

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 HOTEL & MOTEL HOLDINGS, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 BJC ENTERPRISES, LLC, ET AL.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 Civil Action No. 2009-CP-26-05743

**ORDER DENYING DEFENDANTS'
 MOTION FOR RECONSIDERATION OF
 MASTER'S ORDERS AND TO SET ASIDE
 MASTER'S DEED**

FILED
 HORRY COUNTY
 2014 MAR 17 AM 9:57
 MELANIE LUCAS
 CLERK OF COURT

This matter comes before the Court upon the Motion of Defendants BJC Enterprises, LLC ("BJC"), Wendy J. Bellamy, and Americana, Inc. seeking an Order reconsidering the previous Orders of the Master in Equity and to Set Aside the Master in Equity's Deed. Specifically, Defendants have moved the Court to reconsider and/or to set aside the Master in Equity's Report on Sale and Order of Disbursements, as well as its Order Confirming Sale. Defendants also seek to set aside the Master's Deed recorded on September 17, 2013, at Deed Book 3684 at Page 2197, in the Office of the Horry County Register of Deeds.

GA

The parties have briefed the issues presented in the Motion, and in accordance with Rule 59 of the South Carolina Rules of Civil Procedure, the Court has made its determination on the briefs of the parties without oral argument. Rule 59(f), SCRPC; see also, Pollard v. County of Florence, 314 SC 397, 444 S.E.2d 534 (Ct. App. 1994) (holding that the trial court did not commit reversible error in denying the plaintiff's motion to alter or amend the judgment without first conducting a hearing since a Rule 59(e) motion may, in the court's discretion, be determined on briefs filed by the parties without oral argument). For the reasons set forth below, the Motion for Reconsideration is DENIED.

LEGAL ANALYSIS

I. THE MASTER IN EQUITY DID NOT LACK JURISDICTION AND ACTED WITHIN THE SCOPE OF THE CIRCUIT COURT'S ORDER.

In their Motion for Reconsideration, Defendants allege that this Court lacked jurisdiction to enter the orders related to the foreclosure sale of the properties which are the subject of this case. Instead, Defendants argue that the Master in Equity only had jurisdiction to conduct the foreclosure sale of the properties and to issue a report on the sale to the circuit court. However, Defendants' assertions are contradicted by the clear language of the trial court's Order and Judgment of Foreclosure and Sale, dated September 14, 2012.

In the Order, the Honorable J. Derham Cole specifically directed the Master in Equity not only to sell the mortgaged properties at public auction but also to perform other actions necessary to complete the mortgage foreclosure and transfer of the properties. See Order and Judgment of Foreclosure and Sale, September 14, 2012. Specifically, Judge Cole ordered the Master in Equity to (1) sell the subject property at public auction [Id. at 23, ¶ 8]; (2) accept the proceeds from the sale for deed preparation, costs of recording the deed and transfer taxes on the deed [Id. at 23-24, ¶¶ 9-10]; (3) apply and disburse the sales proceeds appropriately [Id. at 24-25, ¶ 12]; (4) enter deficiency judgment without further notice of hearing if the Master in Equity determined that the sales proceeds were insufficient to pay the amounts authorized to be paid out of the sales proceeds [Id. at 24-25, ¶ 12]; (5) direct the Register of Deeds to release the Mortgage Liens being foreclosed [Id. at 25, ¶ 14]; and (6) execute a deed to the purchaser or purchasers of the property sold [Id. at 26, ¶ 17]. In his Order, Judge Cole reserved to the circuit court the power to issue Writs of Assistance, if necessary, and to have a surplus funds hearing, if surplus funds existed. [Id. at 26, ¶ 18]. However, as set forth in this Court's previous Orders, there are no surplus funds resulting from the sale.

Based on the foregoing, the Court finds that there is no factual or legal basis for Defendants' contention that the Master in Equity lacked jurisdiction to enter the orders related to the foreclosure sale and to execute the Master's deed. Moreover, it should be noted that the Master in Equity acted in accordance with the South Carolina Rules of Civil Procedure in executing the challenged Orders and deed. See Rule 71(b), SCRPC ("The master or other court officer making the sale shall execute a deed to the purchaser. . . . [T]he master or other officer conducting the sale shall file a report with the court as to the sale and the receipts and disbursements made.").

For the reasons listed above, the Master in Equity properly exercised the jurisdiction vested in this Court by virtue of the circuit court's Order, and therefore, the Court finds that Defendants' Motion for Reconsideration must be denied.

3
GA

II. THE MASTER IN EQUITY'S REPORT ON SALE AND DISBURSEMENTS ACCURATELY SETS FORTH THE JUDGMENT, INTEREST, COSTS, CREDITS AND PROCEEDS OF THE FORECLOSURE SALE.

Defendants allege in the Motion for Reconsideration that the Master in Equity's Report on Sale and Disbursements "does not accurately or adequately set forth the judgment due, interest, cost, credits and proceeds of the sale held by the Master." Motion for Reconsideration, at 3, ¶ d. However, it appears that the circuit court carefully and thoroughly considered the amount of the judgment, interest, costs, credits, and proceeds associated with the instant foreclosure during the foreclosure trial of this matter. Order and Judgment of Foreclosure, at 22, ¶¶ 3-5. Therefore, the Court finds that there is no basis for reconsideration of the Master in Equity's Orders in this regard. According to the trial court's Order, the judgment amount, interest, costs, and credits were supported by substantial evidence. As a result, Defendants have

failed to state sufficient grounds for reconsideration, and therefore, this Court finds that the Motion for Reconsideration should be denied.

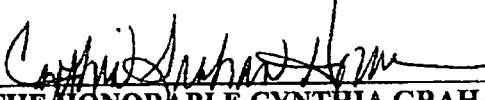
CONCLUSION

After a careful review of the briefs of the parties and the relevant case law, this Court concludes it has properly considered the Motion for Reconsideration. Defendants have failed to state grounds sufficient to warrant reconsideration and have similarly failed to demonstrate any error of law in the Orders of the Master in Equity or in the execution of the Master's Deed.

NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants' Motion for Reconsideration of the Orders of the Master in Equity and to Set Aside the Master in Equity's Deed is hereby DENIED.

AND IT IS SO ORDERED.



THE HONORABLE CYNTHIA GRAHAM HOWE
Master in Equity for Horry County

Dated this 13th day of March, 2014.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
HOTEL & MOTEL HOLDINGS, LLC,)
)
Plaintiff,)
)
vs.)
)
BJC ENTERPRISES, LLC, et al.,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2009-CP-26-05743

CERTIFICATE OF SERVICE

I, as attorney of record, hereby certify that on this 4th day of April, 2014, the following document:

- ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION OF MASTER'S ORDERS AND TO SET ASIDE MASTER'S DEED

has been served upon counsel of record, by depositing copies in the United States mail, postage prepaid and properly addressed as follows:

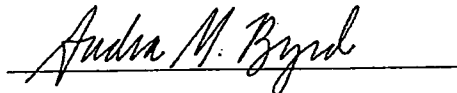
Kathryn M. Cook, Esquire
10409 N. Kings Highway
Post Office Box 4086
North Myrtle Beach, SC 29597

Louise M. Johnson, Esquire
Haynsworth Sinkler Boyd P.A.
Post Office Box 11889
Columbia, SC 29211

Susan P. MacDonald, Esquire
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 3939
Myrtle Beach, SC 29578

Scott B. Umstead, Esquire
Scott B. Umstead, PA
4226 Mayfair Street, Suite 100
Myrtle Beach, SC 29577

William W. DesChamps, Jr., Esquire
William W. DesChamps, III, Esquire
DesChamps Law Firm
1551 21st Avenue North, Suite 14
Myrtle Beach, SC 29577



Audra M. Byrd

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 HOTEL & MOTEL HOLDINGS, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 BJC ENTERPRISES, LLC, WENDY J.)
 BELLAMY, AMERICANA, INC. a/k/a)
 AMERICANA MOTEL OF MYRTLE)
 BEACH, INC., MOZINGO AND)
 WALLACE ARCHITECTS, LLC, KERSI)
 S. SHROFF, and SHROFF)
 MANAGEMENT, INC.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 Civil Action No. 2009-CP-26-05743

CLERK OF COURT
 17 SEP 17 AM 8:46
 MYRTLE BEACH, SOUTH CAROLINA

**REPORT ON SALE, ORDER OF
 DISBURSEMENTS, ORDER CONFIRMING
 SALE, AND ORDER CLOSING CASE**

[Handwritten initials]

1. Pursuant to the Orders of this Court, as well as the Orders of the Honorable J. Derham Cole, Circuit Court Judge, and after due notice and advertisement, the undersigned sold the properties, which are the subject of this action, for the total sum of \$5,500,000.00; that amount being the highest bid on the properties on Tuesday, August 5, 2013 and no subsequent bids were submitted at the upset sale held on Wednesday, September 4, 2013.

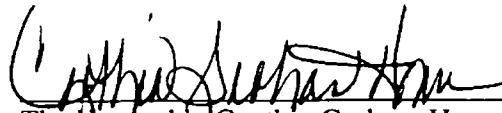
2. The undersigned has executed and delivered to Plaintiff Hotel & Motel Holdings, LLC, its successors and assigns, a good and sufficient deed to said property.

3. That I have paid out and disbursed the proceeds of said sale in accordance with the statement hereto annexed, showing the amounts expended by me and for which I hold receipts or cancelled checks:

OCT 7 2013

Amount of Plaintiff's bid	\$5,500.00.00
<u>Disbursements</u>	
Commission on Sale	\$2,500.00
TOTAL DISBURSED	\$2,500.00

4. All of the funds having been disbursed, I hereby ORDER the file closed and the case ended.


The Honorable Cynthia Graham Howe
Master -In- Equity for Horry County

 Conway, South Carolina

September 16, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 HOTEL & MOTEL HOLDINGS, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 BJC ENTERPRISES, LLC, WENDY J.)
 BELLAMY, AMERICANA, INC. a/k/a)
 AMERICANA MOTEL OF MYRTLE)
 BEACH, INC., MOZINGO AND)
 WALLACE ARCHITECTS, LLC, KERSI)
 S. SHROFF, and SHROFF)
 MANAGEMENT, INC.,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP-26-05743

CLERK OF COURT
 JESSIE WARD
 17 SEP 17 AM 8:49
 COUNTY OF HORRY

**DEFICIENCY JUDGMENT AGAINST
 DEFENDANT BJC ENTERPRISES, LLC**

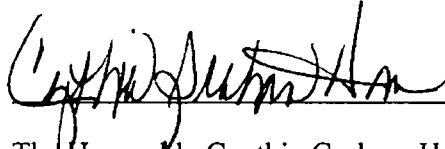
I have determined the existence of a sale of the property, which is the subject of this action, based upon the following information:

Judgment amount in Decree of Foreclosure	\$7,428,275.92
Interest on Judgment to final sale date (7.25% [or \$1475.47 per day] x 330 days)	\$486,905.10
Costs incurred – not included in decree	
a. Commission On Sale	\$2500.00
b. Advertisement	\$16,399.17
Subtotal:	\$7,934,080.19
LESS BID:	\$5,500,000.00
TOTAL DEFICIENCY JUDGMENT AMOUNT.....	\$2,434,080.19

1
 GH

IT IS THEREFORE ORDERED that Plaintiff Hotel & Motel Holdings, LLC have judgment against Defendant BJC Enterprises, LLC in the amount of \$2,434,080.19.

AND IT IS SO ORDERED.



The Honorable Cynthia Graham Howe
Master -In- Equity for Horry County

Conway, South Carolina

September 13, 2013

2
H

STATE OF SOUTH CAROL.
 COUNTY OF HORRY
 IN THE COURT OF COMMON PLEAS

JUDGMENT . CIVIL CASE

CASE NO. 2009- CP-26-05743

HOTEL & MOTEL HOLDINGS, LLC

BJC ENTERPRISES, LLC, WENDY J. BELLAMY,
 AMERICANA MOTEL OF MYRTLE BEACH, INC.,
 MOZINGO AND WALLACE ARCHITECTS, LLC, KERSI S.
 SHROFF, and SHROFF MANAGEMENT, INC.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: AUDRA M. BYRD, ESQ.	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- 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

2013 SEP 17 AM 8:46
 CLERK OF COURT
 HORRY COUNTY

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 : _____

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)
HOTEL & MOTEL HOLDINGS, LLC	BJC ENTERPRISES, LLC	\$2,434,080.19
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: Emerald Shores Motel, 400 Block North Ocean Blvd., Myrtle Beach, SC 29577, TMS#181-11-01-002 (Property 1, Parcel One) Emerald Shores Motel, 405 North Ocean Blvd., Myrtle Beach, SC 29577, TMS#181-11-01-001 (Property 2, Parcel One) Emerald Shores Motel, 405 North Ocean Blvd., Myrtle Beach, SC 29577, TMS#181-11-01-001 (Property 3, Parcel One) Parking lot between Flagg Street and North Ocean Blvd., Myrtle Beach, SC 29577, TMS#181-10-10-007 (Property 4, Parcel 1) 308 4 th Avenue North, Myrtle Beach, SC 29577, TMS#181-10-10-016 (Property 1, Parcel Two) Lot 14, Block 21 Rainbow Court Motel, 405 Flagg Street, Myrtle Beach, SC 29577, TMS#181-10-10-005 (Property 1, Parcel Three) Rainbow Court Motel, 405 Flagg Street, Myrtle Beach, SC 29577, TMS#181-10-10-005 (Property 2, Parcel Three) 406 Chester Street, Myrtle Beach, SC 29577, TMS#181-10-10-003 (Property 3) Triplex, Lot 18, Block 21 404 Chester Street, Myrtle Beach, SC 29577, TMS#181-10-10-002 (Property 4) Lot 17, Block 21 400/402 Chester Street, Myrtle Beach, SC 29577, TMS#181-10-10-001 (Property 5) Lot 16, Block 21 309 5 th Avenue North, Myrtle Beach, SC 29577, TMS#181-10-10-005 (Property 6) Lot 3, Block 21		

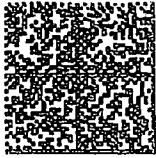
OCT 7 2013



After Five Days Return To
Melanie Huggins - Ward
Clerk of Court of Horry County
 P.O. Box 677
 Conway, South Carolina 29528-0677

**RETURN SERVICE
 REQUESTED**

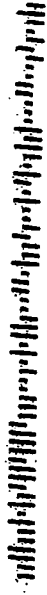
**PRE-SORTED
 FIRST CLASS**



UNITED STATES POSTAGE
 02 1M
 0004253621
 PITNEY BOWERS
\$ 00.68
 OCT 02 2013
 MAILED FROM ZIP CODE 29526

Kathryn M. Cook
 3655 S. Hwy. 17 Business
 Murrells Inlet, SC 29576
 2009-5743,11-4233

IXI-SMP 29576



STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 HOTEL & MOTEL HOLDINGS, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 BJC ENTERPRISES, LLC, WENDY J.)
 BELLAMY, AMERICANA, INC. a/k/a)
 AMERICANA MOTEL OF MYRTLE)
 BEACH, INC., MOZINGO AND)
 WALLACE ARCHITECTS, LLC, KERSI)
 S. SHROFF, and SHROFF)
 MANAGEMENT, INC.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 Civil Action No. 2009-CP-26-5743

**AMENDED ORDER DENYING MOTION
 TO RECONSIDER ORDER AND
 JUDGMENT OF FORECLOSURE AND
 SALE AND GRANTING MOTION TO
 SELL PARCELS SEPARATELY**

FILED
 Horry County
 2013 MAY 14 AM 8:26
 MELANIE HUGGINS-WARD
 CLERK OF COURT

This Court's previous Order Denying Motion to Reconsider Order and Judgment of Foreclosure and Sale and Granting Motion to Sell Parcels Separately, dated January 4, 2013, and filed with the Clerk of Court on January 7, 2013, provided for the foreclosure sale of the subject properties on January 7, 2013, at 11:00 A.M. The Order further provided that no amendment or continuance of the date and time of the foreclosure sale would be granted except by written Order of this Court or as otherwise permitted under the relevant South Carolina Appellate Court Rules.

However, on the day of the previously-ordered sale, Defendants BJC Enterprises, LLC and Americana, Inc. filed petitions with the United States Bankruptcy Court seeking protection under Chapter 7 of the United States Bankruptcy Code. Thereafter, the foreclosure sale was cancelled by the Horry County Master in Equity pursuant to the automatic stay provisions contained in the United States Bankruptcy Code.

Plaintiff Hotel and Motel Holdings, LLC sought relief from the automatic stay provision of the United States Bankruptcy Code by filing a Motion for Relief with the Bankruptcy Court. This Court has been advised by counsel for Plaintiff that the Bankruptcy Court conducted a hearing, ruled on Plaintiff's Motion, and granted the relief requested. Further, Plaintiff's counsel submitted to this Court the Orders of the Honorable David R. Duncan, Chief United States Bankruptcy Judge for the District of South Carolina in which the automatic stay relating to both Defendants were lifted by the Bankruptcy Court.

NOW THEREFORE,

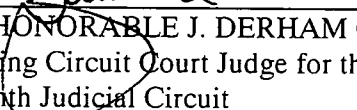
IT IS HEREBY ORDERED that the date of January 7, 2013, be deleted from the previous Order Denying Defendants' Motion for Reconsideration of Order and Judgment of Foreclosure and Sale;

IT IS FURTHER ORDERED that the date and time of June 3, 2013 at 11:00 A.M. be inserted as the new sale date and time of the previous Order, and the Horry County Master in Equity shall conduct the sale of these properties on June 3, 2013;

IT IS FURTHER ORDERED that no continuance or amendment of the date and time of the foreclosure sale, as set forth in this Order, shall be granted except by written Order of the undersigned or as permitted under the relevant South Carolina Appellate Court Rules.

IT IS FURTHER ORDERED that nothing contained herein shall affect the remaining terms of the previous Orders of this Court or the time for appeal, all of which remain unchanged.

AND IT IS SO ORDERED.



THE HONORABLE J. DERHAM COLE
Presiding Circuit Court Judge for the
Fifteenth Judicial Circuit

5/7, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 HOTEL & MOTEL HOLDINGS, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 BJC ENTERPRISES, LLC, WENDY J.)
 BELLAMY, AMERICANA, INC. a/k/a)
 AMERICANA MOTEL OF MYRTLE)
 BEACH, INC., MOZINGO AND)
 WALLACE ARCHITECTS, LLC, KERSI)
 S. SHROFF, and SHROFF)
 MANAGEMENT, INC.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 Civil Action No. 2009-CP-26-5743

FILED
 HORRY COUNTY
 2013 JAN -7 AM 8:36
 MELANIE HUGGINS
 CLERK OF COURT

**ORDER DENYING DEFENDANTS
 MOTIONS FOR RECONSIDERATION
 ORDER AND JUDGMENT OF
 FORECLOSURE AND SALE AND TO
 SELL PARCELS SEPARATELY**

This matter comes before the Court upon the Motions of Defendants BJC Enterprises, LLC (“BJC”), Americana, Inc., and Wendy J. Bellamy. In their first Motion, filed with the Horry County Clerk of Court on October 22, 2012, Defendants request this Court reconsider its previous Order and Judgment of Foreclosure and Sale, dated September 14, 2012. In their second Motion, originally filed with the Horry County Clerk of Court on November 28, 2012, and amended on December 3, 2012, Defendants seek an Order of this Court allowing the properties subject to foreclosure to be sold separately. Defendants requested a hearing on both Motions, and with the consent of all parties and counsel, a hearing was held before the Honorable J. Derham Cole, Circuit Court Judge, on January 4, 2012, in Spartanburg, South Carolina. After a careful review of the memoranda filed by all interested parties and hearing arguments of counsel, the Court denies both Motions and further orders that the foreclosure sale, previously scheduled for December 3, 2012, shall proceed on January 7, 2013 at 11:00 A.M.

In its Rule 60(a) Corrective Order, filed October 26, 2012, the Court ordered that the foreclosure sale of the subject properties proceed on December 3, 2012, at 9:30 A.M. However, the date and time of the foreclosure sale listed in the prior Order and Judgment of Foreclosure and Sale, as well as the date and time of sale, contained in the Rule 60(s) Corrective Order are hereby amended as set forth below.

NOW THEREFORE,

IT IS HEREBY ORDERED that Defendants' Motion for Reconsideration of Order and Judgment of Foreclosure and Sale is hereby denied; and

IT IS FURTHER ORDERED that Defendants' Motion and Amended Motion to Sell Parcels Separately is hereby ~~denied~~ and *granted and*;

IT IS FURTHER ORDERED that the amended date of December 3, 2012, contained in Paragraph 8 on Page 23, be deleted from the previous Order of and Judgment of Foreclosure and Sale;

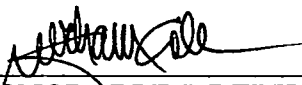
IT IS FURTHER ORDERED that the date of January 7, 2013, be inserted as the new sale date in Paragraph 8 on Page 23 of the previous Order, and the Horry County Master in Equity shall conduct the sale of these properties on January 7, 2013;

IT IS FURTHER ORDERED that the time of 9:30 A.M., contained in Paragraph 8 on Page 23, be deleted from the previous Order;

IT IS FURTHER ORDERED that the time of 11:00 A.M. be inserted as the new sale time in Paragraph 8 on Page 23 of the previous Order; and

IT IS FURTHER ORDERED that no continuance or amendment of the date and time of the foreclosure sale, as set forth in this Order, shall be granted except by written Order of the undersigned or as permitted under the relevant South Carolina Appellate Court Rules.

AND IT IS SO ORDERED.



THE HONORABLE J. DERHAM COLE
Presiding Circuit Court Judge for the
Fifteenth Judicial Circuit

January 4, 2013

Spartanburg, South Carolina

COPIES
MAILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
HOTEL & MOTEL HOLDINGS, LLC,)
)
Plaintiff,)
)
vs.)
)
BJC ENTERPRISES, LLC, WENDY J.)
BELLAMY, AMERICANA, INC. a/k/a)
AMERICANA MOTEL OF MYRTLE)
BEACH, INC., MOZINGO AND)
WALLACE ARCHITECTS, LLC, KERSI)
S. SHROFF, and SHROFF)
MANAGEMENT, INC.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2009-CP-26-5743

**RULE 60(A) CORRECTIVE ORDER
REGARDING DATE OF FORECLOSURE
SALE**

FILED
HORRY COUNTY
2012 OCT 26 PM 1:58
MELANIE HUGGINS-WARD
CLERK OF COURT

This Court's previous Order of and Judgment of Foreclosure and Sale, dated September 14, 2012, provided for the foreclosure sale of the subject properties on October 1, 2012, at 9:30 A.M. (Order at p. 23, ¶ 8). However, the date listed was a clerical mistake, given the advertising requirements of three weeks and timing of the Order. Therefore, pursuant to Rule 60(a) of the South Carolina Rules of Civil Procedure, this Court hereby enters this Corrective Order to address the mistake.

Rule 60(a) provides in relevant part: "Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders."

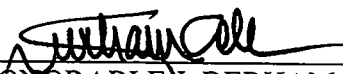
NOW THEREFORE,

IT IS HEREBY ORDERED that the date of October 1, 2012, contained in Paragraph 8 on Page 23, be deleted from the previous Order of and Judgment of Foreclosure and Sale;

IT IS FURTHER ORDERED that the date of December 3, 2012, be inserted as the new sale date in Paragraph 8 on Page 23 of the previous Order; and

IT IS FURTHER ORDERED that nothing contained herein shall affect the remaining terms of the previous Order or the time for appeal, all of which remain unchanged.

AND IT IS SO ORDERED.



THE HONORABLE J. DERHAM COLE
Presiding Circuit Court Judge for the
Fifteenth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 HOTEL & MOTEL HOLDINGS, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 BJC ENTERPRISES, LLC, WENDY J.)
 BELLAMY, AMERICANA INC., a/k/a)
 AMERICANA MOTEL OF MYRTLE)
 BEACH, INC., MOZINGO + WALLACE)
 ARCHITECTS, LLC, KERSI S. SHROFF,)
 and SHROFF MANAGEMENT, INC.)
)
 Defendants.)
)
)
)

IN THE COURT OF COMMON PLEAS
 Civil Action No. 2009-CP-26-05743

**ORDER AND JUDGMENT OF
 FORECLOSURE AND SALE**

(NON-JURY MORTGAGE FORECLOSURE)

DEFICIENCY REQUESTED

FILED
 HORRY COUNTY
 12 OCT -9 AM 8:59
 MELANIE HUGGINS-WARD
 CLERK OF COURT

APPEARING PARTIES:

Audra M. Byrd, Esquire of Turner, Padgett, Graham and Laney, P.A., Attorney for Hotel & Motel Holdings, LLC, as Plaintiff and as Assignee of mortgage interests formally held by First Palmetto Savings Bank; William H. Short, Jr., Esquire of Haynsworth, Sinkler, Boyd, P.A., Attorney for First Palmetto Savings Bank; Kathryn M. Cook, Esquire of Cook & Roy, LLC, Attorney for BCJ Enterprises, LLC, Americana, Inc., also known as Americana Motel of Myrtle Beach, Inc., and Wendy J. Bellamy; and J. Christopher Clark, Esquire of Nelson Mullins Riley & Scarborough, LLP, Attorney for Kersi S. Shroff and Shroff Management, Inc.

The Honorable J. Derham Cole, Circuit Court Judge, held a bench trial of the three foreclosure claims in this action on July 23 – 26, 2012, at the Horry County Court of Common Pleas in Conway, South Carolina. A bench trial of the foreclosure claims was held pursuant to numerous orders including, *inter alia*, the Order Granting Motion to Strike Jury Trial Request filed with the Clerk of Court on September 29, 2011, the Order of the Honorable G. Edward

Welmaker filed with the Clerk of Court on May 29, 2012, the Order of the South Carolina Court of Appeals Denying Appellants' Petition for Writ of Supersedeas dated June 1, 2012, and the Order of the United States Bankruptcy Court Granting Hotel & Motel Holdings, LLC's Motion for Relief from Automatic Stay dated February 7, 2012. After due notice in each instance, this Court has held numerous hearings in the above matter, and Plaintiff and Defendants' attorneys of record, along with other counsel attended these hearings.

Present and participating in the bench trial of the three foreclosure claims in this action were Plaintiff Hotel & Motel Holdings, LLC ("H & M") through its representative, Donald Godwin, Audra M. Byrd, attorney for H & M, as well as Defendants Wendy J. Bellamy, Americana, Inc. and BJC Enterprises, LLC, through their representatives, Wendy J. Bellamy and Harvey L. Jones, all represented by attorney Kathryn M. Cook. During the trial of this case, the Court heard testimony from numerous witnesses including: Brent Hutto, Donald Godwin, John K. DuBose, III, Esquire, Harvey L. Jones, Wendy J. Bellamy, Kersi S. Shroff, Samuel Small, Sr., Edward Farmer, Robert Wilder, and Bhupendra Patel. In addition to these witnesses, the Court received excerpts from the depositions of Jack Jones and Samuel Small, Jr., Esquire. The Court also considered a significant amount of documentary evidence from the parties.

From the testimony, pleadings, evidence and inferences therefrom, the Court finds, concludes, and orders as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Parties, Jurisdiction, Venue and Relevant Procedural History

1. The Lis Pendens in this action was filed in the Office of the Clerk of Court for Horry County on June 4, 2009. An Amended Lis Pendens was filed in the Office of the Clerk of Court for Horry County on June 11, 2009.

2. The Summons and Complaint were filed in the Office of the Clerk of Court for Horry County on June 11, 2009, and designated as Civil Action Number 2009-CP-26-05743 in the Court of Common Pleas. Service was made upon Defendants named in this action as is shown by the proofs of service filed herein.
3. The properties which are the subject of this foreclosure action are located in the County of Horry, State of South Carolina. Therefore, venue is proper in this Court pursuant to S.C. Code Ann. § 15-7-10(3).
4. H & M is a limited liability company organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in the County of Horry.
5. Defendant BJC Enterprises, LLC ("BJC") is a limited liability company organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in the County of Horry.
6. Defendant Americana, Inc., also known as Americana Motel of Myrtle Beach, Inc. ("Americana"), is a corporation incorporated in and existing pursuant to the laws of the State of South Carolina with its principal place of business in the County of Horry.
7. Defendant Wendy J. Bellamy ("Bellamy") is a citizen and resident of the State of South Carolina, County of Horry.
8. The following Defendants were named in the Complaint in that they had or may have claimed a lien on the subject real properties:
 - a. Defendant Mazingo + Wallace Architects, LLC is a limited liability company organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in the County of Horry.

- b. Defendant Kersi S. Shroff is a citizen and resident of the State of South Carolina, County of Horry.
 - c. Defendant Shroff Management, Inc. is a corporation incorporated in and existing pursuant to the laws of the State of South Carolina with its principal place of business in the County of Horry.
9. Each Defendant submitted an Answer to the Summons and Complaint.
10. On or about June 30, 2009, H & M purchased the BJC loan documents from First Palmetto Savings Bank, F.S.B. ("First Palmetto"), including the Notes and Mortgages which are the subject of this action. After its purchase of the loan documents, H & M filed a Motion with this Court seeking an Order allowing its substitution as Plaintiff. The Court granted the Motion, and H & M was substituted as Plaintiff herein. The Amended Summons and Complaint (which were attached to and filed with the Motion) were served on all Defendants in accordance with applicable law.
11. All Defendants have filed Answers to the Amended Summons and Complaint in this action.
12. All Defendants were notified of the time, date, and place of the bench trial of the foreclosure claims in this matter as required by law.
13. No Defendant is in the military service of the United States of America, as contemplated under the Soldiers' & Sailors' Civil Relief Act of 1940, and any amendments thereto.

The Loan Documents

14. For value received, BJC, by and through its authorized agent and managing member, made, executed and delivered a Promissory Note dated on or about January 14, 2005, promising thereby to pay to the order of First Palmetto, its successors and assigns, the

principal amount of \$5,580,000.00, with interest at the rate of 5.500% per annum (“the 2005 Note”). Other terms and conditions are stated in the 2005 Note, which is of record herein.

15. To secure repayment of the Note, BJC, by and through its authorized agent and managing member, made, executed and delivered to First Palmetto, its successors and assigns, a Mortgage, which was filed with Horry County Register of Deeds in Mortgage Book 3904 at page 0008 (“the BJC Mortgage”). The BJC Mortgage constitutes first priority mortgage lien and a purchase money mortgage on the real property described in the BJC Mortgage.
16. BJC used the \$5,580,000.00 proceeds received from the loan reflected in the 2005 Note to purchase real estate, namely the Real Property described in Exhibit A to the BJC Mortgage, located in Myrtle Beach, South Carolina.
17. To further secure repayment of the 2005 Note, Americana, by and through its authorized agent and President, made, executed and delivered to First Palmetto, its successors and assigns, a Mortgage, which was filed with Horry County Register of Deeds in Mortgage Book 3904 at page 0028 (“the Americana Mortgage”). The property described in the Americana Mortgage was hypothecated and pledged by Americana as security for First Palmetto’s making, renewing or extending a loan or loans to BJC. The Americana Mortgage constitutes a first priority mortgage lien on the real property described in the Americana Mortgage.
18. To further secure repayment of the 2005 Note, Wendy J. Bellamy made, executed and delivered to First Palmetto, its successors and assigns, a Mortgage, which was filed with Horry County Register of Deeds in Mortgage Book 3904 at page 0020 (“the Bellamy

Mortgage"). The property described in the Bellamy Mortgage was hypothecated and pledged by Defendant Wendy J. Bellamy as security for First Palmetto's making, renewing or extending loans to BJC. The Bellamy Mortgage constitutes a first priority mortgage lien on the real property described in the Bellamy Mortgage.

19. In or about September of 2009, certain property described in the Bellamy Mortgage (Lot 15, Block 21, Tax Map Number: 181-10-10-016) was damaged by fire. As a result of the fire, Johnson & Johnson, Inc., the property insurance provider, issued a check payable to Wendy J. Bellamy and First Palmetto in the amount of \$94,781.14. Defendant Bellamy and First Palmetto endorsed the check, and the proceeds were deposited into an Interest on Lawyers' Trust Account held by the law firm of Haynsworth, Sinkler, Boyd, P.A, as counsel for First Palmetto. The proceeds constitute additional collateral under the terms of the Bellamy Mortgage and may be applied against the principal amount owed by BJC.
20. As additional collateral for the 2005 Note, The Henry C. Coan, Jr. Marital Trust pledged a Certificate of Deposit in the amount of \$500,000.00 to the order of First Palmetto, its successors and assigns. The pledge agreement is of record in this action. Additionally, The Henry C. Coan, Jr. Marital Trust executed a Commercial Security Agreement, which is also of record in this action. The Commercial Security Agreement provides, *inter alia*, that in the event of default by BJC, collection of the indebtedness may be had through the application of the proceeds of the Certificate of Deposit against the obligation owed by BJC.
21. Under the terms of the 2005 Note, BJC was to make twenty-three monthly interest payments and a final balloon payment of \$5,606,065.48 due on January 14, 2007.

22. Prior to the maturity date, BJC renewed its loan with First Palmetto in January of 2007. For value received, BJC executed and delivered a Renewal Note (Account No. 75-084095-9) dated January 12, 2007 ("2007 Note"), promising thereby to pay to the order of First Palmetto the sum of \$5,573,146.62, bearing interest from that date at the rate of 8.250% per annum. Other terms and conditions are stated in the 2007 Note, which is of record herein. Under the renewal, BJC was required to make eleven monthly interest payments, with a balloon payment of \$5,612,196.82 due on January 12, 2008.
23. In January of 2008, First Palmetto renewed the BJC loan. For value received, BJC executed and delivered a Renewal Note (Account No. 75-084095-9) dated January 17, 2008 ("2008 Note"), promising thereby to pay to the order of First Palmetto the sum of \$5,573,146.62, bearing interest from that date at the rate of 8.250% per annum.¹ Other terms and conditions are stated in the 2008 Note, which is of record herein. Under the final renewal, BJC was required to make eleven monthly payments of principal and interest, with a balloon payment of \$5,509,352.46 due on January 17, 2009.
24. During 2008, BJC was consistently late on its monthly loan payments to First Palmetto, and BJC eventually stopped making any payments whatsoever to First Palmetto in October of 2008.
25. The members of BJC, the guarantors of the BJC loan, and First Palmetto had one or more meetings at the end of 2008, and First Palmetto indicated that it was not willing to renew the BJC loan for another term unless BJC could come up with a plan for repayment. When the 2008 Note came due in January of 2009, BJC did not make the balloon payment, and First Palmetto filed a foreclosure action on February 2, 2009.

¹ Account Number 75-073840-1 is listed at the top of the 2008 Note; however, the correct renewal number is listed at the bottom of the 2008 Note (Account Number 75-084095-9).

26. Thereafter, BJC was able to negotiate with First Palmetto for additional time. First Palmetto extended the loan maturity date until May 31, 2009, and dismissed the foreclosure action after BJC made a \$95,000.00 payment to First Palmetto on February 3, 2009, and paid the past due property taxes. However, that was last payment BJC ever made on its loan. When BJC failed to make the balloon payment on May 31, 2009, First Palmetto filed the present foreclosure action.

The Loan Sale to H & M

27. After present action was filed, H & M was formed on June 15, 2009 when its Articles of Organization were filed with the Office of the South Carolina Secretary of State.
28. Pursuant to a Loan Sale Agreement dated June 24, 2009, and an Addendum to the Loan Sale Agreement dated June 30, 2009, H & M purchased and First Palmetto sold, transferred and assigned to H & M the BJC Loan Documents, including the Notes, Security Agreements, Mortgages, and other related rights described therein.
29. Pursuant to a Loan Sale Agreement and the Addendum to the Loan Sale Agreement, along with the actions taken thereunder, H & M is now the holder of the BJC Notes and the Mortgages of BJC, Americana and Bellamy.
30. Pursuant to the Loan Sale Agreement and the Addendum to the Loan Sale Agreement, along with the actions taken thereunder, H & M was assigned all rights of First Palmetto in the present action, which was pending in the Horry County Court of Common Pleas Civil Action Number 2009-CP-26-05743. On September 11, 2009, H & M was formally substituted as Plaintiff in this foreclosure action.
31. H & M is the owner and holder of the Notes and security instruments securing the same including the Note and Mortgages subject to this action by virtue of an Assignment of

Mortgage dated June 30, 2009, and recorded on June 30, 2009, in the Horry County Register of Deeds Office in Mortgage Book 5183 at Page 3147 and in Deed Book 3408 at Page 300, copies of which are of record in this action.

32. H & M is the owner and holder of the Note and security instruments securing same including the Note and Mortgages subject to this action by virtue of an Assignment of Mortgage dated June 30, 2009, in the Horry County Register of Deeds Office in Mortgage Book 5183 at Page 3149 and Deed Book 3408 at Page 302, copies of which are of record in this action.
33. H & M is the owner and holder of the Notes and security instruments securing same including the Note and Mortgages subject to this action by virtue of that Assignment of Mortgage dated June 30, 2009 and recorded on June 30, 2009 in the Horry County Register of Deeds Office in Mortgage Book 5183 at Page 3151 and Deed Book 3408 at Page 304, copies of which are of record in this action.
34. Since acquiring the First Palmetto loan, H & M, through counsel, has maintained and continued to prosecute the First Palmetto foreclosure action.
35. Plaintiff is seeking foreclosure of the BJC Mortgage, the Americana Mortgage and the Bellamy Mortgage. Plaintiff has also requested a deficiency judgment against BJC in the event the properties are sold at less than the indebtedness, as well as the costs and fees of this action at the time of sale.
36. According to the terms and conditions of the 2008 Note, the Security Agreement, the Pledge Agreement and the Mortgages, in the event of default, the entire principal and accrued interest shall become due and payable in accordance with the terms of the 2008 Note, Security Agreements and Mortgages. These documents further provide that if the

same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, would be secured by the 2008 Note, Security Agreements and Mortgages as a part of the debt secured thereby.

37. Under the terms and conditions of the Mortgages, it is provided that together with and in addition to the monthly payments of principal and interest payable under the terms of the 2008 Note secured thereby, the mortgagors will pay, each month until the 2008 Note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.
38. Further, under the terms and conditions of the Mortgages, it was agreed that the Mortgagors would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if the Mortgagors failed to do so, the Mortgagee, or its assign, might pay the same, which amount, together with interest thereon, would be secured by the Mortgages.
39. H & M, through its managing member, Donald Godwin, testified that H & M paid property taxes in 2010 for the mortgaged properties in the amount of \$2629.72. In 2011, H & M paid property taxes in the amount of \$75,626.70. Further, H & M has paid insurance for the subject properties in the amount of \$35,991.94. In total, H & M has incurred costs of \$114,247.36 for insurance and taxes due on the mortgaged properties.
40. According to the terms of the Mortgages and the Assignments of Leases and Rents made, executed and delivered by BJC, Americana and Bellamy, and as additional security, the Mortgagors assigned all rents, issues and profits of the mortgaged premises from and after any default thereunder. The Mortgages and Assignments of Leases and Rents further provide that in the event legal proceedings are instituted pursuant to the

Mortgages or Security Agreements, the mortgagees, or its successors or assigns, would have a right to have a receiver appointed to collect the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by the Mortgages and Security Agreements. A receiver has been appointed for the properties by Order filed with the Clerk of Court on April 20, 2010.

41. The Honorable Steven H. John has scheduled a hearing to determine the reasonable fees of the Receiver, including the Receiver's reasonable attorney's fees and costs incurred in taking control of and managing the mortgaged properties. This hearing is set for September 5, 2012.

Default and Notice of Default

42. As noted above, BJC has defaulted in the payment of the 2008 Note by failing to pay First Palmetto, upon demand, and, thereafter, has also failed to pay H & M, who is the assignee, the principal, interest and other charges due upon BJC's default. In addition, the 2008 Note matured, at the latest on May 31, 2009, pursuant to any forbearance agreements between First Palmetto and BJC, such that all amounts due specified under the 2008 Note were immediately due and payable on May 31, 2009. Therefore, the 2008 Note is in default and First Palmetto and H & M have declared the entire balance of the principal, interest and charges upon default to be immediately due and payable.
43. John K. DuBose, III, Esquire of Robinson-DuBose, P.C. testified during the trial of this case that his law firm, on two occasions, provided BJC, Americana, and Bellamy, with written notice of the default, although the loan documents do not require that notice be sent. Moreover, the evidence at trial establishes that at a minimum, Edward Farmer, the

Certified Public Accountant for BJC, and Kersi S. Shroff, a member of BJC, received copies of the default letters sent.

44. First Palmetto and later H & M, as a result of the defaults under the 2008 Note and Mortgages of BJC, Americana and Bellamy, retained the law firms of DuBose-Robinson, P.C. of Camden, South Carolina and Turner Padgett Graham & Laney, P.A. of Myrtle Beach, South Carolina to perform legal services in recovering the indebtedness and otherwise proceeding to try to collect on the indebtedness and subject real properties. As a result, H & M and First Palmetto have incurred reasonable collection costs and expenses, including attorneys' fees, for the attempted collection and enforcement of payment of these obligations.

Priority of the Liens of H & M

45. As previously stated, the BJC Mortgage constitutes a first priority mortgage and a purchase money mortgage on the real property described in the BJC Mortgage. The Americana Mortgage constitutes a first priority mortgage on the real property described in the Americana Mortgage. The Bellamy Mortgage constitutes a first priority mortgage on the real property described in the Bellamy Mortgage.
46. The following persons and entities are included as Defendants in this action, as a result of some purported inclusion of said persons or entities in the title record, and as a result of said Defendants purporting to have liens as of June 11, 2009, as to the subject real properties. H & M has requested the Court take judicial notice of the public records of Horry County, with particular emphasis on those records contained in the Office(s) of the Register of Deeds and Clerk of Court, which the Court has done. Certified copies of

these documents were also provided to the Court during the trial of this matter. As a result the Court finds as to each additional Defendant as follows:

- a. Defendant Mozingo + Wallace, LLC is named as a Defendant by virtue of Civil Action No. 2009-CP-26-3186 seeking to foreclose a Mechanic's Lien against the subject properties. The Mechanic's Lien, if applicable, is junior and subsequent to H & M's mortgage lien.
- b. Defendant Kersi S. Shroff and Defendant Shroff Management, Inc. are named as Defendants herein by virtue of those Lis Pendens filed with the Clerk of Court for Horry County on May 19, 2009 as Civil Action Number 2009-LP-26-2279 and 2009-LP-26-2280. The basis for these Lis Pendens is not to challenge the title to the real property and is, instead, to challenge the ownership interest in BJC.
- c. Defendants Kersi S. Shroff and Shroff Management, Inc. have also filed the following Lis Pendens with the Clerk of Court for Horry County, which are of record but have expired and were renewed as Lis Pendens 2009-LP-26-2279 and 2009-LP-26-2280:

1. 2009-LP-26-0575
2. 2009-LP-26-1040
3. 2009-LP-26-1586
4. 2009-LP-26-1587
5. 2009-LP-26-1966
6. 2009-LP-26-1965

Any Lis Pendens or liens of Defendants Kersi S. Shroff and Shroff Management, Inc. are junior and subsequent to H & M's mortgage liens.

47. The liens, Lis Pendens or judgments of the above-named Defendants are junior and inferior to H & M's lien and will be extinguished by this Order and subsequent sales. The priority of those liens as to any surplus funds, if any exist, will be determined at a subsequent date.

The Defenses of BJC, Americana, and Bellamy

48. Defendants BJC, Americana, and Bellamy have asserted various affirmative defenses to the foreclosure claims of H & M, including the following: (1) Lack of Holder in Due Course; (2) Lack of Consideration; (3) Fraud in the Procurement; (4) Lack of Notice; (5) Failure of Conditions Precedent; (6) Lack of Damages; (7) Impossibility; (8) Waiver; (9) Estoppel; and (10) Unclean Hands. Each defense is addressed separately below.

a. Lack of Holder in Due Course

As their first defense, Defendants assert that H & M is not a holder in due course. However, lack of holder in due course is not a defense, and the burden of establishing holder in due course status does not arise until a defense is shown to exist. S.C. Code Ann. § 36-3-305. Thereafter, if Defendants establish a defense, the burden shifts to H & M to prove its status as a holder in due course. However, as set forth below, Defendants have failed to establish a viable defense, and therefore, H & M's status as a holder in due course is not an issue in this case.

b. Lack of Consideration

Defendants assert that the assignment of the BJC loan documents from First Palmetto to H & M was without consideration. This assertion is without any factual basis, and the evidence in this case establishes the contrary is true. The Loan Sale Agreement between the parties provides for payment of \$5,000,000.00

by H & M to First Palmetto. There is no dispute that \$2,000,000.00 has been paid to First Palmetto, and H & M is obligated to pay \$4,000,000.00 to First Palmetto upon the maturity of its Note in June of 2014. Therefore, the assignment is not without consideration, and this defense fails.

c. Fraud in the Procurement

Defendants assert that H & M and First Palmetto “participated in fraud extracting the Guaranty from Defendant Bellamy in 2008 for the 2005 debt and in procuring the assignment of the loan, Note, Mortgages, Guaranties, and security interests to Plaintiff in 2009.” Amended Answer, at p. 10, ¶ 49. In order to establish a defense of fraud in the inducement to enter into a contract, Defendants must prove:

- (1) a representation;
- (2) its falsity;
- (3) its materiality;
- (4) knowledge of its falsity or reckless disregard of its truth or 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; and
- (9) the hearer's consequent and proximate injury.

Darby v. Waterboggan, 288 S.C. 579, 344 S.E.2d 153 (Ct. App. 1986).

“Fraud cannot be presumed; it must be proved by clear, cogent, and convincing evidence.” Foxfire Village, Inc. v. Black & Veatch, Inc., 304 S.C.

366, 374, 404 S.E.2d 912, 917 (Ct. App. 1991). The failure to prove any one of these elements is fatal to the defense. Darby, 288 S.C. at 584, 344 S.E.2d at 155.

As an initial matter, Defendants have failed to allege a misrepresentation by H & M or Defendants' reliance thereupon. In addition, the evidence clearly establishes that Defendant Bellamy was required to sign a personal guaranty in 2005 and 2007. More importantly, the personal guaranty is not an issue in this foreclosure action. Finally, H & M was not formed in January of 2008 when the personal guaranty was executed. H & M was not formed until June of 2009. Therefore, H & M could not have participated in the alleged fraudulent procurement of the personal guaranty.

With regard to the assignment of the BJC loan documents, Defendants have presented no evidence that these documents were fraudulently procured. Defendants have similarly failed to establish any misrepresentation by H & M or First Palmetto or their reliance thereon. More importantly, the Loan Sale Agreement was executed *after* the default of BJC and the filing of the present foreclosure action. Therefore, it is clear that Defendants have not sustained any damage or injury as a result of this assignment. As such, this defense is without merit.

d. Lack of Notice

Defendants assert that H & M failed to give proper notice and opportunity to cure prior to bringing the present foreclosure action. Nonetheless, the evidence in this case clearly demonstrates that BJC was provided adequate notice of its default. The testimony in this case establishes that the various members of BJC

met with First Palmetto on numerous occasions in 2008 and 2009 regarding the defaults of BJC under the terms of the loan documents. On at least two occasions, First Palmetto, through its counsel, the law firm of Robinson-DuBose, P.C., provided Defendants BJC, Americana, and Bellamy, with written notice of the defaults, although the loan documents do not require that notice be sent. Moreover, the evidence at trial establishes that at a minimum, Edward Farmer, the Certified Public Accountant for BJC, and Kersi S. Shroff, a member of BJC, received copies of the default letters sent.

In addition, First Palmetto instituted a foreclosure action in February of 2009, in which First Palmetto clearly outlined the various defaults of BJC. Finally, Defendant Bellamy testified during the trial of this matter that she was orally notified, prior to the filing of this action, by an official of First Palmetto that the present foreclosure suit would be filed because of the defaults of BJC. Thus, the contention that BJC was without notice of its default is wholly without merit. Based on the foregoing, BJC was provided notice of its default and an adequate opportunity to cure, but it failed to do so.

e. Failure of Conditions Precedent

In their Answer, Defendants allege generally that H & M failed to meet the conditions precedent required before bringing this foreclosure action. However, Defendants do not point to any specific conditions, and at trial, no evidence of this defense was presented to the Court. In fact, a review of the loan documents at issue in this matter reveals that no conditions precedent exist under

the terms of the Note, Mortgages or other loan documents. As such, this defense also fails.

f. Lack of Damages

In their Answer, Defendants allege that H & M has not suffered any damages. The Court finds this defense to be meritless as H & M has clearly suffered damages as a result of Defendants' failure to make payment as required under the terms of its loan agreement.

g. Impossibility

Defendants assert that H & M has interfered with the business of BJC, physically taken over the mortgaged properties, and confiscated the revenues, thereby preventing Defendants from making the loan payments to First Palmetto.

To state a viable defense based upon impossibility, Defendants must establish that they were unable to perform their obligations under the loan documents because their performance was rendered impossible by an act of God, the law, or by a third party. Hawkins v. Greenwood Development Corp., 328 S.C. 585, 593, 493 S.E.2d 875, 879 (Ct. App. 1997) (citing Moon v. Jordan, 301 S.C. 161, 164, 390 S.E.2d 488, 490 (Ct. App. 1990)). Impossibility must be more than a mere inconvenience. Id. "A party to a contract cannot be excused from performance on the theory of impossibility of performance unless it is made to appear that the thing to be done cannot by any means be accomplished, for if it is only improbable or out of the power of the obligor, it is not deemed in law impossible." Id. (quoting 17A Am.Jur.2d Contracts § 673, at 681 (1991)). Defendants have the burden of proving the defense of impossibility. Id.

In this case, the evidence establishes that H & M was not formed until after the present foreclosure action was filed and could not have interfered with BJC's operations prior to its formation. Moreover, the Court-appointed Receiver has been in control of the properties since his appointment in 2010. Finally, the testimony at trial and the documents admitted as evidence in this case establish that BJC could not make the mortgage payments using the revenues from the motel operations at any time. Therefore, no alleged interference by H & M or any other party made it impossible for BJC to perform under the terms of the loan documents. Quite simply, even if Defendants could establish interference in their operations of the properties by H & M, which they have not, the defense of impossibility would still have no application in these circumstances. There is no evidence to suggest that H & M or any other party made it impossible for BJC or its members to pay the debt owed.

h. Waiver

Defendants further assert waiver as an affirmative defense in their Answer. "A waiver is a voluntary and intentional abandonment or relinquishment of a known right." Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992). Waiver is an affirmative defense, and the burden of proof is upon the party who asserts it. Frady v. Smith, 247 S.C. 353, 147 S.E.2d 412 (1966).

While Defendants allege generally that H & M waived its right to recover, Defendants do not point to any specific conduct which would constitute a waiver.

In fact, the evidence presented at trial establishes that H & M has clearly not waived its right to foreclose. As such, this defense fails.

i. Estoppel

In their Answer, Defendants allege generally that H & M is estopped from seeking to foreclose the mortgages which are the subject of this action. Under South Carolina law, the essential elements of estoppel are divided between the estopped party and the party claiming estoppel. Southern Dev. Land and Golf Co. v. South Carolina Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2d 748 (1993).

As to the estopped party, the essential elements are:

- (1) conduct amounting to a false representation or concealment of material facts, or conduct calculated to convey the impression that the facts are otherwise than, and inconsistent with, the party's subsequent assertions;
- (2) intention or expectation that such conduct be acted upon by the other party; and
- (3) actual or constructive knowledge of the real facts.

As to the party claiming estoppel, the essential elements are:

- (1) lack of knowledge or the means of acquiring, with reasonable diligence, knowledge of the true facts;
- (2) reasonable reliance on the other party's conduct; and
- (3) a prejudicial change in position.

Id.

Here, Defendants have failed to present any evidence of the elements necessary to establish estoppel. Specifically, Defendants have failed to establish a false representation or concealment of material fact by H & M or First Palmetto,

Defendants' reasonable reliance or a prejudicial change in position by Defendants. Therefore, their estoppel defense fails.

j. Unclean Hands

As their final defense, Defendants allege that the present foreclosure claims are barred because H & M comes to the Court with unclean hands. To establish the defense of unclean hands, Defendants must establish inequitable conduct by H & M, related directly to the subject matter of the litigation, which causes them prejudice or injury. Provident Life and Acc. Ins. Co. v. Driver, 317 S.C. 471, 451 S.E.2d 924 (Ct. App. 1994).

While Defendants have generally alleged that H & M has unclean hands, Defendants do not allege any conduct by H & M which would support such a defense. The conduct complained of by Defendants relates to actions and events that occurred after the loan documents were executed and after Defendants were in default. Moreover, the alleged misconduct relating to the assignment of the BJC loan is specifically authorized by the terms of the loan documents. Defendants have failed to meet their burden of proof as to this defense. Therefore, the unclean hands defense is not applicable in this case.

ORDER OF FORECLOSURE AND FINAL CONCLUSIONS OF LAW

Based upon the foregoing, the Court concludes, as follows:

1. BJC Enterprises, LLC has not made payments when due under the 2008 Note, and it is, therefore in default. The full amount of principal, interest and advances due under the 2008 Note, as of the first date of the trial of this matter, was \$6,754,683.04.

2. H & M is entitled to attorneys' fees in the amount of \$395,115.44 and legal costs in the amount of \$13,483.15 under the terms of the Mortgages and the 2008 Note.
3. The amount due on the Note, with costs, expenses and attorneys' fees is as follows:

Principal	\$5,029,708.41
Accrued Interest through July 23, 2012	\$1,456,652.60
Late Charges	\$268,322.03
Attorney's Fees	
DuBose-Robinson, P.C.	\$13,872.84
Turner Padgett Graham & Laney, P.A.	\$381,242.60
Costs and Expenses of Suit	\$13,483.15
Costs of H & M for Taxes and Insurance	\$114,247.36
Credit for Fire Insurance Proceeds Check	-\$94,781.14
TOTAL JUDGMENT	\$7,182,747.85

4. There is due to H & M on the 2008 Note, Mortgages and Security Agreements set forth in the Complaint the sum of \$7,182,747.85, representing the "Total Judgment Debt" due Plaintiff as set forth in Paragraph 3, supra, together with interest at the rate provided in the 2008 Note, reflected in the combined per diem of \$1152.64, on the balance of principal from the first date of the trial of this matter to the date of the entry of this judgment. Judgment for that amount should be immediately entered against Defendants BJC Enterprises, LLC, Americana, Inc., and Wendy J. Bellamy.
5. The amount due in the preceding paragraph (the "Total Judgment Debt", as set forth in paragraph 4 supra, and later accrued interest on the principal) shall constitute the Total Judgment Debt due to H & M and shall bear interest hereafter at the judgment rate of interest.

6. The obligors, including the Defendant BJC Enterprises, LLC, Americana, Inc. and Wendy J. Bellamy, liable on the indebtedness for the aforesaid Mortgage and Security Agreements debt, shall, on or before the date of sale of the property hereinafter described, pay to Plaintiff or Plaintiff's attorney the amount of Plaintiff's total judgment debt as foresaid, together with the costs and disbursements of this action.
7. H & M is seeking a foreclosure of its mortgages and has not waived its rights to a deficiency judgment.
8. That on default of payment at or before the time herein indicated, the mortgaged premises described as hereinafter set forth, shall be sold by the Horry County Master In Equity, at public auction, on the regular date of judicial sale at the Horry County Judicial Center, in the City of Conway, Horry County, State of South Carolina on October 1, 2012, at 9:30 A.M. (and should the regular day of judicial sale fall on a legal holiday, then and in such event, the sales day shall be on Monday next succeeding such holiday), on the following terms, that is to say:
 9. FOR CASH: The Master In Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent), the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days same to be forfeited and applied to the costs and Plaintiff's debt.
 - a. The sale shall be subject to taxes and assessments, to existing easements and restrictions, and to any other senior encumbrances.

- b. Purchaser to pay for any statutory commission to the Master In Equity due for the sale, deed preparation, all costs of recording the deed and all transfer taxes on the deed.
 - c. 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 re-advertised and sold at some convenient sales day thereafter when the Plaintiff or the Plaintiff's attorney or agent is present.
10. If Plaintiff is the successful bidder at the sale for a sum not exceeding the amount of costs, disbursements, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master In Equity only the amount of the costs, disbursements and expenses, crediting the balance of the bid on Plaintiff's indebtedness.
11. That the 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. 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 thirty (30) days after the date of the sale, then the Master In Equity may advertise the premises for sale on the next or some other subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured.
12. The Master In Equity shall apply the proceeds of the sale as follows:
- FIRST: To payment of the amount of the costs and expenses of this action, including any 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 or so much thereof as the purchaser's money will pay on the same; if the proceeds of sale be insufficient to pay the amounts hereinbefore authorized to be paid out of said proceeds, the parties hereto entitled to such deficiency have monetary judgment therefore against BJC Enterprises, LLC and any guarantors against whom judgment was previously obtained, pursuant to S.C. Code Ann. Section 29-3-660 (1976, as amended) and such judgment will be entered without further notice or hearing.

NEXT: Any surplus will be held pending the further Order of this Court.

13. In addition to all parties deemed by law to have received constructive notice of this action, Defendants named herein, and all persons whomsoever claiming under them, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold or any part thereof.
14. The Master in Equity shall direct the Register of Deeds to release of record the Mortgage liens being foreclosed after the Order Confirming Sale and Disbursements has been executed and filed, which Mortgage liens are described as follows:
 - a. Mortgage of Real Estate mortgage from BJC Enterprises, LLC dated January 14, 2005, of record in the RMC Office/Clerk of Courts Office for Horry County in Mortgage Book 3904 beginning at Page 0008 and recorded on January 19, 2005.
 - b. Mortgage of Real Estate from Wendy J. Bellamy dated January 14, 2005, now of record in the RMC Office/Clerk of Courts Office for Horry County in Mortgage Book 3904 beginning at Page 0020 recorded on January 19, 2005.
 - c. Mortgage of Real Estate from Americana Motel of Myrtle Beach, Inc., a/k/a Americana, Inc., dated January 14, 2005, now of record in the RMC Office/Clerk of Courts Office for Horry County in Mortgage Book 3904 beginning at Page 0028 on January 19, 2005.
15. 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 Horry County is

ordered and directed to eject and remove from the premises the occupants of the property sold (if any), 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.

16. 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.
17. **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 Horry 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 Master In Equity who executes such deed as grantor.
18. The undersigned Circuit Court Judge 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), SCRCF.
19. The Court-appointed Receiver shall be allowed to enter the subject properties to perform maintenance and to prevent waste, and the Receiver shall be allowed to receive the rents being paid by any tenant occupying the property.
20. The Home Affordable Modification Program is not applicable to these Notes and Mortgages.

21. The Court heard testimony, some irrelevant to the issues at hand, and the testimony of such witnesses is committed to the sound discretion of this Court. Based on the foregoing findings, the Court finds any and all such testimony as unpersuasive.
22. The following is a description of the premises herein ordered to be sold:

Property 1 (Emerald Shores Motel)

TMS# 181-11-01-002

ALL AND SINGULAR, all those certain lots or parcels of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, designated as Lots 1 and 2 in Block 4 of the Hotel Section as shown on map of Myrtle Beach made by N.C. Hughes, Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116.

These lots are also shown on map made by Stanley H. Wright, dated June 1926 and recorded in the office of the ROD for Horry County in Plat Book 1 at Page 84.

For a more accurate and complete description of these lots of land reference is made to a map thereof, showing the locations of improvements thereon, made for the grantors herein and George Simon by Robert L. Bellamy C. E., dated March 24, 1964, and recorded April 10, 1964, in Plat Book 40 at Page 14.

Property 2 (Emerald Shores Motel)

TMS#181-11-01-001

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid and being Lot Number Three (3) of Block Four (4) of the Hotel section as shown on map of Myrtle Beach made by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116, reference to which is craved as forming a part of these presents.

Property 3 (Emerald Shores Motel)

TMS#181-11-01-001

ALL AND SINGULAR, that certain piece, parcel or lot of land, and the buildings and furnishings therein, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid, and being Lot Number Four (4) of Block Four (4), having an ocean frontage of seventy (70) feet and a depth of One Hundred Thirty (130) feet as shown on map of Myrtle Beach Hotel Section made

by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116, to which reference is craved as forming a part of these presents.

Less and excepting from the above description lot, the South Carolina State Highway Commission or the Town of Myrtle Beach owning a four (4) foot strip adjacent to Ocean Blvd and this said four (4) foot strip across the back of the above described lot is excepted from this conveyance.

Property 4 (Parking Lot)

TMS#181-10-10-007

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being in Dogwood Neck Township, County and State aforesaid, and more particularly described as Lot Two (2), Block 13, Hotel Section, as shown on a map made by Robert L. Bellamy, C.E., for Mary Lee Powell dated April 20, 1960 recorded in Plat Book 29 at Page 116, in the office of the ROD for Horry County, South Carolina.

These being the identical properties conveyed to the Mortgagor herein by Deed from James C. Journey, dated January 13, 2005 and recorded January 19, 2005 in Deed Book 2849 at Page 171 and by Deed from James C. Journey, as Trustee of the Madeline M. Journey Revocable Trust, dates January 13, 2005 and recorded January 19, 2005 in Deed Book 2849 at Page 167 records of the office of the Register of Deeds for Horry County, South Carolina.

Property 5

(Lot 14 Block 21)

TMS# 181-10-10-016

ALL THAT certain piece, parcel or lot of land with the improvements thereon, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Fourteen (14) of Block Twenty-One (21), of the Hotel Section of Myrtle Beach, on a map of said Section made by N.C. Hughes, Jr., Engineer, in November 1933, and recorded in the Office of the Register of Deeds for Horry County, South Carolina in Plat Book 1 at Page Book 116.

This being the identical property conveyed to the Mortgagor herein by Deed from Estate of Wendell E Jones, Jr., dated July 22, 2002 and recorded July 23, 2002 in Deed Book 2501 at Page 1435, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 6 (Rainbow Court Motel)

Portion of TMS#181-10-10-005

All and Singular, all those certain parcels or lots of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, in the City of Myrtle Beach, designated as Lots 4, 5, 7, 8 & 9 in Block 21 of the Hotel Section at Myrtle Beach as shown on map made by Stanley H. Wright, Engineer, dated June 1926, and recorded in the Office of the R.M.C. for Horry County in Plat Book 1, at Page 84.

This being a portion of the properties conveyed to the Mortgagor herein by Deed from Harvey C. Jones and Lila M. Bagnal, dated September 3, 1968 and recorded May 22, 1969 in Deed Book 409 at Page 224, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 7 (Rainbow Court Motel)

Portion of TMS#181-10-10-005

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Horry, and being known and designated as Lot Six (6) of Block twenty-one (21), according to a map or plat of Hotel Section of Myrtle Beach as made in June and July of 1926 under the supervision of Stanley H. Wright, Engineer; which map or plat is of record in the Clerk of Court's Office for Horry County in Plat Book 1, at Page 84, reference to which is hereby made as a part of this description, said lot of land being more particularly described by meets and bounds as follows, to wit:

Beginning at a stake on the Southwest line of Fifth Avenue at the corner common to lots six (6) and seven (7) of Block twenty-one (21) and running thence along the dividing line between lots six (6) and seven (7) South 38 deg. 32 min. West one hundred and fifty (150) feet to a stake on the Northeast line of lot eight (8), thence along the dividing line between lots six (6) and eight (8) North 51 deg. 28 min. West fifty-seven and five tenths (57.5) feet to a stake at the corner of lot five (5); thence along the dividing line between lots five (5) and six (6) North 38 deg. 32 min. East one hundred and fifty (150) feet to a stake on the Southwest line of Fifth Avenue; thence along the said Southwest line Fifth Avenue South 51 deg. 28 min. East Fifty-seven and five tenths (57.5) feet to the place of beginning.

This being the identical property conveyed to the Mortgagor herein by Deed from Winston W. Vaught as Master, dates May 8, 1972 and recorded May 8, 1972 in Deed Book 469 at Page 270, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 8 (Triplex, Lot 18 Block 21)

TMS#181-10-10-003

All and singular, all that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, in the City of Myrtle Beach, designated as lot 18 in Block (21) of the Hotel Section at Myrtle Beach as shown on map made by Stanley H. Wright, Engineer, dated June 1926, and recorded in the Office of the R.M.C. for Horry County in Plat Book 1 at Page 84 and Plat Book 1 at Page 116.

This being a portion of the properties conveyed to the Mortgagor herein by Deed from Harvey C. Jones and Lila M. Bagnal, dates September 3, 1968 and recorded May 22, 1969 in Deed Book 409 at Page 224, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 9 (Lot 17 Block 21)

TMS#181-10-10-002

ALL AND SINGULAR, that certain piece, parcel or lot of land, situated, lying and being in the Town of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Seventeen (17) of Block Twenty-One (21) of the Hotel Section, as shown on map of Myrtle Beach made by N.C. Hughes, C.E. dated November 1933 recorded in the Office of the Clerk of Court for Horry County in Plat Book 1 at Page 116, to which plat reference is craved as forming a part of these presents; this being the lot referred to as Parcel Five (5) in deed from H.L. Buck, Jr. to E.E. Burroughs, dated May 21, 1951 recorded in Book 93 at Page 64, RMC for Horry County.

This being the identical property conveyed to the Mortgagor herein by Deed from Charles A. Fanshaw, dated February 19, 1993 and recorded February 19, 1993 in Deed Book 1615 at Page 718, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 10 (Lot 16 Block 21)

TMS#181-10-10-001

ALL AND SINGULAR, all that certain piece, parcel or lot of land, situate, lying and being in Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, being Lot Sixteen (16), Block Twenty-One (21) of the Hotel Section of Myrtle Beach as shown on the map or plat by N.C. Hughes, Jr., Engineer. A copy of said map is recorded in Plat Book 1 Page 116, Office of the R.M.C for Horry County and is by reference incorporated herein as forming a part and parcel of this description.

This being the identical property conveyed to the Mortgagor herein by Deed from Lucille T. Mull Trust, dated December 19, 2001 and recorded December 21, 2001

in Deed Book 2437 at Page 800, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 11 (Lot 3 Block 21)

Portion of TMS#181-10-10-005

All and singular, all that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, being more particularly shown and designated as Lot No. Three (3) of Block Twenty-One (21), of the Hotel Section of Myrtle Beach, on a map of the said section made under the supervision of Stanley H. Wright, Engineer, dated June and July 1926, and recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 1, at Page 84, reference to which is craved as forming a part of these presents.

This being the identical property conveyed to the Mortgagor herein by Deed from Lila McCall Bagnal, dated September 10, 1973 and recorded September 10, 1973 in Deed Book 498 at Page 858, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 12 (Lot 6 Block 28 & ½ of Lot 7 & 8 & Part of Lot 9)

TMS#181-10-07-010 & 011

ALL AND SINGULAR, that certain piece, parcel or lot of land lying and being in the Town of Myrtle Beach, County and State aforesaid, and being Lot No. 6 of Block -28- of the Hotel Section, and beginning at a stake corner on the Northwestern side of Chester Street, which is the Northeastern corner of the lot herein described, and runs North 51 deg. And 28 min. west 240 feet to a stake on the read line of Lot No. 14 of said block; thence South 38 deg. And 32 min. west along the rear line of Lots No. 13 and No. 14, 60 feet to a stake; thence South 51 deg. And 28 min. east 240 feet to a stake on the Northwestern side of Chester Street; thence North 38 deg. And 32 min East with Chester Street 60 feet to the point of beginning.

ALSO

All that certain piece, or lot of land, situate and being in the State of South Carolina, County of Horry; known and designated as one-half (1/2) of Lots Seven (7) and Eight (8) of block Twenty-Eight (28) in the Hotel Section; a subdivision of the property of Myrtle Beach according to a plat made under the direction of Stanley H. Wright, consulting engineer, in June 1926, reference to said plat is hereby made. The said lot of land being more particularly described by metes and bounds as follows: Beginning at a stake on Chester Street at Northeast corner of lot seven (7) of said Block Twenty-Eight (28) and running thence North 51 deg. 27 min.45 sec. West, one hundred and twenty (120) feet to a stake on the line

between lots eight (8) and nine (9) of said block thence South 38 deg. 32 min. 15 sec. West along the dividing line between lots (8) and nine (9), seventy-five (75) feet to a stake, thence South 51 deg. 27 min 45 sec. East, one hundred twenty (120) feet to a stake on Chester Street, and thence along Chester Street seventy-five (75) feet to the beginning corner, and being one-half (1/2) of Lots Number seven (7) and eight (8) mentioned above.

ALSO

All that certain piece of land, situated in the Town of Myrtle beach, State and County aforesaid, beginning at the North East corner of lot 9, block 28, Hotel Section, and extending sixty feet along the Cherry and Buck line to the North West corner, extending twenty-five feet along the Cherry and Bartholomew line to a South West corner, extending sixty feet to a South East corner and extending twenty-five feet along Cherry and Stackhouse line to the North East corner. The above description being twenty five feet by sixty feet, a part of lot 9, block 28, Hotel Section.

ALSO

The certain right of way connecting the property herein described with Fourth Avenue as shown on the aforesaid plat. This right-of-way is private way for ingress and egress and is ten 10 feet in width, lying along the boundary line between Lots 8 & 9 of block 28, and being more particularly described as follows: Beginning at the corner of lots 8 and 9 on Fourth Avenue and running thence North 38 deg. 32 min. 15 sec. East along the dividing line of these lots a distance of seventy-five (75) feet to the Northwest corner of the property conveyed to the grantee by deed of Elizabeth G. Stackhouse recorded in the Office of the RMC for Horry County in Deed Book 894 at Page 508; thence running South 51 deg. 27 min. 45 sec. East ten (10) feet along the Western boundary line of the property therein conveyed; thence running South 39 deg. 32 min. 15 sec.; West parallel with the dividing line between Lot 8 and 9, and a distance of ten (10) feet therefrom, for seventy-five (75) feet to Fourth Avenue; thence along the edge of Fourth Avenue ten (10) feet to the beginning corner.

This being the identical property conveyed to the Mortgagor herein by Deed from Sara Alice Beverly, dated April 7, 1999 and recorded April 7, 1999 in Deed Book 2133 at Page 850, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 13 (Lot 1 Block 21)

TMS#181-10-10-004

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Horry, and being known and

designated at Lot One (1) Block Twenty-One (21) according to map or plat of Hotel Section of Myrtle Beach as made in June and July of 1926 under the supervision of Stanley H. Wright, Engineer, which map or plat is of record in the Office of the Clerk of the Court for Horry County, in Plat Book 1 at Page 84, reference to which is hereby made as a part of this description; said lot of land being more particularly described by meets and bounds as follows; to wit:

Beginning at a stake at the Northeast corner of Lot 1 of said Block 21, which place of beginning is the intersection of the Southeast line of Chester Street with the Southwest line of Fifth Avenue, and running thence South 51 degrees 28 min. East along said Southwest line of Fifth Avenue 57.5 feet to a stake at the corner of Lot 2; thence South 38 degrees 32 Min. West along dividing line Between Lots 1 and 2, 150 feet to a stake on the Northeast line of Lot 18, 57.5 feet to a stake on the Southeast line of Chester Street; thence along said Southeast line of Chester Street; thence along said Southeast line of Chester Street North 38 degrees 32 min. East 150 feet to the place of beginning.

This being the identical property conveyed to the Mortgagor herein by Deed from Evelyn Petros Pharr, dated October 4, 1983 and recorded October 4, 1983 in Deed Book 824 at Page 408, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 14 (Lot 2 Block 21)

Portion of TMS#181-10-10-005

All and singular that certain piece, parcel or lot of land situate, lying and being at Myrtle Beach, South Carolina, Dogwood Neck Township, County and State aforesaid and being Lot Two (2) of Block Twenty-One (21) as shown on map of Myrtle Beach, Hotel section, as made by N.C. Hughes, Jr., Engineer, dated November 1933, and recorded in the Office of the Clerk of Court for Horry County, in Plat Book 1, at Page 116, to which plat, reference is craved as forming a part of these presents. The same being conveyed to C.M. Wright by the Myrtle Beach Farms Company, a corporation, by their deed dated October 5, 1934, and recorded October 18, 1934 in Book C-4 at Page 433.

This being the identical property conveyed to the Mortgagor herein by Deed from David L. Leventer, dated October 20, 1972 and recorded January 10, 1973 in Deed Book 483 at Page 548, records of the Office of the Register of Deeds for Horry County, South Carolina.

[SIGNATURE PAGE FOLLOWS]

AND IT IS SO ORDERED.



THE HONORABLE J. DERHAM COLE
Presiding Circuit Court Judge for Horry County,
Fifteenth Judicial Circuit

9/14, 2012