

NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS  
HON. ELLIS DREW MASTER IN EQUITY

---

CASE NO.: 2010-CP-37-417

J. CHARLES GRAY ... APPELLANT

VS

PLANTATION FEDERAL BANK as successor in interest to  
FIRST SAVERS BANK ... RESPONDENT

PEGGY B. GRAY ... APPELLANT

VS

PLANTATION FEDERAL BANK as successor in interest to  
FIRST SAVERS BANK ... RESPONDENT

---

NOTICE OF INTENT TO APPEAL

---

J. Charles Gray and Peggy B. Gray appeal the Order dated December 31, 2013 which was served by mail upon Appellants' counsel on January 2, 2014 granting Respondent's Motion for Summary Judgment as to Appellants' Counterclaims and Referring this matter to the Master in Equity for further proceedings.

THE GRIFFIN FIRM, LLC

BY: 

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Attorney for Appellants  
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Attorney for Appellant

**RECEIVED**

FEB 06 2014

S.C. SUPREME COURT

Dated: January 30, 2014

Other Counsel of Record

Brad Richardson  
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133 Straight Drive  
Anderson, SC 29625  
864-222-0292

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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COURT OF COMMON PLEAS  
HON. ALEXANDER S. MACAULAY

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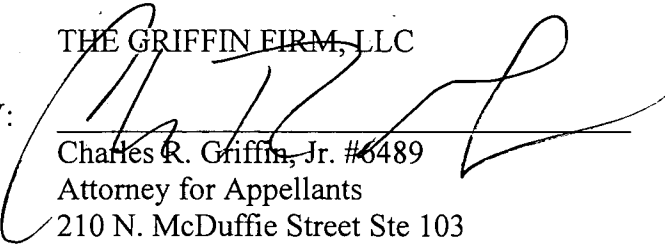
PLANTATION FEDERAL BANK as successor in interest to  
FIRST SAVERS BANK ... RESPONDENT

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CERTIFICATE OF SERVICE

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The undersigned does hereby certify that he served the Notice of Appeal on the Respondent by depositing with the U.S. Mail with postage prepaid a copy of same to the office Bradley Richardson, attorney for the Respondent 133 Straight Drive Anderson, SC 29625

THE GRIFFIN FIRM, LLC  
BY:   
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Attorney for Appellant

Dated: January 30, 2014

Other Counsel of Record

Brad Richardson  
Attorney for Respondent  
133 Straight Drive  
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STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-37-417 414

Plantation Federal Bank as successor in interest to

J. Charles Gray, Peggy B. Gray and Waterford

First Savers Bank,  
PLAINTIFF(S)

Ridge Owners Association, Inc.,  
DEFENDANT(S)

Submitted by: Bradley K. Richardson, Esq.	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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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, 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 : \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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

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.

Bradley K. Richardson  
Circuit Court Judge      63      12/31/13      Date

Copies to: Atty.  (P)  (D)  Judge Code  
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BEVERLY H. WHITFIELD  
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ATTN: CLERK OF COURT  
JAN - 2 2014  
CLERK OF COURT, OCONEE COUNTY

ENTERED  
12/31/13

For Clerk of Court Office Use Only

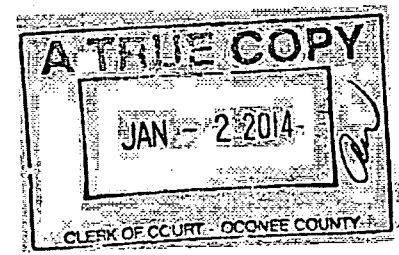
This judgment was entered on the 2<sup>nd</sup> day of January, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 2<sup>nd</sup> day of January, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Bradley K. Richardson  
133 Straight Dr  
Anderson SC 29625  
ATTORNEY(S) FOR THE PLAINTIFF(S)

Charles R Griffin Jr.  
210 North McDuffie Ste. 103  
Anderson SC 29621  
ATTORNEY(S) FOR THE DEFENDANT(S)  
Beverly H. Whitfield  
CLERK OF COURT

Court Reporter: \_\_\_\_\_

FILED O'CONNOR, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT  
2014 JAN - 2 P 1:51



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF OCONEE )  
 )  
 Plantation Federal Bank as successor )  
 in interest to First Savers Bank, )  
 )  
 vs. )  
 )  
 Plaintiff, )  
 )  
 J. Charles Gray and Waterford Ridge )  
 Owners Association, Inc., )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
 CIVIL ACTION NO. 2010-CP-37-417

**ORDER GRANTING PLAINTIFF'S  
 MOTION FOR SUMMARY JUDGMENT**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF OCONEE )  
 )  
 Plantation Federal Bank as successor )  
 in interest to First Savers Bank, )  
 )  
 vs. )  
 )  
 Plaintiff, )  
 )  
 Peggy B. Gray and Waterford Ridge )  
 Owners Association, Inc., )  
 )  
 Defendants. )  
 )

FILED OCONEE, SC  
 BEVERLY H. WHITFIELD  
 CLERK OF COURT  
 2010 JUN -2 P 1:51

**THIS MATTER** came before the Court on Plaintiff's motion for summary judgment. Arguments were heard on September 3, 2013 at the Oconee County Courthouse. Plaintiff was represented at the hearing by Bradley K. Richardson and the Defendants, J. Charles Gray and Peggy B. Gray, were represented by Charles R. Griffin. Based upon oral arguments, the deposition of Peggy B. Gray, the deposition of J. Charles Gray, Plaintiff's Memorandum in

Copies to:  
 Atty  (P)  (D)   
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Support of Summary Judgment, the case law presented by counsel and for the reasons set forth herein, the Plaintiff's motion for summary judgment is granted.

### FINDINGS OF FACT

The following facts have been established by the pleadings and the depositions of the Defendants, J. Charles Gray and Peggy B. Gray (hereinafter "the Grays"). The Grays are seasoned, sophisticated real estate investors who have purchased and sold numerous parcels of real estate. They have purchased lots to "flip" or resell at a profit, built speculative homes for resale and developed subdivisions. They have conducted business with and obtained mortgage loans from several different financial institutions.

The Grays purchased the properties that are the subject of Plaintiff's foreclosure action at auction in 2006. The Grays had attended several auctions and purchased real estate at auctions in the past. After contracting to purchase the subject properties from a third party the Grays elected to finance their purchases by obtaining first mortgage secured, purchase money loans from Community First Bank. The Community First mortgage loans provided interest only payments for a term of twelve months with balloon payments due at maturity. At maturity the Community First mortgages were renewed for one year. In 2008 Community First Bank informed the Grays that they would no longer renew their loans with interest only repayment terms.

The Grays subsequently refinanced their mortgage loans with First Savers Bank. The terms of the new mortgage loans provided for interest only monthly payments for a period of twelve months with balloon payments due at maturity. The Grays admit in their depositions that no employee or agent of the Plaintiff represented to them that the mortgage loans would be renewed upon the same terms extended in 2008. At maturity First Savers Bank agreed to renew the loans with interest only repayment terms for twelve months. At the time renewal terms were

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extended First Savers Bank informed the Grays that all future renewals or modifications of the mortgage loans would require monthly payments of principal and interest. The Grays do not dispute that they were represented by their independent counsel, James S. Belk, when all loan documents referenced herein were executed.

In 2009 the Grays stopped making payments on the mortgage loans because they were no longer able to meet their repayment obligations as a result of lack of or loss of income. Furthermore they were unable to generate income from their real estate investments due to a downturn in the global real estate market. The Defendants acknowledge that this litigation would never have occurred if it were not for the decline in the real estate market as they would have been able to resell their real estate investments.

## **CONCLUSIONS OF LAW**

### **I. Standard of Review/Summary Judgment**

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." S.C.R.P. 56(c). Summary judgment is appropriate when "plain, palpable, and undisputable facts exist on which reasonable minds cannot differ." McNaughton-McKay Electric Co. of N.C., Inc. vs. Andrich, 324 S.C. 275, 279, 482 S.E.2d 564 (Ct. App. 1997). After consideration of the issues framed by the parties, the Court finds that summary judgment in favor of the Plaintiff is appropriate as to all of the causes of action.

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**II. Breach of Contract Accompanied by a Fraudulent Act and/or Fraudulent Intent and Fraud**

This action was commenced by the Plaintiff filing this action for foreclosure of its mortgages. The Grays have counterclaimed alleging breach of contract accompanied by a fraudulent act and/or with fraudulent intent. The Grays have also filed a separate counterclaim alleging fraud. In order to maintain either cause of action the Grays must establish that all of the elements of fraud are present.

“In order to recover in an action for fraud and deceit, based upon misrepresentation, the following elements must be shown by clear cogent and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either the knowledge of its falsity or a reckless disregard of its truth and falsity; (5) intent that the representation be acted upon; (6) the hearer’s ignorance of its falsity; (7) the hearer’s reliance on its truth; (8) the hearer’s right to rely thereon; (9) the hearer’s consequent and proximate injury. Failure to prove any one of the foregoing elements is fatal to recover.” Kahn Construction Co. vs. South Carolina Nation Bank of Charleston, 275 S.C. 381, 384, 271 S.E.2d. 414 (1980).

The Grays have failed to establish any false representations made by First Savers Bank in regards to their mortgage loans. Furthermore, the Grays have failed to provide any evidence or testimony that establishes all nine elements of fraud. The Grays admit that they executed and delivered the notes and mortgages that are the subject matter of this litigation. The Grays’ depositions show that they received precisely what they bargained for. The Grays admit they were given loans with interest only repayment terms for a period of twelve months with balloon payments due at maturity. While the Grays’ pleadings allege that the Plaintiff represented that identical loan terms would be extended at maturity, the Grays admitted in their depositions that no one at First Savers Bank ever stated that the terms of the original loans from First Savers Bank would be renewed with identical terms.

Upon maturity of the initial loans, the Grays contracted with First Savers Bank for renewal terms that provided interest only repayment terms for a period of twelve months with

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balloon payments due at maturity. The Grays accepted the new loan terms and executed all loan documents at a closing conducted by independent counsel of their own choosing who had represented them in several real estate transactions over the years. The Grays do not dispute executing the notes and admit they mortgaged the properties as collateral for the notes. The terms of the notes and mortgages are unambiguous and speak for themselves. The Grays admit no one at First Savers Bank ever stated that the terms of the original loans from First Savers Bank would be renewed with identical terms. The Grays received exactly what they bargained and contracted for.

The Grays have failed to establish that First Savers Bank made any representation that was false or material. Absent a representation that could be considered false and material there is no genuine issue as to any material fact in regards to the Grays' counterclaim for breach of contract accompanied by a fraudulent act or with fraudulent intent. Furthermore there is no genuine issue as to any material fact in regards to the Grays' counterclaim for fraud. The Court grants Plaintiff's motion for summary judgment as to both causes of action.

### III. Breach of Fiduciary Duty

A fiduciary relationship exists when a person places special trust or confidence in another. (O'Shea v. Lesser, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992)) However, "The normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature." (Burwell v. South Carolina National Bank, 288 S.C. 34, 40, 340 S.E.2d 786, 790 (1986)). The Grays admit neither First Savers Bank, nor its agents or employees advised the Grays on the purchase of the properties that are the subject matter of this litigation, nor did First Savers Bank ever misrepresent the terms of the loan documents they signed. The Grays are seasoned and experienced real estate investors. Mr. Gray admits that he has worked in the real estate business

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[REDACTED]

for over ten years and was familiar with the risk/rewards of investment opportunities. It is clear the Grays knew the risks of real estate investing and understood the loan terms being extended to them by First Savers Bank at all times. The Grays' own depositions establish there was no reason for them to place special trust in the Plaintiff or its employees as they are sophisticated real estate investors. The relationship between the Grays and the Plaintiff was that of a creditor-debtor and not fiduciary in nature. Therefore First Savers Bank owed no fiduciary duty to The Grays. Even if a fiduciary relationship existed the Grays fail to identify any action of Plaintiff which would have resulted in a breach of a fiduciary relationship. Once again the Grays received what they requested from Plaintiff, no other commitment was ever made to the Grays and there is no evidence to the contrary. As the Grays have failed to provide any evidence as to the creation of a fiduciary relationship with First Savers Bank or a breach of any purported fiduciary duty, the Court grants Plaintiff's motion for summary judgment for this cause of action.

#### **IV. Violation of Unfair Trade Practices Act**

As set out hereinabove, First Savers Bank acted in good faith in making the mortgage loans which are the subject of this litigation. First Savers Bank never misrepresented the loan terms to the Grays and has fully complied with all agreed upon loan terms. The Grays point to no deceptive, willful acts that would rise to the level of unfair trade practices. The Grays have provided no evidence that there was any bank conduct in making their loans which adversely affected the public interest. The Grays have failed to establish any evidence that shows that there is a genuine issue of material fact that the Plaintiff has violated the unfair trade practices Act. Accordingly, their claim must fail. *Robertson vs. First Union Nat'l Bank*, 350 S.S.389, 565 S.E.2d.309 (Ct. App. 2002). Summary Judgment is granted in favor of the Plaintiff in regards to this counterclaim.

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J.

**V. Tortious Interference with Present and Prospective Economic Opportunities**

The Grays testified that during the pendency of this action they have successfully purchased a new primary residence and were able to obtain financing for their new home with satisfactory loan terms. The Grays testified that their financial difficulties were caused by a variety of factors such as loss of income, the inability to sell real property and the overall state of the economy for the past few years. The Grays admit that they were parties to a separate foreclosure action commenced by First Citizens Bank and Trust Company, Inc. filed in 2010. The Grays testified that if the economy had continued to flourish they would have been able to make all loan payments and this action would never have been initiated. The Grays also testified that the Plaintiff did not cause their financial difficulties. Based upon the forgoing there is no genuine issue of material fact that Plaintiff is the cause of the Grays' financial difficulties. Therefore the Court grants summary judgment in favor of the Plaintiff as to this cause of action.

**VI. Foreclosure of Mortgages**

The Plaintiff originally commenced this action by filing two separate foreclosures in regards to its notes and mortgages. The Grays admit to having executed the loan documents; pledging the real property which is the subject of this action as collateral; and to having defaulted on the repayment terms of the notes. In regards to the foreclosure action, this matter is referred to the Oconee County Master-in-Equity for further proceedings

**VII. Attorney's Fees**

The South Carolina Supreme Court in the matter of Citizens and Southern National Bank of South Carolina vs. Easton, 310 S.C. 458 S.E.2d 640 (1993), held that "with regard to the notes which provide for attorney's fees at a specific rate in the event collection becomes necessary, it

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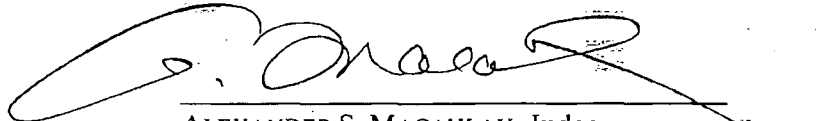
is a well established principle of law that when there is a contract providing for such, the amount of attorney's fees is governed by the contract." In the Grays case, the notes include a provision for attorney's fees and costs to the extent allowed by law.

**NOW THEREFORE**, based upon the foregoing,

**IT IS ORDERED** that the Plaintiff's motion for summary judgment is granted as to all of the Defendants counterclaims.

**IT IS FURTHER ORDERED** that this matter shall be referred to the Oconee County Master-in-Equity for further proceedings.

**AND IT IS SO ORDERED.**



ALEXANDER S. MACAULAY, Judge

December 31, 2013  
Walhalla, South Carolina

FILED OCONEE COUNTY  
BEVERLY H. WHITEFIELD  
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