mistake, or other circumstances of unfairness in the sale, he may be compelled by the court to perform his contract of purchase. In the absence of such circumstances, therefore, his contract should be upheld. These principles are well established. Henry v. Blakely, 216 S.C. 13, 56 S.E.2d 581; Appeal of Paslay, 230 S.C. 55, 94 S.E.2d 57.

In the case last cited, petitioners alleged that they had been prepared, through their attorney, to bid at least \$1,000.00 for the property that was sold in partition, to a stranger to the suit, for \$450.00; and it appeared, also, that their attorney had been prevented from attending the sale because of mechanical failure of his automobile. But we held the disparity between the sale price and the alleged value of the property not so shocking as in itself to vitiate the sale, and that counsel's explanation of his failure to be present was not sufficient, in the circumstances, to warrant our setting it aside. Distinction between that case and this is readily apparent. There no factor was present for which the selling officer had any responsibility; here the claim of misapprehension and excusable mistake on the part of counsel was in relation to the conduct of the sale.

233 S.C. at 104-05, 103 S.E.2d at 761-62. In this case, there is no allegation that the Court engaged in any misconduct or any in appropriate behavior. Further, there is no allegation of fraud, misrepresentation, mistake, or other circumstances of unfairness in the sale. Simply, as a matter of law, there are no "other circumstances" justifying the setting aside of the judicial sale. See also *Eastern Savings Bank, FSB v. Sanders*, 373 S.C. 349, 354, 644 S.E.2d 802, 805 (2007) (requiring the selling officer or the purchaser to engage in conduct that prevented the Bank from making higher bid).

As stated by the South Carolina Supreme Court, the other circumstances “must be such irregularity in the proceedings as to show that the sale was not fairly made, or that appellant was defrauded or misled to his injury and loss.” *Howell v. Gibson*, 208 S.C. 19, 28-29, 37 S.E.2d 271, 275 (1946). In this case, there is no argument that the sale was not fairly made or that SCBT was defrauded or misled to its injury and loss.

## **2. Adequate Price**

As provided in S.C.Code Ann. § 15-39-720 (2005), when a deficiency is sought, the mortgagee gets to make a single bid. The purpose of this statute is understood to be that “[t]he mortgagee must enter his bid at the time the sale is made and is precluded from entering any other bid after his last bid at the initial sale. This effectively forces the mortgagee to enter his highest and best bid at the initial sale.” See *Eastern Savings Bank, FSB v. Sanders*, 373 S.C. 349, 354, 644 S.E.2d 802, 805 (2007) (quoting 27 S.C. Juris. *Manner of Sale* § 128 (1996) (internal citation omitted)). So, as a matter of law, the bid by SCBT on these properties was its “highest and best bid.”

In *Eastern Savings Bank, FSB v. Sanders*, 373 S.C. 349, 644 S.E.2d 802 (2007) the Supreme Court states that “South Carolina has not established a bright line rule for what percentage the sale value must be with respect to the actual value in order to shock the conscience of the court. However, a search of South Carolina jurisprudence reveals only when judicial sales are for less than ten percent of a property's actual value, have our courts consistently held the discrepancy to shock conscience of the court.” 373 S.C. at 359, 644 S.E.2d at 807. However, when the price is above 10% the courts have consistently held that the discrepancy does not shock the conscience of the court. *Id.* (purchase price was 1/3 of value); *Singleton v. Mullins Lumber Co.*, 234 S.C. 330, 108 S.E.2d 414 (1959) (successful bid of 13% of value of the property was not sufficient to “shock the conscience”);

In this case, the purchase price by SCORE is nearly 1/3 of the value, even assuming the value of the property is the amount of the mortgage. Thus, the purchase price was clearly in excess of 10% and as a matter of law cannot shock the conscious of the court.<sup>1</sup>

### 3. THERE IS NO "SCHEME"

In the motion to set aside the sale, SCBT alleges that the Borrower, Guarantor and SCORE engaged in a "scheme" by (a) petitioning the Court pursuant to South Carolina's appraisal rights statutes and (b) by having SCORE purchase the property. Clearly, by adopting the appraisal rights statutes, the South Carolina legislature did not participate in any type of "scheme." Thus, SCBT's argument in this regard is beyond absurd.

As it relates to SCORE purchase the property, SCBT sites the case of *Interstate Building & Loan Ass'n v. Waters*, 50 S.C. 459, 27 S.E. 948 (1897) as providing some authority for the proposition that a related entity should not be allowed to purchase the property at foreclosure. In fact, there is no prohibition on the mortgagor or a related entity purchasing the property at a foreclosure sale. In *Gardner v. Nash*, *Gardner v. Nash*, 225 S.C. 303, 82 S.E.2d 123 (1954), a bidder claimed to be bidding for the mortgagor at the foreclosure sale. When this successful bidder refused to transfer the property to the mortgagor, the Court required the transfer, even though there was no writing. Thus, mortgagors can buy the property at the foreclosure sale and SCBT can offer no authority to the contrary because there is no contrary authority.

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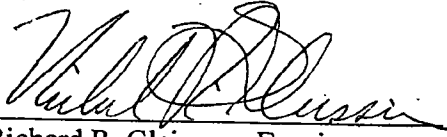
<sup>1</sup> SCORE would note that the issue of deficiency judgment pursuant to the South Carolina Appraisal Statutes is presently pending before this same court. Because SCBT has taken the position in its motion to vacate the sale, that the value of the property must be measured by the amount of its mortgage, SCBT must now be judicially estopped from arguing a lesser value pursuant to the appraisal statutes. Thus, any and all deficiency claimed by SCBT must be removed as a matter of law.

As it relates to *Interstate*, in that case, the property was being sold at a tax sale. The debtor husband borrowed the money to pay the taxes, but instead of paying the taxes, he purchased the property at the tax sale and put the property in his wife's name. That is a fraudulent conveyance. He either gave money to his wife for no consideration to purchase the property at the tax sale or he purchased the property at the tax sale and transferred it to his wife for no consideration. None of that occurred in this case. Attached hereto as Exhibit 1 is a copy of a printout from the South Carolina Secretary of State's website showing that SCORE has been in existence since 2010. It was not created for the purpose of buying this property and has its own independent existence, assets and liabilities. There is no evidence that suggests a fraudulent conveyance from the Borrower or the Guarantor allowed SCORE to purchase this property. Simply, *Interstate* is not authority for setting aside this sale.

#### CONCLUSION

This Court made no error and engaged in no misconduct warranting the setting aside of the judicial sale fairly made. The sale of the property was for more than SCBT was willing to bid for the property, thus must be presumptively for an adequate price and not so insufficient as to shock the conscience of anyone. Lastly, there is no "scheme". There is no evidence of a "scheme." There is no fraud, mistake or fraudulent conveyance. There is no reason to set aside this sale. Further, because there is no factual basis or legal basis to support the motion, SCORE requests that the Court sanction the movant and require the movant to pay SCORE's legal fees for responding to this motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard R. Gleissner', written over a horizontal line.

Richard R. Gleissner, Esquire  
S.C. Bar Number 15139  
Gleissner Law Firm, L.L.C.  
1237 Gadsden Street, Suite 200A  
Columbia, South Carolina 29201  
(803) 787-0505  
Attorneys for the Purchaser  
South Carolina Operating Room Equipment, LLC

IN THE STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

South Carolina Bank and Trust, N.A.

Plaintiff,

vs.

Rhonda Meisner and Sand Dollar 31, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-06317

**CERTIFICATE OF SERVICE**

RICHLAND COUNTY  
FILED  
2012 NOV -5 AM 11:09  
JEANETTE W. MCBRIDE  
C.P. & G.S.

I, the undersigned employee of the Gleissner Law Firm, LLC, attorneys for the interested party, South Carolina Operating Room Equipment, LLC, do hereby certify that I have served a copy of the documents listed below in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

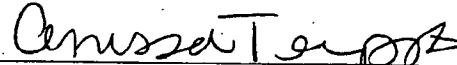
**Documents served**

Memorandum in Opposition to Motion to Vacate Sale

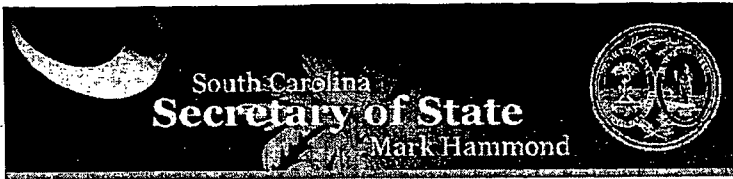
**Counsel served**

Glenn E. Bowens, Esquire  
Post Office Box 424  
Winnsboro, SC 29180

Teri Lee Kimball-Callen, Esquire  
Rogers Townsend & Thomas, PC  
Post Office Box 100200  
Columbia, SC 29202

  
Anissa Terpstra, Paralegal to  
Richard R. Gleissner, Esquire

November 2, 2012



## SOUTH CAROLINA OPERATING ROOM EQUIPMENT, LLC

Note: This online database was last updated on 11/1/2012 6:01:30 PM.  
See our Disclaimer.

## DOMESTIC / FOREIGN:

Domestic

## STATUS:

Good Standing

## STATE OF INCORPORATION

SOUTH CAROLINA

## / ORGANIZATION:

Profit

## REGISTERED AGENT INFORMATION

## REGISTERED AGENT NAME:

RHONDA MEISNER

## ADDRESS:

ONE CHESTER ROAD

## CITY:

BLYTHEWOOD

## STATE:

SC

## ZIP:

29016

## SECOND ADDRESS:

## FILE DATE:

11/08/2010

## EFFECTIVE DATE:

11/08/2010

## DISSOLVED DATE:

//

## Corporation History Records

| CODE         | FILE DATE  | COMMENT | Document |
|--------------|------------|---------|----------|
| Domestic LLC | 11/08/2010 | AT WILL |          |

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

Physical Address: Edgar Brown Building - 1205 Pendleton Street Suite 525 Columbia, SC 29201  
Mailing Address: SC Secretary of State's Office 1205 Pendleton Street Suite 525 Columbia, SC 29201

Exhibit 1

SCBT, N.A.  
PO BOX 100115  
COLUMBIA SC 29202

001 061 04 00526 Page: 1  
Loan: 11742806 06/04/2011

Telephone: 800-277-2175

Exhibit 11  
Replacement

RHONDA MEISNER  
1 CHESTER RD  
BLYTHEWOOD SC 29016-8555

----- Copy -----  
\* Past Due Notice \*

Borrower: SAND DOLLAR 31 LLC

|                           |                                             |                        |            |
|---------------------------|---------------------------------------------|------------------------|------------|
| Loan Type:                | COMMERCIAL-MORTGAGE                         | Maturity Date:         | 07/25/2011 |
| Principal Balance:        | 31,535.04                                   | Original Loan Date:    | 07/24/2006 |
| Current Rate:             | 8.5000                                      | Original Loan Amount:  | 36,000.00  |
| Interest Thru 06/04/2011: | 303.15                                      | Last Payment Received: | 06/24/2011 |
| One Day's Interest:       | 7.44                                        | Last Payment Amount:   | 1,892.28   |
| Late Charge Balance:      | 74.98                                       |                        |            |
| Collateral/Property:      | 8191 WINNEBORO HIGHWAY BLYTHEWOOD, SC 29016 |                        |            |
|                           | Past Due Date:                              | 07/25/2011             |            |
|                           | Amount Past Due:                            | 31,840.19              |            |
|                           | Late Charges:                               | 74.98                  |            |
|                           | Total Amount Due:                           | 31,915.17              |            |

Replacement Due to loss of exhibit.  
Respondant provided this copy and will  
stipulate addition to record on appeal

**CERTIFICATE OF COUNSEL RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable Joseph E. Strickland, Master-in-Equity

---

Appellate Case No. 2012-213558

---

SCBT, N.A.

Respondents,

v.

Sand Dollar 31, LLC; Rhonda  
Meisner, Defendants, of  
whom Rhonda Meisner is

Appellant.

---

**CERTIFICATE OF APPELLANT**

---

The undersigned certifies that this the Record on Appeal contains all records requested of any party and complies with Rule 211(b), SCACR.

October 23, 2013



Rhonda L. Meisner, Appellant

Post Office Box 689

Blythewood, South Carolina 29016

pegasus@nuvox.net

(803)960-3696

IN THE MATTER OF APPELLATE CASE # 2012-213558

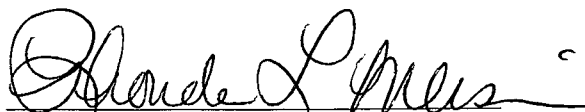
Appellant Rhonda Meisner certifies she has sent a copy of the RECORD ON APPEAL VIA HAND DELIVERY TO THE FOLLOWING ATTORNEYS THIS 16<sup>th</sup> DAY OF October, 2013. Appellant further states she has filed the requisite 15 copies of the RECORD ON APPEAL WITH THE COURT OF APPEALS VIA HAND DELIVERY.

Jason Wyman  
Rogers, Townsend and Thomas, PC  
220 Executive Center Drive  
Columbia, South Carolina 29210  
(803) 771-7900

**RECEIVED**

OCT 16 2013

**SC Court of Appeals**



Rhonda Meisner, Appellant  
Post office Box  
689  
Blythewood, SC 29016  
pegasus@nuvox.net  
803-960-3696