

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM HORRY COUNTY
Court of Common Pleas

S.C. Supreme Court

Larry B. Hyman, Jr., Circuit Judge for The Fifteenth Judicial Circuit

Case No. 2012-213156
Appellate Case No: 2012-213156

Scott Lemons and Gold Coast Resorts, LLC.....Petitioners

v.

The McNair Law Firm, P.A.....Respondent

PETITIONER'S APPENDIX VOL. I

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 10-CP-26-9113
Appellate Case No.: 2012-213156

Scott Lemons and Gold Coast Resorts, LLC.....Appellant

v.

The McNair Law Firm, P.A.....Respondents

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Scott Lemons and Gold Coast Resorts,)
LLC,)
)
Plaintiffs,)
)
vs.)
)
The McNair Law Firm, P.A.,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Civil Action No.: 10-CP-26-9113

FILED
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MELANIE HUGGINS-WARD
CLERK OF COURT

**ORDER GRANTING MCNAIR LAW FIRM, P.A.'S
MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on Defendant McNair Law Firm, P.A.'s ("McNair") Motion for Summary Judgment. McNair's motion was filed on June 11, 2012 and the Court held a hearing on McNair's motion on July 30, 2012. Plaintiffs were represented at the hearing by Mark W. Hardee, and McNair was represented by Robert E. Stepp, and William H. Jordan. Following the hearing, the Court took McNair's motion under advisement and allowed the parties to submit additional briefs in support of their respective positions.

After hearing the arguments of counsel at the hearing and considering the briefs and other materials submitted by the parties in connection with the motion, the Court grants McNair's Motion for Summary Judgment.

UNDISPUTED FACTS

The undisputed facts of this case may be summarized as follows. On September 29, 2006, Plaintiff Lemons entered into an agreement to purchase a parcel of real property (the "Property") from John Delduca for \$1.4 million (the "Delduca Contract"). On October 28, 2006, Plaintiff

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Gold Coast Resorts, LLC ("Gold Coast"), a company in which Plaintiff Scott Lemons ("Lemons") was at all times the sole member, entered into a contract to sell the Property to Ken Hyatt for \$2.9 million (the "Hyatt Contract"). Neither Lemons nor Gold Coast had title to the Property at that time. The Hyatt Contract provided that the transaction would be closed on or before November 23, 2006 and stated that "Time is of the essence" (emphasis in original). The Hyatt Contract contained no provision by which the closing date could be extended.

Neither the Delduca Contract nor the Hyatt Contract was ever performed. Neither Gold Coast nor Lemons acquired title to the Property from Delduca, and neither Gold Coast nor Hyatt ever tendered performance to the other. When the Hyatt Contract did not close, Tom Naomi ("Naomi"), a real estate agent at C.S.E. Enterprises, Inc. d/b/a Re/Max at the Coast ("Re/Max"), and Re/Max sued Lemons and Gold Coast claiming that they had produced a buyer (i.e., Hyatt) and thus were entitled to their real estate commission pursuant to an agreement (the "Commission Agreement") that provided that Naomi and Re/Max would receive a 10% commission if Naomi was able to provide Lemons with a purchaser for the Property. Represented by Mark McAdams ("McAdams"), who at that time was an attorney in McNair's Myrtle Beach office, Lemons and Gold Coast denied liability to Naomi and Re/Max and filed a third-party complaint against Hyatt alleging breach of contract and seeking specific performance of the Hyatt Contract.

On April 11, 2008, the underlying case was mediated. McAdams attended the mediation on behalf of Gold Coast and Lemons. Lemons was not present. At the mediation, an agreement was signed by McAdams by which Gold Coast and Lemons agreed to settle their claims against Hyatt for \$5,000. On May 8, 2008, McAdams mailed to Lemons a document entitled "MUTUAL RELEASE" and asked Lemons to review it and contact him. Lemons claims not to have received

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this letter and the enclosed release. (Lemons Dep. Vol. I, p. 175, line 20 – p. 176, line 2.) On May 21, 2008, Lemons signed the same mutual release at McNair's Myrtle Beach office. (Lemons Dep. Vol. I, p. 134, line 20 – p. 135, line 4.) Lemons signed the mutual release twice – once for himself and once for Gold Coast – and the document also contains the signatures of two witnesses. Lemons admits signing the mutual release, but claims that he did not read it prior to signing. (Lemons Dep. Vol. I, p. 178, lines 22 – 24.) Lemons received and retained the \$5,000 paid by Hyatt. (Lemons Dep. Vol. II, p. 228, line 18 – p. 229, line 17.)

On June 10, 2008, the underlying case went to trial before the Honorable J. Stanton Cross on the remaining claims (i.e., Naomi and Re/Max's claims against Lemons and Gold Coast). McAdams represented Lemons and Gold Coast at the trial and Lemons was present and testified. (Lemons Dep. Vol. II, p. 234, line 14 – p. 235, line 13.) Hyatt was not present. On June 18, 2008, Judge Cross entered an order and judgment in favor of Naomi and Re/Max in the amount of \$290,000.00, which represented the full commission for the Hyatt Contract. On June 26, 2008, McAdams filed a Motion to Alter or Amend the judgment.

In early August of 2008, McAdams resigned from McNair. On August 12, 2008, Lynn Stevens, an attorney in McNair's Myrtle Beach office, sent Lemons a letter informing him that McAdams had resigned and asking Lemons to instruct McNair concerning the further handling of all open matters. Lemons instructed McNair to forward his files to Thomas C. Brittain ("Brittain"). Prior to that time, Lemons had made no effort to terminate McAdams as counsel for Gold Coast or himself.

In November of 2008, Brittain filed a memorandum in support of Lemons' and Gold Coast's Motion to Alter or Amend. By order dated December 12, 2008, the Honorable Ralph P. Stroman amended Judge Cross's order and overturned the judgment in favor of Naomi and

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Re/Max. Naomi and Re/Max appealed and by order dated June 7, 2011, the Court of Appeals affirmed Judge Stroman's order. The Memorandum in Support of Motion to Alter or Amend, Judge Stroman's order, and the South Carolina Court of Appeals' opinion all stated that Lemons and Gold Coast had settled their claims against Hyatt for \$5,000. Lemons and Gold Coast did not dispute or otherwise contest the statement in the memorandum or the findings in two court orders.

Plaintiffs commenced this legal malpractice action on September 28, 2010, alleging that McAdams settled Plaintiffs' claims against Hyatt without Plaintiffs' consent or authority.¹ Now pending before this Court is McNair's Motion for Summary Judgment.

LEGAL STANDARD

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder." Singleton v. Sherer, 377 S.C. 185, 197-98, 659 S.E.2d 196, 203 (Ct. App. 2008). Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the 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." Rule 56(c), SCRCF. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." Quail Hill, LLC v. County of Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010).

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." Singleton, 377 S.C. at 197-98, 659 S.E.2d at

¹ Plaintiffs have not complained about any other aspect of McAdams' representation of them.

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203. Instead, "[t]he nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. at 198, 659 S.E.2d at 203. "It is not sufficient for one to create an inference that is not reasonable or an issue of fact that is not genuine." Evans v. Stewart, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006). "Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper." Id.

Applying this standard to the undisputed facts of this case, the Court grants McNair's Motion for Summary Judgment for the reasons discussed below.

CONCLUSIONS OF LAW

Plaintiffs' sole cause of action against McNair in this case is for legal malpractice in connection with the mediation of the claim against Hyatt. Under South Carolina law, a plaintiff in a legal malpractice action must establish four elements: "(1) the existence of an attorney-client relationship; (2) A breach of duty by the attorney; (3) Damage to the client; and (4) Proximate cause of the plaintiff's damages by the breach." Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions, 388 S.C. 394, 402, 697 S.E.2d 551, 555 (2010) (citing Rydde v. Morris, 381 S.C. 643, 647, 675 S.E.2d 431, 433 (2009)). In establishing proximate cause in a South Carolina legal malpractice action, the plaintiff must establish that the attorney's negligence was a "but for" cause of the plaintiff's damages. See Eadie v. Krause, 381 S.C. 55, 64, 671 S.E.2d 389, 393 (Ct. App. 2008).

"The plaintiff in a legal malpractice action must prove a 'case within a case,' as he or she must prove the merits of the underlying case as part of the proof of the malpractice case." 7A C.J.S. Attorney & Client § 331 (citations omitted). The case within a case doctrine is relevant when, as here, "the theory of the malpractice case places the merits of the underlying litigation

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directly at issue.” Eastminster Presbytery v. Stark & Knoll, 2012 WL 723331, at *2 (Ohio Ct. App., March 7, 2012). “In order to prove causation in these cases, the plaintiff must prove that but for the attorney’s conduct, the plaintiff would have obtained a better outcome in the underlying case.” Id. “Under the case-within-a-case concept, the test is objective. Therefore, the test is not what the outcome *would have been*, but rather what it *should have been*.” Doe v. Howe, 367 S.C. 432, 626 S.E.2d 25 (Ct. App. 2007) (citing Wilburn Brewer, Jr., *Expert Testimony in Legal Malpractice Cases*, 45 S.C. L. Rev. 727, 766 (1994)). “The question of the success of the underlying claim . . . is a question of law.” Id. (citing Manning v. Quinn, 294 S.C. 383, 386, 356 S.E.2d 24, 25 (1988) (holding that likelihood of success of underlying case was a question of law “and decision of that question on summary judgment motion is appropriate”).

McNair has moved for summary judgment in this case on four separate grounds. First, McNair argues that Plaintiffs’ claims against Hyatt in the underlying case had no value and, therefore, Plaintiffs were not damaged by the alleged unauthorized settlement of those claims. Second, McNair argues that, because in the underlying case the Court determined that the Hyatt Contract was null and void, Plaintiffs are collaterally estopped from asserting otherwise in this case. Third, McNair argues that Plaintiffs ratified the settlement agreement and as a result cannot now recover against McNair. Finally, McNair argues that Plaintiffs are bound by the mutual release executed by Lemons. The Court finds that McNair is entitled to summary judgment on each of these grounds and that each ground is independently sufficient to warrant summary judgment in McNair’s favor.

I. Because Plaintiffs’ claims against Hyatt in the underlying case had no value, Plaintiffs were not damaged by the alleged unauthorized settlement of those claims.

There is a factual dispute as to whether or not Plaintiffs’ authorized McAdams to settle the underlying case for \$5,000. That factual issue is not material, however, because as a matter of

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endeavor, so far as possible in light of the expressed intention of the parties, to construe performances of mutual promises as concurrent conditions." 15 Williston on Contracts § 44:20 (4th ed. 2011); Am. Nat'l Bank of Winter Haven, Fla. v. Caldwell, 166 S.C. 194, ___, 164 S.E. 613, 615 (1932) ("It is the tendency of the courts to construe the undertakings of the parties to such contracts as being dependent, unless a contrary intention appears.").

When a contract contains dependent concurrent conditions, as the Hyatt Contract did, it is clear as a matter of law and common sense that a party may not sue for breach if that party is not able to perform. As the South Carolina Supreme Court explained:

Where the covenants are dependent and concurrent neither party can recover against the other without a performance or offer to perform on his part, unless performance shall be excused or rendered impossible by the other party. Hence, if a [purchaser] wishes to compel the vendor to fulfill his contract, he must make his part of the agreement precedent, and cannot proceed against the other without an actual performance of the agreement on his part, or a tender and refusal.

Bishop v. Tolbert, 249 S.C. 289, 300, 153 S.E.2d 912, 918 (1967). This well established rule applies to both parties to the transaction, and therefore it is also true that a seller must have title to the property as a condition precedent to enforcement of the agreement against the purchaser. "[W]here all or part of the performances to be exchanged under an exchange of promises are due simultaneously, it is a condition of each party's duty to perform that the other party either tender or with manifested present ability to do so, offer performance of his or her part of the simultaneous exchange." 15 Williston on Contracts 43:31 (4th ed. 2011).

When neither party is able to perform at the specified closing date, and the contract provides, as here, that time is of the essence, the contract becomes void and both parties' duty to perform is discharged. See Nadeau v. Beers, 440 P.2d 164, 166 (Wash. 1968) (holding that when an agreement makes time of the essence, fixes a termination date, and there is no conduct giving

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rise to waiver or estoppel, the agreement becomes "legally defunct" on the termination date if performance is not tendered); Pittman v. Canham, 2 Cal. App. 4th 556, 559-60 (Cal. App. 1992) ("The failure of both parties to perform concurrent conditions during the time for performance results in a discharge of both parties' duty to perform."); 15 Williston on Contracts 43:31 (4th ed. 2011) ("After the time fixed by the contract . . . the conditions become impossible of performance, so the contract must be considered discharged."); Restatement (Second) of Contracts § 238 (1981) (noting that until a party has made an offer of performance "the other party is under no duty to perform, and if both parties fail to make such an offer, neither party's failure is a breach").²

That is exactly the case here. Neither Hyatt nor Gold Coast performed or tendered performance on the date of the closing. Lemons never acquired title to the Property from Delduca, and never entered into any kind of agreement with Gold Coast to transfer title to Gold Coast. (Lemons Dep. Vol. I, p. 123, lines 15 – 16). Gold Coast therefore did not have the ability to tender title to Hyatt on November 23, 2006 as required by the express terms of the Hyatt Contract. Because time was made of the essence in the closing of the Hyatt Agreement, the Court finds that the failure of both parties to tender performance by the closing date specified in the Hyatt Contract resulted in the discharge of that contract. Therefore, neither party could hold the

² As noted above, the South Carolina Supreme Court has ruled that the condition precedent does not require that a party actually perform. Bishop, 249 S.C. at 300, 153 S.E.2d at 918. But, a party must at the least "make an appropriate offer to perform, since it is a condition of each party's duties of performance with respect to the exchange that there be no uncured material failure by the other party at least to offer performance." Restatement (Second) of Contracts § 238, cmt. a (1981). An offer of performance "must be accompanied with manifested present ability to make it good, but the offeror need not go so far as actually to hold out that which he is to deliver." Id., cmt. b. In the present case, because neither Gold Coast nor its sole member Lemons ever had title to the Property on the date of closing, Gold Coast, by definition, did not have a "manifested present ability to make it good," and could not hold out title to the Property to Hyatt.

other in default and no cause of action to enforce the contract ever arose. Because Hyatt's duty to purchase the Property was discharged by Gold Coast's failure to obtain and to tender title, there was no breach of contract. Because there was no breach, Plaintiffs' claims against Hyatt were meritless and should have been dismissed. See Doe v. Howe, 367 S.C. 432, 442, 626 S.E.2d 25, 30 (Ct. App. 2005) (observing that "[a]s to damages, the plaintiff must show he or she 'most probably would have been successful in the underlying suit if the attorney would not have committed the alleged malpractice'"). McNair's settlement of that case therefore did not proximately cause Plaintiffs any damages even if McNair's settlement was unauthorized or negligent, because that settlement resulted in a payment from Hyatt to Plaintiffs even though Hyatt had no liability for failing to close. Eastminister Presbytery, 2012 WL 723331 at *2 (noting that in order to prove causation in cases where the case-within-a-case doctrine applies, "the plaintiff must prove that but for the attorney's conduct, the plaintiff would have obtained a better outcome in the underlying case").

In opposing McNair's motion, Plaintiffs argue that Hyatt repudiated the contract and that Plaintiffs therefore were not required to purchase the property because doing so would be a "futile act." Plaintiffs cite American Jurisprudence 2d (Contracts) for the proposition that a repudiation of a contract before time of performance gives the adverse party the right to treat the entire contract as broken, and sue immediately for breach. Plaintiffs further rely on Dubignon v. Loud, 7 Rich. 193 (S.C. Ct. App. 1854) for the proposition that once a party makes known his intention not to perform under a contract, the other party may sue for breach without further performing under the contract. Plaintiffs' arguments are not persuasive when applied to the facts of this case.

First, the Court notes that there is no evidence in the record indicating that Hyatt informed Plaintiffs prior to the closing date that he would not be performing under the contract. Plaintiffs' argument confuses breach of contract with anticipatory repudiation of a contract. While Hyatt did not perform under the contract, there is no evidence before the Court that prior to the date of closing Hyatt repudiated the contract by informing Plaintiffs that he would not be performing his contractual obligations. In fact, the opposite is true. Plaintiffs alleged in their third-party complaint against Hyatt in the underlying case that "[o]n November 24, 2006, Kenny Hyatt informed Tom Naomi, the dual real estate agent for [Plaintiffs and Hyatt], that he was ready, willing and able to close the transaction." There is therefore no anticipatory repudiation that might otherwise have discharged Plaintiffs' obligation to acquire title to the Property as a condition to suing for breach. Consequently, this case presents no basis to depart from the well established legal principles (discussed above) that clearly required Plaintiffs to acquire title to the property in order to maintain a breach of contract action against Hyatt. Having failed to do so, Plaintiffs had no cause of action against Hyatt in the underlying case and cannot now recover against McNair for the alleged unauthorized settlement with Hyatt.

The Plaintiffs also argued at the hearing that McNair was negligent in failing to advise Plaintiffs that they needed to purchase the Property in order to sue Hyatt for breach of contract. However, counsel for Plaintiffs conceded during the hearing that Plaintiffs waited until after the Hyatt Contract had expired to ask McNair whether or not to purchase the Property. Accordingly, Plaintiffs' failure to acquire title to the Property on or before the closing date cannot be attributable to any advice offered by McNair.

The Court finds as a matter of law that Plaintiffs' claims against Hyatt in the underlying case had no value. As a result, Plaintiffs were not damaged by McNair's settlement of those claims on Plaintiffs' behalf, even if that settlement was unauthorized.

II. The court in the underlying case found that the Hyatt Contract was null and void and Plaintiffs are collaterally estopped from asserting otherwise.

The Court also finds that McNair is entitled to summary judgment because Judge Stroman found that the Hyatt Contract was "null and void," and Plaintiffs could not have recovered for breach of a void agreement. Plaintiffs are collaterally estopped from asserting otherwise in this litigation. "A party claiming preclusive effect under collateral estoppel must demonstrate that the particular issue was (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." Crosby v. Prysmian Communications Cables & Sys., USA, LLC, 397 S.C. 101, 723 S.E.2d 813 (Ct. App. 2012). In the underlying case, Judge Stroman held that the Hyatt Contract was "null and void." Judge Stroman's finding was necessary to his determination that Plaintiffs were not obligated to pay a commission to the realtor who procured the Hyatt Contract. The Court of Appeals affirmed Judge Stroman's order and Plaintiffs did not take any action to challenge or appeal this finding. As a result, the finding that the Hyatt Contract was null and void became the law of the underlying case and Plaintiffs are collaterally estopped from now asserting otherwise. The Court finds that the issue of the validity of the contract between Hyatt and Gold Coast was actually litigated in the underlying case, was directly determined in the underlying case, and was necessary to support the judgment in the underlying case. Because the Hyatt Contract was null and void, Plaintiffs could not have sued thereon and could not have recovered against Hyatt in the underlying case. Plaintiffs therefore cannot now recover against McNair.

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III. Plaintiffs ratified the settlement agreement.

The Court concludes as a matter of law that Plaintiffs' claim against McNair is barred as a matter of law because Plaintiffs ratified the settlement with Hyatt. Ratification is "the express or implied adoption and confirmation by one person of an act or contract performed or entered into in his behalf by another who at the time assumed to act as his agent." Lincoln v. Aetna Cas. & Sur. Co., 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989); Brazell Bros. Contractors v. Hill, 245 S.C. 69, 74, 138 S.E.2d 835, 837 (1964) ("Ratification . . . is the adoption by one person of an act done or bargain made for him by another under such circumstances that he would not have been bound but for his subsequent assent."). "One asserting ratification must establish the following three elements: (1) acceptance by the principal of the benefits of the agent's acts, (2) the principal's full knowledge of the facts, and (3) circumstances or an affirmative election demonstrating the principal's intent to accept the unauthorized arrangements." Stiltner v. USAA Cas. Ins. Co., 395 S.C. 183, 191, 717 S.E.2d 74, 78 (Ct. App. 2011) (citing Lincoln v. Aetna Cas. & Sur. Co., 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989)).

While silence or a failure of the principal to repudiate the act does not necessarily constitute ratification, ratification is apparent when "the silence or acquiescence in question cannot be explained on any other theory than that of ratification." Stiltner, 395 S.C. at 191-92, 717 S.E.2d at 78 (quoting 2A C.J.S. *Agency* § 71 (2003)). "The authority of an attorney, or ratification of his unauthorized acts, may be inferred from the circumstances, as for instance, from the silent acquiescence of the client for a long period, or from the client's acceptance and retention of the fruits of the unauthorized act of the attorney." Foxworth v. Murchinson Nat'l Bank, 136 S.C. 458, ___, 134 S.E. 428, 431 (1926). The relationship between attorney and client is

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predicated on that of principal and agent. See 78 C.J.S. *Attorney & Client* § 220. Where there is a relationship between principal and agent, such as attorney and client, the presumption of ratification arising from silence is strong. See *Hinson v. Roof*, 128 S.C. 470, ___, 122 S.E. 488, 490 (1924).

Ratification may also arise from positions taken in litigation by the attorney for the principal. In *Brazell Brothers Contractors v. Hill*, 245 S.C. 69, 138 S.E.2d 835 (1964), a case with elements similar to the present case, the court held the client had ratified a release because his attorney filed a motion in court that acknowledged the release and sought other relief.

The Court finds that all of the facts necessary to establish ratification of the settlement by Plaintiffs as a matter of law are undisputed and present. First, it is undisputed that Lemons kept the settlement proceeds and never tendered them back to Hyatt. (Lemons Dep. Vol. II, p. 228, line 18 – p. 229, line 17.) The first element is therefore satisfied. Second, Lemons had full knowledge of the facts from at least the date of the trial of the claims by Naomi. At that point he knew that Hyatt was not present and the only matter presented was a defense to Naomi, and not a claim against Hyatt. (Lemons Dep. Vol. I, p. 189, line 20 – p. 190, line 1.) Thereafter he made no effort to avoid the settlement or to rescind the release. Moreover, he continued to retain the benefits of the settlement proceeds. (Lemons Dep. Vol. II, p. 234, lines 5 – 10.) He continued to do nothing even after receipt of Judge Cross' order, which plainly recites that the Hyatt claims had been settled for \$5,000. Plaintiffs cannot disclaim knowledge of the facts after the issuance of this order. After receiving Judge Cross's order with that language, Lemons never moved to set aside the settlement or otherwise re-open the claim against Hyatt. To the contrary, he acquiesced without protest in a representation made by his attorney Brittain to the Court, in support of his argument, that Lemons' and Gold Coast's claims against Hyatt had been settled

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for \$5,000. Lemons thereafter also accepted the benefit of Judge Stroman's order relieving him of the Naomi judgment, which again recites that the claims against Hyatt had been settled for \$5,000. The same thing is true with respect to the opinion of the Court of Appeals. Finally, such actions, silence, acquiescence, and adoption of the settlement are only explainable as full acceptance of the settlement and its benefits, and therefore constitute ratification of the settlement as a matter of law.

In opposing McNair's ratification argument, Plaintiffs rely on Crowley v. Harvey & Battey, P.A., 327 S.C. 68, 488 S.E.2d 334 (1997), for the proposition that Plaintiffs may retain the benefits of the settlement with Hyatt and still maintain a legal malpractice cause of action against McNair. The Court finds that Crowley is inapplicable on its face, however, and the controlling authority for the issue in this case is L.F.S. Corp. v. Kennedy, 287 S.C. 162, 337 S.E.2d 209 (1985), a case discussed in Crowley. When these two decisions are considered together it is evident that Kennedy is controlling under the facts of this case and that Plaintiffs' legal malpractice cause of action fails as a matter of law.

In Kennedy, a client sued its lawyer alleging that the lawyer failed to follow the client's instructions concerning settlement negotiations and permitted summary judgment to be entered based on an unauthorized agreement. 287 S.C. at 163, 337 S.E.2d at 210. The court found that, despite the lawyer's alleged failure to follow his client's instructions, the client ratified its lawyer's actions by accepting funds pursuant to the settlement agreement and taking action to enforce the agreement. Id. These facts are very similar to the present case, in which Plaintiffs allege that McAdams acted without authority, yet Plaintiffs accepted the funds and repeatedly cited the agreement to the Master-in-Equity and to the South Carolina Court of Appeals in aid of an argument to avoid a judgment in favor of Naomi and Re/Max.

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While Kennedy was a case questioning the authority of an attorney as agent for his client, Crowley is a negligence case. In Crowley, a client sued her lawyer alleging that the lawyer gave her negligent advice that she relied on in settling the property division issues in her divorce action. 327 S.C. at 70, 488 S.E.2d at 334. The lawyer argued that, by accepting settlement funds and suing to enforce the agreement, the client had ratified the agreement under Kennedy. Id. at 70, 488 S.E.2d at 335. The court distinguished Kennedy, noting that in Kennedy "the malpractice claim was premised on allegations that the attorney had exceeded his authority in settling the client's case [and] *despite knowledge of this problem*, the client ratified its attorney-agent's acts by accepting the benefits of the settlement." Id. (emphasis in original). The court found that the claim in Crowley was "entirely different" from the claim in Kennedy in that the claim in Crowley concerned "the adequacy of the attorney's advice to their client." Id. at 71, 488 S.E.2d at 335. The court thus held that "where . . . the settlement itself cannot be attacked and the issue is not one of agency but of negligence, the fact the client has accepted the benefits of the settlement and judicially sought to enforce its terms are not bars to maintenance of a malpractice claim." Id.

Thus, two distinct legal principles emerge from Kennedy and Crowley. If, on the one hand, the basis for the client's legal malpractice claim is that the lawyer was negligent in advising the client concerning settlement, then accepting settlement funds and affirming the settlement agreement do not constitute ratification. Crowley, 327 S.C. at 71, 488 S.E.2d at 335. If, on the other hand, the basis of the client's legal malpractice claim is that the lawyer exceeded his authority in settling the client's case, then accepting settlement funds and affirming the settlement agreement will constitute ratification. Kennedy, 287 S.C. at 163-64, 337 S.E.2d at 210.

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The Court concludes that this case is controlled by Kennedy and not by Crowley. Here, Plaintiffs allege that McAdams settled Plaintiffs' claims against Hyatt without Plaintiffs' authority. Kennedy is directly on point and the undisputed facts of this case compel the conclusion that Plaintiffs ratified the settlement agreement with Hyatt and are barred from recovering on their legal malpractice claim against McNair. Because Plaintiffs have fully and openly ratified the settlement, the Court finds that they may not now maintain a claim against McNair for the alleged unauthorized conduct of McAdams in committing Plaintiffs to that settlement. Accordingly, McNair is entitled to judgment in its favor as a matter of law.

IV. Plaintiffs' claim fails as a matter of law because Plaintiffs are bound by the mutual release executed by Lemons.

The Court concludes that Plaintiffs' legal malpractice claim against McNair fails as a matter of law because Plaintiffs are bound by the mutual release executed by Lemons. Lemons admits that he executed the two-page mutual release by which Plaintiffs settled their claims against Hyatt. (Lemons Dep. Vol. I, p. 134, line 20 – p. 135, line 4.) Lemons further admits that he failed to read the mutual release and that, if he had read it, he would not have signed it. (Lemons Dep. Vol. I, p. 178, lines 22 – 24; p. 179, line 23 – p. 180, line 1.) Under South Carolina law, Lemons had a duty to read the release before signing it and cannot avoid the effect of the mutual release or claim misrepresentation as to its contents by claiming that he did not read it.

It is well established under South Carolina law that "a person who can read is bound to read an agreement before signing it." Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2000) (footnote omitted) (citing Hood v. Life & Cas. Ins. Co. of Tenn., 173 S.C. 139, 175 S.E. 76 (1934)); Burwell v. South Carolina Nat'l Bank, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986). Thus, "[a] person who signs a contract or other written document


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cannot avoid the effect of the document by claiming he did not read it.” Wachovia Bank v. Blackburn, 394 S.C. 579, 585, 716 S.E.2d 454, 458 (Ct. App. 2011) (quoting Regions Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003)); J.B. Colt Co. v. Britt, 129 S.C. 226, ___, 123 S.E.2d 845, 847 (1924) (“[O]ne cannot avoid a written contract into which he has entered on the ground that he did not attend to its terms, that he did not read the document which he signed, that he supposed it was different in its terms, or that it was a mere form.”) “A person signing a document is responsible for reading the document and making sure of its contents.” Wachovia Bank, 394 S.C. at 585, 716 S.E.2d at 458 (quoting Regions Bank, 354 S.C. at 663, 582 S.E.2d at 440). “One who signs a written instrument has the duty to exercise reasonable care to protect himself.” Id. The only exception to this rule is that “if the party is ignorant and unwary, his failure to read the document may be excused.” Regions Bank, 354 S.C. at 664, 582 S.E.2d at 440 (citing cases). However, South Carolina courts “very strictly construe[] this exception.” Id. “In determining whether a party can be classified as ignorant and unwary, an individual’s education, business experience and intelligence are all considered.” Id.

A party cannot simply rely on the representations of others as to the contents of a written document, even when that person is in a fiduciary relationship. See Marion Partners, LLC v. Weatherspoon & Voltz, LLP, 716 S.E.2d 29, 31 (N.C. App. 2011) (finding that plaintiff’s attorney owed plaintiff a duty to explain the consequences of a document, but holding that “this duty does not relieve [plaintiff] from her own duty to ascertain for herself the contents of the contract she was signing”). Under South Carolina law, “the right to rely upon representations as to the contents of a written instrument must be determined in light of the duty on the part of the representee to use reasonable prudence and diligence under the particular circumstances for his own protection.” Parks v. Morris Homes Corp., 245 S.C. 461, 466-67, 141 S.E.2d 129, 132

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(1965); Florentine Corp. Inc. v. PEDA I. Inc., 287 S.C. 382, 386, 339 S.E.2d 112, 114 (1985) (same). "What constitutes reasonable prudence and diligence with respect to reliance upon a representation in a particular case and the degree of fault attributable to such reliance will depend upon the various circumstances involved, such as the form and materiality of the representation, the respective intelligence, experience, age, and mental and physical condition of the parties, the relation and respective knowledge and means of knowledge of the parties, etc." Id. at 467, 141 S.E.2d at 132; Redwend Ltd. P'ship v. Edwards, 354 S.C. 459, 474, 581 S.E.2d 496, 504 (Ct. App. 2003) ("[T]he precedent in South Carolina is to look to the totality of circumstances to determine whether reliance was justified.")

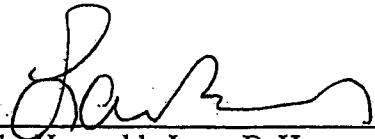
There is no question that Lemons was fully capable of reading and understanding the document he signed. First, Lemons concedes that he would not have signed the mutual release if he had read it, thereby acknowledging that he would have understood it if he had read it. (Lemons Dep. Vol. I, p. 179, line 23 – p. 180, line 1.) Second, Lemons is an experienced real estate agent who deals with contracts as a part of his business. Moreover, the mutual release is only a two page document, is titled prominently "**MUTUAL RELEASE**" on the top of the first page, and the first sentence provides clearly that Plaintiffs are releasing their claims against Hyatt in exchange for payment of \$5,000. Because Lemons is charged with knowledge of the contents of the mutual release, he cannot claim that he was misled by his attorney as to its contents. See, e.g., Doub v. Weathersby-Breeland Ins. Agency, 268 S.C. 319, 326, 233 S.E.2d 111, 114 (1977) ("It is well settled in this State that one cannot complain of fraud in the misrepresentation of the contents of a written instrument in his possession when the truth could have been ascertained by his reading the instrument."). Lemons may not now avoid the mutual

release or claim misrepresentation as to its contents and McNair is entitled to judgment in its favor as a matter of law.

CONCLUSION

The Court finds that McNair is entitled to judgment as a matter of law in this case on each of the four grounds addressed above. Accordingly, McNair's motion for summary judgment is granted.

IT IS SO ORDERED.



The Honorable Larry B. Hyman, Jr.
Presiding Judge

Conway, S.C.

9-4, 2012


/20

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Scott Lemons and Gold Coast Resorts, LLC,
[] Plaintiffs,

vs.

Mark McAdams and The McNair Law Firm, P.A.,

[X] Defendant The McNair Law Firm
Check box above indicating submitting party

IN THE [X] COURT OF COMMON PLEAS
[] FAMILY COURT
Civil Action No.: 10-CP-26-9113

**MOTION AND ORDER INFORMATION FORM
AND COVER SHEET**

<u>name, SC Bar no. and address of plaintiff's attorney</u> Mark W. Hardee, Esquire The Hardee Law Firm 2301 Devine Street Columbia, South Carolina 29205 Telephone: (803) 799-0905 Fax: (803) 733-0470 Email: mwhardee@bellsouth.net e-mail: other:	<u>name, SC Bar no. and address of defendant's attorney</u> Robert E. Stepp, Esquire William H. Jordan, Esquire Sowell Gray Stepp & Laffitte, LLC Post Office Box 11449 Columbia, South Carolina 29211 Telephone: (803) 929-1400 Fax: (803) 231-7886 Email: rstepp@sowell.com ; wjordan@sowell.com e-mail: other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Defendant McNair Law Firm, P.A.'s Motion for Summary Judgment Estimated Time Needed: Court Reporter Needed: YES [X] NO []	
SECTION II: Motion Type ☒ Written motion attached ☐ Form Motion: I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for [] Plaintiff [X] Defendant Date Submitted: _____	
SECTION III: Motion Fee [X] PAID - AMOUNT: <u>\$25.00</u> [] EXEMPT: [] Rule to Show Cause in Child or Spousal Support [] Domestic Abuse or Abuse and Neglect (check reason) [] Indigent Status [] State Agency v. Indigent Party [] Sexually Violent Predator Act [] Post Conviction Relief [] Motion for Stay in Bankruptcy [] Motion for Publication [] Motion for Execution (Rule 69, SCRCF) [] Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ [] Other: _____	
JUDGE'S SECTION [] Motion Fee to be paid upon filing of the attached order. [] Other: _____	JUDGE: _____ CODE: _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ (print name) [] MOTION FEE COLLECTED: _____ [] CONTESTED - AMOUNT DUE: _____	

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Scott Lemons and Gold Coast Resorts,
LLC,

Plaintiffs,

vs.

The McNair Law Firm, P.A.,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Civil Action No.: 10-CP-26-9113

HORRY COUNTY
12 JUN 11 AM 8:28
MELANIE HUBBARD-WARD
CLERK OF COURT

**DEFENDANT MCNAIR LAW FIRM, P.A.'S
MOTION FOR SUMMARY JUDGMENT**

Defendant McNair Law Firm, P.A. ("McNair") hereby moves pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an Order granting summary judgment in its favor as to all claims in Plaintiffs' Complaint on the ground that there are no genuine issues of material fact and McNair is entitled to judgment as a matter of law.

As will be set forth in detail in McNair's supporting memorandum, this Motion should be granted for the following reasons:

1. As a matter of law, Plaintiffs suffered no damages in connection with McNair's alleged negligence in the underlying case. Because Gold Coast did not tender and could not tender performance to Kenny Hyatt ("Hyatt") on the closing date, Hyatt's duty to purchase was discharged, and there was no breach of contract. As a result, Plaintiffs' claims against Hyatt were worthless and, as a matter of law, Plaintiffs were not damaged by the alleged unauthorized settlement of the underlying case.

2. Plaintiffs' claims fail as a matter of law because Plaintiffs are bound by the mutual release executed by Lemons. Lemons had a duty to read the mutual release before signing it, but failed to do so. As a result and under the circumstances of this case, Plaintiffs cannot avoid the effect of the mutual release or claim misrepresentation as to its contents by claiming Lemons did not read it.

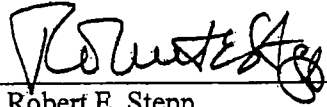
3. Plaintiffs openly ratified the settlement agreement and may not now maintain an action against McNair based on the allegation that McNair executed the settlement agreement without Plaintiffs' authority.

In support of its Motion, McNair will rely upon a memorandum of law to be submitted prior to this hearing on this matter, along with case law, statutory law, and any documents or affidavits which may be submitted prior to the hearing.

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, Counsel was under no duty to consult with opposing counsel prior to filing this motion.

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

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William H. Jordan
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorney for Defendant McNair Law Firm, P.A.

Columbia, South Carolina
June 7, 2012

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Scott Lemons and Gold Coast Resorts,
LLC,

Plaintiffs,

vs.

Mark McAdams and The McNair Law
Firm, P.A.,

Defendants.

) IN THE COURT OF COMMON PLEAS

) IN THE FIFTEENTH JUDICIAL CIRCUIT

) Civil Action No. 10-CP-26-9113

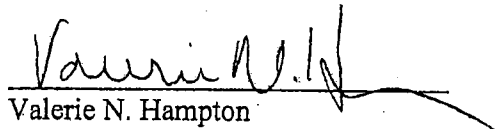
CERTIFICATE OF SERVICE

HORRY COUNTY
JUN 11 AM 8:28
CLERK OF COURT
JELANIE HUBBINS-WARD

I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendant McNair Law Firm, P.A., do hereby certify that I have served all counsel in this action with a copy of the document specified below by emailing a copy of the same to the following address:

Document: Defendant McNair Law Firm P.A.'s Motion for Summary Judgment

Counsel Served: Mark W. Hardee, Esquire
The Hardee Law Firm
2301 Devine Street
Columbia, South Carolina 29205
mwhardee@bellsouth.net
Attorney for Plaintiffs


Valerie N. Hampton

June 7, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

FIFTEENTH JUDICIAL CIRCUIT

Scott Lemons and Gold Coast Resorts,
LLC,)

Civil Action No.: 10-CP-26-9113

Plaintiffs,)

vs.)

The McNair Law Firm, P.A.,)

Defendant.)

HORRY COUNTY
12 JUN 27 PM 1:45
MELANIE HUGGINS-WARD
CLERK OF COURT

**DEFENDANT MCNAIR LAW FIRM, P.A.'S MEMORANDUM
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendant McNair Law Firm, P.A. ("McNair") hereby submits the following material and authorities in support of its Motion for Summary Judgment. There are no issues of fact that affect McNair's entitlement to judgment in its favor and the immediate end to this litigation. As is set forth in detail below, Plaintiffs have not suffered any damages as a result of any act or omission of McNair. Therefore, as a matter of law, McNair is not liable to Plaintiffs and McNair is entitled to summary judgment in its favor.

I. INTRODUCTION

This action concerns McNair's representation of Plaintiffs in a lawsuit arising from a real estate transaction that did not close. In the underlying case, Plaintiffs asserted a claim against Kenny Hyatt ("Hyatt"), who had contracted to purchase real property from Gold Coast, alleging that Hyatt breached the contract. Plaintiffs now claim that McNair settled Plaintiffs' claims against Hyatt without Plaintiffs' consent and for far less than the claims were worth. As will be

set forth more fully below, however, Plaintiffs' claims against Hyatt were worthless and therefore Plaintiffs were not damaged by the alleged unauthorized settlement of the underlying case. Moreover, Plaintiffs signed a mutual release and received and retained settlement funds in connection with the settlement of their claims against Hyatt. As a matter of law, Plaintiffs are bound by the mutual release and have ratified the settlement agreement. For these reasons, McNair is entitled to summary judgment in its favor.

II. FACTS AND PROCEDURAL HISTORY

On September 29, 2006, Scott Lemons ("Lemons") entered into an agreement to purchase a parcel of real property (the "Property") from John Delduca for \$1.4 million (the "Delduca Contract¹"). On October 28, 2006, Gold Coast Resorts, LLC ("Gold Coast"), a company in which Lemons was and is the sole member, entered into a contract to sell the Property to Hyatt for \$2.9 million (the "Hyatt Contract²"). Importantly, the Hyatt Contract provided that the transaction would be closed on or before November 23, 2006 and stated that "Time is of the essence." (Hyatt Contract ¶ 3.) (emphasis in original). The Hyatt Contract contained no provision by which the closing date could be extended. (Hyatt Contract ¶ 11.)

Neither the Delduca Contract nor the Hyatt Contract was ever performed. Neither Gold Coast nor Lemons acquired title to the Property from Delduca, and neither Gold Coast nor Hyatt ever tendered performance to the other. When the Hyatt Contract did not close, Tom Naomi, a real estate agent at C.S.E. Enterprises, Inc. d/b/a Re/Max at the Coast ("Re/Max"), and Re/Max sued Lemons and Gold Coast claiming that they had produced a buyer (i.e., Hyatt) and thus were entitled to their real estate commission pursuant to an agreement (the "Commission

¹ A copy of the Delduca Contract is attached hereto as **Exhibit A**.

² A copy of the Hyatt Contract is attached hereto as **Exhibit B**.

Agreement³”), which Lemons wrote, that provided that Naomi and Re/Max would receive a 10% commission if Naomi was able to provide Lemons with a purchaser for the Property. Represented by Mark McAdams (“McAdams”), a former attorney in McNair’s Myrtle Beach office, Lemons and Gold Coast answered and filed a third-party complaint⁴ against Hyatt alleging breach of contract and seeking specific performance of the Hyatt Contract.

On April 11, 2008, the underlying case was mediated. McAdams attended the mediation on behalf of Gold Coast and Lemons. Lemons was not present. At the mediation, an agreement was signed by McAdams by which Gold Coast and Lemons agreed to settle their claims against Hyatt for \$5,000.00.⁵ On May 8, 2008, McAdams mailed to Lemons a document entitled prominently “MUTUAL RELEASE” and asked Lemons to review it and contact him.⁶ Lemons claims not to have received this letter and the enclosed release. (Lemons Dep. Vol. I⁷, p. 175, line 20 – p. 176, line 2.) On May 21, 2008, Lemons signed the Mutual Release⁸ at McNair’s Myrtle Beach office. (Lemons Dep. Vol. I, p. 134, line 20 – p. 135, line 4.) Lemons signed the Mutual Release twice – once for himself and once for Gold Coast - and the Mutual Release contains the signatures of two McNair employees as witnesses. (See Ex. H.) Lemons admits signing the Mutual Release, but claims that he did not read the Mutual Release prior to signing it. (Lemons Dep. Vol. I, p. 178, lines 22 – 24.) Lemons received and retained the \$5,000 paid by Hyatt. (Lemons Dep. Vol. II⁹, p. 228, line 18 – p. 229, line 17.)

³ A copy of the Commission Agreement is attached hereto as **Exhibit C**.

⁴ A copy of Plaintiffs’ Answer and Third-Party Complaint is attached hereto as **Exhibit D**.

⁵ A copy of the Settlement Agreement as to Claims Involving Kenny Hyatt is attached hereto as **Exhibit E**.

⁶ A copy of McAdams’ May 8, 2008 letter to Lemons is attached hereto as **Exhibit F**.

⁷ Portions of Volume I of the Deposition of Scott Lemons are attached hereto as **Exhibit G**.

⁸ A copy of the Mutual Release is attached hereto as **Exhibit H**.

⁹ Portions of Volume II of the Deposition of Scott Lemons are attached hereto as **Exhibit I**.

On June 10, 2008, the case went to trial before Judge Cross on the remaining claims (i.e., Naomi and Re/Max's claims against Lemons and Gold Coast). McAdams represented Lemons and Gold Coast at the trial and Lemons was present and testified. (Lemons Dep. Vol. II, p. 234, line 14 – p. 235, line 13.) Hyatt was not present. On June 18, 2008, Judge Cross entered an order and judgment in favor of Naomi and Re/Max in the amount of \$290,000.00,¹⁰ which represented 10% of the purchase price in the Hyatt Contract. On June 26, 2008, McAdams filed a Motion to Alter or Amend the judgment.¹¹

In early August of 2008, McAdams resigned from McNair. On August 12, 2008, Lynn Stevens, an attorney in McNair's Myrtle Beach office, sent Lemons a letter informing him that McAdams had resigned and asking Lemons to instruct McNair concerning the further handling of all open matters.¹² Lemons instructed McNair to forward his files to Tommy Brittain ("Brittain"). (See Ex. L.) Prior to that time, Lemons made no effort to terminate McAdams as counsel for Gold Coast or himself.

In November of 2008, Brittain filed a memorandum in support of Lemons' and Gold Coast's Motion to Alter or Amend.¹³ By order dated December 12, 2008, Judge Stroman amended Judge Cross's order and overturned the judgment in favor of Naomi and Re/Max.¹⁴ Naomi and Re/Max appealed and by order dated June 7, 2011, the Court of Appeals affirmed Judge Stroman's order.¹⁵ The Memorandum in Support of Motion to Alter or Amend, Judge

¹⁰ A copy of Judge Cross's Order is attached hereto as **Exhibit J**.

¹¹ A copy of the Motion to Alter or Amend is attached hereto as **Exhibit K**.

¹² A copy of Stevens' August 12, 2008 letter is attached hereto as **Exhibit L**.

¹³ A copy of the Memorandum in Support of Motion to Alter or Amend is attached hereto as **Exhibit M**.

¹⁴ A copy of Judge Stroman's Order is attached hereto as **Exhibit N**.

¹⁵ A copy of the South Carolina Court of Appeals' opinion is attached hereto as **Exhibit O**.

Stroman's order, and the South Carolina Court of Appeals' opinion all stated that Lemons and Gold Coast had settled their claims against Hyatt for \$5,000. (See Exs. M, N, O.)

Plaintiffs commenced this legal malpractice action on September 28, 2010, alleging that McAdams settled Plaintiffs' claims against Hyatt without Plaintiffs' consent or authority.

As is set forth below, the facts do not support Plaintiffs' claims, and McNair is entitled to judgment as a matter of law.

III. LEGAL STANDARD

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder." Singleton v. Sherer, 377 S.C. 185, 197-98, 659 S.E.2d 196, 203 (Ct. App. 2008). Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the 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." Rule 56(c), SCRPC. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." Quail Hill, LLC v. County of Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010).

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." Singleton, 377 S.C. at 197-98, 659 S.E.2d at 203. Instead, "[t]he nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. at 198, 659 S.E.2d at 203. "It is not sufficient for one to create an inference that is not reasonable or an issue of fact that is not genuine." Evans v. Stewart, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006). "Although summary judgment is a drastic

remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper.” Id.

IV. ARGUMENT

Under South Carolina law, a plaintiff in a legal malpractice action must establish four elements: “(1) The existence of an attorney-client relationship; (2) A breach of duty by the attorney; (3) Damage to the client; and (4) Proximate cause of the plaintiff’s damages by the breach.” Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions, 388 S.C. 394, 402, 697 S.E.2d 551, 555 (2010) (citing Rydde v. Morris, 381 S.C. 643, 647, 675 S.E.2d 431, 433 (2009)). In establishing proximate cause in a South Carolina legal malpractice action, the plaintiff must establish that the attorney’s negligence was a “but for” cause of the plaintiff’s damages. See Eadie v. Krause, 381 S.C. 55, 64, 671 S.E.2d 389, 393 (Ct. App. 2008).

“The plaintiff in a legal malpractice action must prove a ‘case within a case,’ as he or she must prove the merits of the underlying case as part of the proof of the malpractice case.” 7A C.J.S. Attorney & Client § 331 (citations omitted). The case within a case doctrine is relevant when, as here, “the theory of the malpractice case places the merits of the underlying litigation directly at issue.” Eastminster Presbytery v. Stark & Knoll, 2012 WL 723331, at *2 (Ohio Ct. App., March 7, 2012). “In order to prove causation in these cases, the plaintiff must prove that but for the attorney’s conduct, the plaintiff would have obtained a better outcome in the underlying case.” Id. “Under the case-within-a-case concept, the test is objective. Therefore, the test is not what the outcome *would have been*, but rather what it *should have been*.” Doe v. Howe, 367 S.C. 432, 626 S.E.2d 25 (Ct. App. 2007) (citing Wilburn Brewer, Jr., *Expert Testimony in Legal Malpractice Cases*, 45 S.C. L. Rev. 727, 766 (1994)).

In this case, it is clear that Plaintiffs have suffered no damages as a result of any act or omission of McNair. Accordingly, McNair is entitled to judgment as a matter of law.

A. PLAINTIFFS' CLAIMS AGAINST HYATT WERE WORTHLESS AND, AS A MATTER OF LAW, PLAINTIFFS WERE NOT DAMAGED BY THE ALLEGED UNAUTHORIZED SETTLEMENT OF THE UNDERLYING CASE.

McNair denies Plaintiffs' allegation that McAdams settled Plaintiffs' claims against Hyatt in the underlying case without Plaintiffs' authorization. However, even if that were true, South Carolina law establishes as a matter of law that Plaintiffs did not have a valid claim for breach of contract against Hyatt, and therefore Plaintiffs suffered no damages as a result of the settlement of their claims against Hyatt.

At the time a seller enters into a contract to convey real estate, the seller is not required to have title to the property he intends to sell. Searles v. Auld, 118 S.C. 430, ___, 111 S.E. 785, 785 (1922) ("The fact, as alleged, that defendant at the time of making the contract did not have title, is not sufficient to indicate an impossibility of compliance on his part at the date set for same.") Under the "American Rule," "a purchaser cannot, prior to the time fixed by the contract for conveyance, complain that a seller's title is deficient or encumbered." Wolken v. Wade, 406 N.W.2d 720, 723-24 (S.D. 1987). Thus, Gold Coast was legally entitled to enter into a contract to sell property that it did not own at the time the contract to sell was executed.

At the time for performance, however, the seller must have title to the property as a condition of enforcing the contract to sell it. "[T]he [purchaser] may rightfully insist . . . that the title be perfect at the time fixed by the contract for final performance." Id. A real estate contract, like the Hyatt Contract, that provides that a deed shall be delivered to the buyer at the closing in exchange for the specified purchase price, creates what the law regards as dependent concurrent conditions. A concurrent condition is "an elliptical expression for a condition precedent where

performances are due at the same time.” Restatement (First) of Contracts § 251 (2012). “Since concurrent conditions protect both parties, courts endeavor, so far as possible in light of the expressed intention of the parties, to construe performances of mutual promises as concurrent conditions.” 15 Williston on Contracts § 44:20 (4th ed. 2011); Am. Nat’l Bank of Winter Haven, Fla. v. Caldwell, 166 S.C. 194, ___, 164 S.E. 613, 615 (1932) (“It is the tendency of the courts to construe the undertakings of the parties to such contracts as being dependent, unless a contrary intention appears.”).

When a contract contains dependent concurrent conditions, as the Hyatt contract did, the law is clear that neither party may sue for breach when neither party is prepared to perform. As the South Carolina Supreme Court explained:

Where the covenants are dependent and concurrent neither party can recover against the other without a performance or offer to perform on his part, unless performance shall be excused or rendered impossible by the other party. Hence, if a [purchaser] wishes to compel the vendor to fulfill his contract, he must make his part of the agreement precedent, and cannot proceed against the other without an actual performance of the agreement on his part, or a tender and refusal.

Bishop v. Tolbert, 249 S.C. 289, 300, 153 S.E.2d 912, 918 (1967). This is the well established “American Rule,” and applies to both parties to the transaction. Under this rule, a seller must tender the title to the property as a condition precedent to enforcement of the agreement against the purchaser. “[W]here all or part of the performances to be exchanged under an exchange of promises are due simultaneously, it is a condition of each party’s duty to perform that the other party either tender or with manifested present ability to do so, offer performance of his or her part of the simultaneous exchange.” 15 Williston on Contracts 43:31 (4th ed. 2011). The rule also provides that when neither party is able to perform at the specified closing date, and the contract provides, as here, that time is of the essence, the contract becomes void and both parties’

duty to perform is discharged. See Nadeau v. Beers, 440 P.2d 164, 166 (Wash. 1968) (holding that when an agreement makes time of the essence, fixes a termination date, and there is no conduct giving rise to waiver or estoppel, the agreement becomes “legally defunct” on the termination date if performance is not tendered); Pittman v. Canham, 2 Cal. App. 4th 556, 559-60 (Cal. App. 1992) (“The failure of both parties to perform concurrent conditions during the time for performance results in a discharge of both parties’ duty to perform.”); 15 Williston on Contracts 43:31 (4th ed. 2011) (“After the time fixed by the contract . . . the conditions become impossible of performance, so the contract must be considered discharged.”); Restatement (Second) of Contracts § 238 (1981) (noting that until a party has made an offer of performance “the other party is under no duty to perform, and if both parties fail to make such an offer, neither party’s failure is a breach”).¹⁶

In the present case, neither Hyatt nor Gold Coast performed or tendered performance on the date of the closing. Lemons never acquired title to the Property from Delduca, and never entered into any kind of agreement with Gold Coast to transfer title to Gold Coast. (Lemons Dep. Vol. I, p. 123, lines 15 – 16). Gold Coast therefore did not have the ability to tender title to Hyatt on November 23, 2006 as required by the express terms of the Hyatt Contract. Because time was made of the essence in the closing of the Hyatt Agreement, the failure of both parties to tender performance by the closing date specified in the Hyatt Contract resulted in the discharge of that

¹⁶ As noted above, the South Carolina Supreme Court has ruled that the condition precedent does not require that a party actually perform. Bishop, 249 S.C. at 300, 153 S.E.2d at 918. But, a party must at the least “make an appropriate offer to perform, since it is a condition of each party’s duties of performance with respect to the exchange that there be no uncured material failure by the other party at least to offer performance.” Restatement (Second) of Contracts § 238, cmt. a (1981). An offer of performance “must be accompanied with manifested present ability to make it good, but the offeror need not go so far as actually to hold out that which he is to deliver.” Id., cmt. b. In the present case, because Gold Coast never had title to the Property on the date of closing, it, by definition, did not have a “manifested present ability to make it good.”

contract. Therefore, neither party could hold the other in default and no cause of action to enforce the contract ever arose. Because Hyatt's duty to purchase the Property was discharged by Gold Coast's failure to tender title, there was no breach of contract. Because there was no breach, Plaintiffs' claims against Hyatt were worthless and should have been dismissed. See Doe v. Howe, 367 S.C. 432, 442, 626 S.E.2d 25, 30 (Ct. App. 2005) (observing that "[a]s to damages, the plaintiff must show he or she 'most probably would have been successful in the underlying suit if the attorney would not have committed the alleged malpractice'"). McNair's settlement of that case therefore did not proximately cause Plaintiffs any damages even if McNair's settlement was unauthorized or negligent, because that settlement resulted in a payment from Hyatt to Plaintiffs even though Hyatt had no liability for failing to close. Eastminister Presbytery, 2012 WL 723331 at *2 (noting that in order to prove causation in cases where the case-within-a-case doctrine applies, "the plaintiff must prove that but for the attorney's conduct, the plaintiff would have obtained a better outcome in the underlying case"). Accordingly, this Court should grant McNair's Motion for Summary Judgment.

B. PLAINTIFFS' CLAIM FAILS AS A MATTER OF LAW BECAUSE PLAINTIFFS ARE BOUND BY THE MUTUAL RELEASE EXECUTED BY LEMONS.

Plaintiff Lemons admits that he executed the two-page Mutual Release by which Plaintiffs settled their claims against Hyatt. (Lemons Dep. Vol. I, p. 134, line 20 – p. 135, line 4.) Lemons further admits that he failed to read the Mutual Release and that, if he had read it, he would not have signed it. (Lemons Dep. Vol. I, p. 178, lines 22 – 24; p. 179, line 23 – p. 180, line 1.) Under South Carolina law, Lemons had a duty to read the release before signing it and cannot avoid the effect of the Mutual Release or claim misrepresentation as to its contents by claiming that he did not read it.

It is well established under South Carolina law that “a person who can read is bound to read an agreement before signing it.” Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2000) (footnote omitted) (citing Hood v. Life & Cas. Ins. Co. of Tenn., 173 S.C. 139, 175 S.E. 76 (1934)); Burwell v. South Carolina Nat’l Bank, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986). Thus, “[a] person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it.” Wachovia Bank v. Blackburn, 394 S.C. 579, 585, 716 S.E.2d 454, 458 (Ct. App. 2011) (quoting Regions Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003)); J.B. Colt Co. v. Britt, 129 S.C. 226, ___, 123 S.E.2d 845, 847 (1924) (“[O]ne cannot avoid a written contract into which he has entered on the ground that he did not attend to its terms, that he did not read the document which he signed, that he supposed it was different in its terms, or that it was a mere form.”) “A person signing a document is responsible for reading the document and making sure of its contents.” Wachovia Bank, 394 S.C. at 585, 716 S.E.2d at 458 (quoting Regions Bank, 354 S.C. at 663, 582 S.E.2d at 440). “One who signs a written instrument has the duty to exercise reasonable care to protect himself.” Id. The only exception to this rule is that “if the party is ignorant and unwary, his failure to read the document may be excused.” Regions Bank, 354 S.C. at 664, 582 S.E.2d at 440 (citing cases). However, South Carolina courts “very strictly construe[] this exception.” Id. “In determining whether a party can be classified as ignorant and unwary, an individual’s education, business experience and intelligence are all considered.” Id.

A party cannot simply rely on the representations of others as to the contents of a written document, even when that person is in a fiduciary relationship. See Marion Partners, LLC v. Weatherspoon & Voltz, LLP, 716 S.E.2d 29, 31 (N.C. App. 2011) (finding that plaintiff’s attorney owed plaintiff a duty to explain the consequences of a document, but holding that “this

duty does not relieve [plaintiff] from her own duty to ascertain for herself the contents of the contract she was signing"). Under South Carolina law, "the right to rely upon representations as to the contents of a written instrument must be determined in light of the duty on the part of the representee to use reasonable prudence and diligence under the particular circumstances for his own protection." Parks v. Morris Homes Corp., 245 S.C. 461, 466-67, 141 S.E.2d 129, 132 (1965); Florentine Corp. Inc. v. PEDAI, Inc., 287 S.C. 382, 386, 339 S.E.2d 112, 114 (1985) (same). "What constitutes reasonable prudence and diligence with respect to reliance upon a representation in a particular case and the degree of fault attributable to such reliance will depend upon the various circumstances involved, such as the form and materiality of the representation, the respective intelligence, experience, age, and mental and physical condition of the parties, the relation and respective knowledge and means of knowledge of the parties, etc." Id. at 467, 141 S.E.2d at 132; Redwend Ltd. P'ship v. Edwards, 354 S.C. 459, 474, 581 S.E.2d 496, 504 (Ct. App. 2003) ("[T]he precedent in South Carolina is to look to the totality of circumstances to determine whether reliance was justified.")

There is no question that Lemons was fully capable of reading and understanding the document he signed. First, Lemons concedes that he would not have signed the Mutual Release if he had read it, thereby acknowledging that he would have understood it if he had read it. (Lemons Dep. Vol. I, p. 179, line 23 – p. 180, line 1.) Second, Lemons is an experienced real estate agent who, by his own account, has been involved in "[o]ver two hundred million [dollars] in real estate transactions in [the] past 10 years." (LinkedIn Profile of Scott Lemons¹⁷.) Moreover, the Mutual Release is only a two page document and the first sentence provides clearly that Plaintiffs are releasing their claims against Hyatt in exchange for payment of \$5,000.

¹⁷ A copy of Lemons' LinkedIn Profile is attached hereto as **Exhibit P**.

(See Ex. H.) Because Lemons is charged with knowledge of the contents of the Mutual Release, he cannot claim that he was misled by his attorney as to its contents. See, e.g., Doub v. Weathersby-Breeland Ins. Agency, 268 S.C. 319, 326, 233 S.E.2d 111, 114 (1977) ("It is well settled in this State that one cannot complain of fraud in the misrepresentation of the contents of a written instrument in his possession when the truth could have been ascertained by his reading the instrument."). Lemons may not now avoid the Mutual Release or claim misrepresentation as to its contents and McNair is entitled to judgment in its favor as a matter of law.

C. PLAINTIFFS RATIFIED THE SETTLEMENT AGREEMENT.

Even if Lemons were relieved of the duty to read the Mutual Release and educate himself as to its contents, Plaintiffs' claim against McNair is barred as a matter of law because Plaintiffs ratified the settlement with Hyatt. Ratification is "the express or implied adoption and confirmation by one person of an act or contract performed or entered into in his behalf by another who at the time assumed to act as his agent." Lincoln v. Aetna Cas. & Sur. Co., 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989); Brazell Bros. Contractors v. Hill, 245 S.C. 69, 74, 138 S.E.2d 835, 837 (1964) ("Ratification . . . is the adoption by one person of an act done or bargain made for him by another under such circumstances that he would not have been bound but for his subsequent assent."). "One asserting ratification must establish the following three elements: (1) acceptance by the principal of the benefits of the agent's acts, (2) the principal's full knowledge of the facts, and (3) circumstances or an affirmative election demonstrating the principal's intent to accept the unauthorized arrangements." Stiltner v. USAA Cas. Ins. Co., 395 S.C. 183, 191, 717 S.E.2d 74, 78 (Ct. App. 2011) (citing Lincoln v. Aetna Cas. & Sur. Co., 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989)).

While silence or a failure of the principal to repudiate the act does not necessarily constitute ratification, ratification is apparent when “the silence or acquiescence in question cannot be explained on any other theory than that of ratification.” Stiltner, 395 S.C. at 191-92, 717 S.E.2d at 78 (quoting 2A C.J.S. *Agency* § 71 (2003)). “The authority of an attorney, or ratification of his unauthorized acts, may be inferred from the circumstances, as for instance, from the silent acquiescence of the client for a long period, or from the client’s acceptance and retention of the fruits of the unauthorized act of the attorney.” Foxworth v. Murchinson Nat’l Bank, 136 S.C. 458, ___, 134 S.E. 428, 431 (1926) (quoting 2 R.C.L., p. 977). The relationship between attorney and client is predicated on that of principal and agent. See 78 C.J.S. *Attorney & Client* § 220. Where there is a relationship between principal and agent, such as attorney and client, the presumption of ratification arising from silence is strong. See Hinson v. Roof, 128 S.C. 470, ___, 122 S.E. 488, 490 (1924).

Ratification may also arise from positions taken in litigation by the attorney for the principal. In Brazell Brothers Contractors v. Hill, 245 S.C. 69, 138 S.E.2d 835 (1964), a case with elements similar to the present case, the court held the client had ratified a release because his attorney filed a motion in court that acknowledged the release and sought other relief.

In the present case, all of the facts necessary to establish ratification of the settlement by Plaintiffs as a matter of law are present. First, it is undisputed that Lemons kept the settlement proceeds and never tendered them back to Hyatt. (Lemons Dep. Vol. II, p. 228, line 18 – p. 229, line 17.) The first element is therefore satisfied. Second, Lemons had full knowledge of the facts from at least the date of the trial of the claims by Naomi. At that point he knew that Hyatt was not present and the only matter presented was a defense to Naomi, and not a claim against Hyatt. Thereafter he made no effort to avoid the settlement or to rescind the release. Moreover, he

continued to retain the benefits of the settlement proceeds. (Lemons Dep. Vol. II, p. 234, lines 5 – 10.) He continued to do nothing even after receipt of Judge Cross' order, which plainly recites that the Hyatt claims had been settled for \$5,000. (See Ex. J.) After receiving Judge Cross's order with that language, Lemons never moved to set aside the settlement or otherwise re-open the claim against Hyatt. To the contrary, he acquiesced without protest in a representation made by his attorney Mr. Brittain to the Court that Lemons' and Gold Coast's claims against Hyatt had been settled for \$5,000. (See Ex. M.) He thereafter also accepted the benefit of Judge Stroman's Order relieving him of the Naomi judgment, which again recites that the claims against Hyatt had been settled for \$5,000. (See Ex. N.) The same thing is true with respect to the opinion of the Court of Appeals. (See Ex. O.) Finally, such actions, silence, acquiescence, and adoption of the settlement are only explainable as full acceptance of the settlement and its benefits, and therefore constitute ratification of the settlement as a matter of law.

Because Plaintiffs have fully and openly ratified the settlement, they may not now maintain a claim against McNair for the alleged unauthorized conduct of McAdams in committing Plaintiffs to that settlement. Accordingly, McNair is entitled to judgment in its favor as a matter of law.

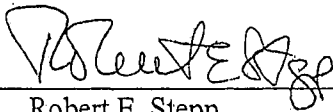
V. CONCLUSION

As is set forth above, Plaintiffs' legal malpractice action against McNair fails as a matter of law. Even taken in a light most favorable to Plaintiffs, the facts illustrate conclusively that Plaintiffs have suffered no damages as a result of any act or omission of McNair. Accordingly, McNair is entitled to summary judgment in its favor.

[Signature Page Follows]

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

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Attorney for Defendant McNair Law Firm, P.A.

Columbia, South Carolina
June 26, 2012

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Scott Lemons and Gold Coast Resorts,
LLC,

Plaintiffs,

vs.

Mark McAdams and The McNair Law
Firm, P.A.,

Defendants.

) IN THE COURT OF COMMON PLEAS

) IN THE FIFTEENTH JUDICIAL CIRCUIT

) Civil Action No. 10-CP-26-9113

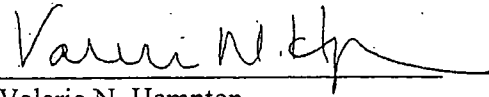
CERTIFICATE OF SERVICE

HORRY COUNTY
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JENNIE HUGGINS-WARD
CLERK OF COURT

I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendant McNair Law Firm, P.A., do hereby certify that I have served all counsel in this action with a copy of the document specified below by emailing a copy of the same to the following address:

Document: Defendant McNair Law Firm P.A.'s Memorandum in Support of Motion for Summary Judgment.

Counsel Served: Mark W. Hardee, Esquire
The Hardee Law Firm
2301 Devine Street
Columbia, South Carolina 29205
mwhardee@bellsouth.net
Attorney for Plaintiffs


Valerie N. Hampton

June 26, 2012
Columbia, South Carolina

The case proceeded to go through normal discovery, and the case was mediated in May 2008. Mr. Lemons did not know of the mediation, and it is undisputed that he did not attend. Mark McAdams signed a settlement agreement of the 1.5 million dollar Breach of Contract case against Kenny Hyatt, on behalf of, and without the authority of, Mr. Lemons, in the amount of five thousand dollars (\$5,000).

Several days later, Mr. Lemons was called by Mr. McAdams to come to his office to sign some paper work. Mr. Lemons was told by Mr. McAdams that Mr. Lemons needed to sign a release of the earnest money in the case, and that Mr. Lemons would receive five thousand dollars of it. Mr. Lemons was told that the case against Mr. Hyatt would go forward. Mr. Lemons later learned that Mr. McAdams had settled the case without his knowledge for five thousand dollars (\$5,000), and that the paper work that he had Mr. Lemons sign was a complete release of the claims.

The case by the real estate agent Mr. Naomi proceeded to trial against Mr. Lemons, who was represented by Mark McAdams, which resulted in a judgment against Mr. Lemons in excess of two hundred thousand dollars (\$200,000). Mark McAdams was fired by The McNair Law Firm just after the trial of that case, and the file was transferred to Tommy Brittain, who was able to have the judgment overturned.

Mr. Lemons is claiming malpractice on behalf of McNair Law Firm, for settling a valuable claim worth 1.5 million dollars, for \$5000, without his knowledge or consent. The Plaintiffs' allege that the reason Mr. McAdams would do such a thing is that, at the same time this was going on, Mr. McAdams secretly replaced Mr. Lemons as a partner in a deal, that at the time, everyone involved thought was worth millions of dollars. In fact, this "business deal" named Global Holdings, was a deal put together by the McNair Law Firm. It has since proven to have been a fraudulent scheme and is being investigated by the SEC and the FBI.

Mr. Lemons claims that Mr. McAdams settled his valuable claim without his authority. It is believed that Mr. McAdams will claim that he had Mr. Lemon's authority. Mr. Lemons claims that Mr. McAdams instructed him to sign a document that Mr. Lemons was lead to believe was a release of earnest money. Mr. McAdams, unknown to Mr. Lemons, cut Mr. Lemons out of what everyone involved at the time believed to be a multi- million dollar business deal. Mr. McAdams secretly went into partnership with Mr. Lemon's partners in the deal. The McNair Law Firm was the architect of that deal.

Plaintiff has alleged legal malpractice, claiming that the McNair Law Firm, while representing the Plaintiff, breached the standard of care, and was negligent by settling a valuable claim for less than it was worth without the knowledge or permission of their client. South Carolina common law of negligence: duty, breach, proximate cause of damages, apply to the case. The Plaintiff will represent expert testimony in this regards from John Freeman. Also see Crowley vs. Harvey and Battey, 327 S.C 68, 488 S.E.2d 334 (1997).

The McNair Law Firm's first ground for Summary Judgment is its assertion that the Plaintiffs' claims against Hyatt in the underlying matter were worthless. This very issue was researched by McNair Law Firm prior to bringing the underlying suit. The record contains a memorandum from McNair Law Firm addressing the issue as to whether or not there was liability on the behalf of Mr. Hyatt, which the answer was "probably yes".

The case the McNair Law Firm relied on at that time was Searles v. Alud, 118 S.C. 430, 111, S.E. 785 (1922). That case holds that not having title to property at the time of a contract for sale, is not sufficient to indicate an impossibility of compliance.

At the time of performance, Mr. Hyatt indicated he was not going to go forward on his contract. At that time Mr. Lemons went to his lawyers at McNair Law Firm, who told him he had a breach of contract suit, and he followed their advice from that point forward.

Lemons Deposition vol. 1 page 125-128

Lemons Deposition vol. 2 page 264- 267, 273-275

Mr. Lemons did not go through with the purchase of the property once he learned that Hyatt did not intend to honor his contract. He testified that he was ready, willing and able to, but instead, wanted to wait and see how the breach of contract law suit unfolded before making that decision. In fact, this testimony is consistent with the testimony in the underlying case. In his deposition in the underlying case, Mr. Lemons testified that he had the ability to close on the property prior to Mr. Hyatt's breaching the contract, but he wanted to wait to see how the breach of contract action against Mr. Hyatt resolved itself. Mr. Lemons testified that he could of closed in multiple ways but "the only reason I have not purchased it yet is because I want to see the outcome"

Lemons deposition in the underlying matter pages 47-52.

Mr. Lemons was ready, willing and able to obtain title to the property prior to Hyatt's breach of contract. He testified that the deal was supposed to be a simultaneous closing. Once learning that Hyatt was going to breach the contract however, he was under no duty to perform a futile act. Once Mr. Hyatt made his intentions clear that he was not he was not going to close on the property. Mr. Lemons was under no duty to proceed under his contract, as that would be a futile act, which the law does not require him to perform.

A repudiation of a contract before time of performance gives the adverse party the right to treat the entire contract as broken, and sue immediately for damages. There is no need to tender performance or compliance with conditions precedent. 17 AM Jur 2nd Contracts 737-8,740.

The contract signed by Hyatt contained no conditions or contingencies. It was a no condition contract. The defendant would have this court recognize a rule of law called

"dependent concurrent conditions". This term is not found in Westlaw's (Rest. Contr.) database covering the Restatement of Contracts.

The Plaintiff has been able to locate a South Carolina case directly on point. Although it is ancient law, it is still good law. The legal conclusion of that case is directly on point. *Dubignon v. Loud*, 7 Rich. 193, S.C.L. 193, 1854 WL 2797 (S.C. App.L. 1854) found: "A vendor cannot maintain an action for the purchase-money, nor (as we have determined in this case) for damages, when his part of the agreement, unexecuted, is precedent, or concurrent, without an actual performance, on his part, or tender and refusal-without executing and offering a conveyance, where that is his duty, unless the purchaser has discharged him from so doing." The court goes on to recognize the rule of law that: "The party must show he was ready; but if the other stops him on the ground of an intention not to perform his part, it is not necessary for the first to go further, and do a nugatory act". The law is clearly settled that Mr. Lemons was under no obligation to perform the futile or "nugatory" act of closing to maintain his breach of contract action against Hyatt.

Other states recognize the same proposition. In *Angle v. Marco Builders Inc.*, 128 Ariz. 396, 626 P2d 126 (1981), the court held "Actual tender becomes unnecessary where it would have been a futile act; as here, where appellees could not concurrently tender performance by conveying the deed since no house had yet been constructed." This is a basic rule of contract law

The McNair Law Firm was correct in its memo in the underlying attached action that a condition present is not required to show a party's ability to perform. Mr. Lemons testified in both the underlying matter, and the deposition in this case, that he was ready, willing and able to go through with his contract with the seller at the time Mr. Hyatt breached his contract.

Defendant McNair next claims that Mr. Lemon's claims against it should be dismissed based on Mr. Lemon's signing a mutual release in the underlying case, and in a separate section, McNair also claims his signing of the release and accepting the money was a ratification of that claim. Ratification has three elements: 1) Acceptance of benefits 2) Full knowledge of faults 3) affirmative election. *Lincoln v. Aetna Cas. & Surety Co.* 300 S.C. 88,386 S.E.2d 801 (Ct.App.1989).

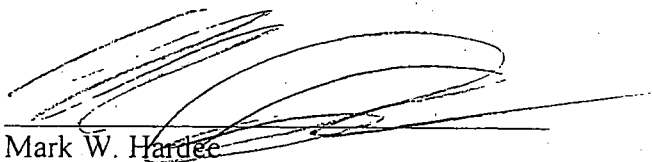
The defendant would have this court find that a plaintiff has no right to rely on his attorney and, that an attorney has no duty to properly advise his client as to the contents of a contract.

Amazingly, McNair fails to cite the seminal case regarding that issue. *Crowley v. Harvey & Battey* 237 S.C. 68, 488, S.E.2d 334(1997). This case sets out that if a client signs a release based on negligent advice from his attorney, although he cannot collaterally attack the Release as to the third party, he can maintain a malpractice against his attorney, and is allowed to keep the proceeds from that underlying matter in an effort to mitigate his damages. In this case Mr. Lemons claims Mr. McAdams, on the behalf of the McNair Law Firm, advised him that the Mutual Release was only releasing the earnest money in this matter, and that it did not stop his lawsuit against Mr. Hyatt for damages from moving forward. Based on that advice, Mr. Lemons signed the Release. McNair Law Firm's arguments in this regard are frivolous. In fact, Mr. Lemons testifies as to a telephone conversation he had with Mr. McAdams after signing the Mutual Release, which was overheard by witness Karen Hartley, and at that time Mr. McAdams clearly told Mr. Lemons that the case against Mr. Hyatt was still viable, and that the release only applied to \$5,000 dollars of the earnest money.

CONCLUSION

The Plaintiffs maintain that not only are there questions of fact in this case, but much of the facts are un-contradicted. Lemon received negligent advice from the McNair Law Firm in the underlying matter, including negligent advice as to the signing of the release. Mark McAdams, without authorization, settled a case with self-authentication damages of \$1.5 million dollars for \$5,000 dollars, and did not communicate this to Mr. Lemons until well after he signed the release causing him to lose his claims. Therefore the McNair Law Firm's Motion for Summary Judgment should be denied.

THE HARDEE LAW FIRM



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Aug 2, 2012

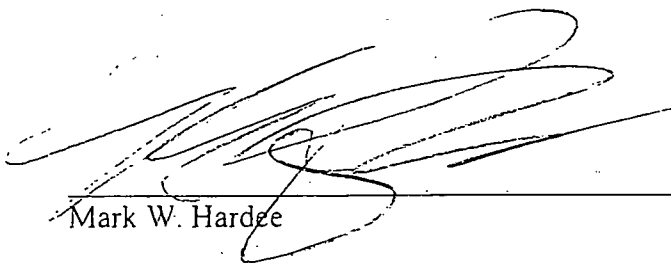
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Horry County
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MELANIE HUGGINS-WARD
CLERK OF COURT

CERTIFICATE OF SERVICE

I, Mark W. Hardee, Attorney at Law, do hereby certify that I have this date served a copy of the following upon the individuals named below, by placing a copy in the United States Mail, postage prepaid and return address clearly indicated to the address below:

COUNSEL SERVED: Robert Stepp

PLEADING: Plaintiff's Supplemental Memorandum in Opposition to Summary
Judgment



Mark W. Hardee

8/2/12
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Scott Lemons and Gold Coast Resorts, LLC,	)	Civil Action No.: 10-CP-26-9113
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
The McNair Law Firm, P.A.,	)	
	)	
Defendant.	)	

**DEFENDANT MCNAIR LAW FIRM, P.A.'S REPLY MEMORANDUM
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendant McNair Law Firm, P.A. ("McNair") submits the following Reply Memorandum in response to the arguments offered by Plaintiffs in their opposing memorandum and at the hearing on this motion. Plaintiffs have cited no legal authority and have raised no factual issues that in any way impact McNair's entitlement to judgment as a matter of law.¹ Well-established legal principles compel the entry of summary judgment in McNair's favor and the immediate end to this litigation.

I. ARGUMENT

A. Plaintiffs' Claims Against Kenny Hyatt were Worthless.

Plaintiffs allege in this case that they were damaged by a McNair lawyer's settlement, without authority, of Plaintiffs' suit against Kenny Hyatt. The suit against Hyatt was based on a failure to close a real estate transaction. To succeed in this case, Plaintiffs must prove the merits of their case against Hyatt. Doe v. Howe, 367 S.C. 432, 626 S.E.2d 25 (Ct. App. 2007). "Under

¹ McNair is accepting Plaintiffs' testimony to be accurate for purposes of this motion, while reserving the right to contest certain of that testimony if this motion is denied.

the case-within-a-case concept, the test is objective. Therefore, the test is not what the outcome *would have been*, but rather what it *should have been*.” *Id.* (emphasis in original). “The question of the success of the underlying claim . . . is a question of law.” *Id.* (citing Manning v. Quinn, 294 S.C. 383, 386, 356 S.E.2d 24, 25 (1988) (holding that likelihood of success of underlying case was a question of law “and decision of that question on summary judgment motion is appropriate”). Accordingly, any opinions offered by Plaintiffs’ expert or any one else concerning what would have happened in the underlying case or the value of the underlying case are irrelevant and should not be considered by the Court. The determination of what the outcome of the underlying case *should have been* is strictly a matter of law for the Court to decide. See Dawkins v. Fields, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) (holding that “expert testimony on issues of law is inadmissible”). In this case, applicable law establishes clearly that Plaintiffs did not have a valid claim against Hyatt in the underlying case. As a result, Plaintiffs should have recovered nothing from Hyatt in the underlying case and cannot, as a matter of law, recover anything from McNair in this case regardless of the results of the mediation.

1. Plaintiffs never acquired title to the property.

At the time set for performance of a real estate contract, the seller must have title to the property in order to enforce the contract to sell it. This rule of law is firmly established in courts across the country and Plaintiffs have not cited a single case that holds otherwise. Instead, Plaintiffs rely upon Searles v. Auld, 118 S.C. 430, 111 S.E. 785 (1922), a South Carolina case originally cited in McNair’s memorandum in support of the motion for summary judgment. Searles confirms the rule that one who does not have title on the day of closing cannot enforce a contract to sell real property. Plaintiffs correctly cite Searles as holding that “not having title to property at the time of a contract for sale is not sufficient to indicate an impossibility of

compliance.” (emphasis added). Searles also holds, however, that “[i]f the title is defective . . . but such defects are cured at the time fixed for performance, a rescission will not be permitted.” Id. at 787 (emphasis added). Thus, while a party may contract to sell property he does not own, he must “cure the defect,” *i.e.* “own the property,” at the time fixed for closing in order to sue the purchaser for breach. In this case, it is uncontroverted that no Plaintiff ever had title to the property on November 23, 2006, the date established for closing in the Hyatt contract and therefore could not have performed under the Hyatt contract. As a result, Plaintiffs could not have prevailed in an action against Hyatt for breach of contract in the underlying case.

Plaintiffs also submitted a memorandum prepared by a McNair associate dated May 18, 2007. Plaintiffs incorrectly contend that McNair reached the same conclusion in this memorandum that Plaintiffs now argue, *i.e.*, that Lemons did not have to have title to the property in order to enforce the contract with Hyatt. While this memorandum is irrelevant to the case because it was prepared well after the contract with Hyatt had already expired, the legal conclusion reached is the same one that McNair is currently presenting. The memorandum states that “if [Lemons] can acquire title by the time performance is due in the contract between [Lemons] and Hyatt, then Hyatt cannot rescind the contract.” Again, neither Plaintiff had title to the property at the time performance of the Hyatt contract was due. As a result, Plaintiffs did not have a breach of contract claim against Hyatt.

Plaintiffs also argue that Hyatt repudiated the contract and that Plaintiffs therefore were not required to purchase the property because doing so would be a “futile act.”² First, there is no evidence in the record, and Plaintiffs cite to none, indicating that Hyatt informed Plaintiffs prior to the closing date that he would not be performing under the contract, or that Plaintiffs offered

² In support of this position, Plaintiffs cite “17 AM Jur 2nd contracts 737-8, 740.” McNair is unable to locate the section to which Plaintiffs cite.

to close with Hyatt and such offer was declined. To the contrary, Lemons testified that he never spoke with Hyatt at all. (Lemons Dep.³, p. 39, lines 17 – 20.) Therefore, Hyatt did not repudiate the contract prior to the closing date.

Moreover, even if Hyatt had informed Plaintiffs prior to the closing date that he did not intend to perform under the contract, the law clearly required Plaintiffs to acquire title to the property in order to maintain a breach of contract action against Hyatt. If Hyatt repudiated the contract, Plaintiffs arguably would be excused from showing up on the specified closing date and presenting Hyatt with a signed deed. However, the law is absolutely clear that Plaintiffs had to acquire title to the property on or prior to the closing date in order to hold Hyatt liable for breach. An act required by the law cannot be a “futile act.”

Finally, Plaintiffs argued at the hearing that McNair was negligent in failing to advise Plaintiffs that they needed to purchase the property in order to sue Hyatt for breach of contract. However, counsel for Plaintiffs readily admitted during the hearing on this motion that Plaintiffs waited until after the Hyatt contract had expired to ask McNair whether or not to purchase the property. Accordingly, Plaintiffs’ failure to acquire title to the property on or before the November 23, 2006 closing date cannot be attributable to any advice offered by McNair. Moreover, such alleged negligent advice is not alleged in the Complaint in this case and is not the subject of Plaintiffs’ expert affidavit.

2. The Hyatt Contract was null and void.

In the underlying case, Judge Stroman found that the contract between Gold Coast and Hyatt was “null and void.” The Court of Appeals affirmed Judge Stroman’s order and Plaintiffs did not take any action to challenge or appeal this finding. Judge Stroman’s finding was directly

³ The relevant portion of Lemons’ March 11, 2008 deposition is attached hereto as **Exhibit A**.

related to his determination that Plaintiffs were not obligated to pay a commission to the realtor who procured the Hyatt contract. As a result, the finding that the Hyatt contract was null and void became the law of the underlying case and Plaintiffs are collaterally estopped from now asserting otherwise. There is no question that the issue of the validity of the contract between Hyatt and Gold Coast was actually litigated in the underlying case, was directly determined in the underlying case, and was necessary to support the judgment in the underlying case. See Crosby v. Prysmian Communications Cables & Sys., USA, LLC, 397 S.C. 101, 723 S.E.2d 813 (Ct. App. 2012). Because the contract between Gold Coast and Hyatt was null and void, Plaintiffs had no legal basis to recover damages from Hyatt in the underlying case and that claim therefore should have been dismissed. Plaintiffs thus cannot recover against McNair in this case.

B. Plaintiffs Ratified the Settlement Agreement.

The facts of this case compel the conclusion that, even if McAdams did not have Plaintiffs' authorization to settle the underlying case with Hyatt, Plaintiffs ratified the settlement agreement and cannot now recover against McNair. Lemons kept the settlement proceeds and never tendered them back to Hyatt. He made no effort at any time to seek relief under Rule 60 or otherwise avoid the settlement, or to rescind the release he signed. He made various representations to two courts indicating that he had agreed to settle his claims against Hyatt, and used this fact to support his argument that Naomi was not entitled to a real estate commission. Finally, Lemons never contested recitations in numerous court orders indicating that his claims against Hyatt had been settled. Plaintiffs accepted and retained the benefits of the settlement after learning about the truth of the settlement⁴ and took numerous actions thereafter indicating their

⁴ McNair contends that Plaintiffs were aware of the settlement no later than May 21, 2008, which is the date that Lemons signed the Mutual Release. While Plaintiffs deny such knowledge at that

acceptance of the settlement. See Stiltner v. USAA Cas. Ins. Co., 395 S.C. 183, 191, 717 S.E.2d 74, 78 (Ct. App. 2011). As a result, Plaintiffs ratified the settlement agreement.

In opposing McNair's ratification argument, Plaintiffs rely on Crowley v. Harvey & Battey, P.A., 327 S.C. 68, 488 S.E.2d 334 (1997), for the proposition that Plaintiffs may retain the benefits of the settlement with Hyatt and still maintain a legal malpractice cause of action against McNair. Crowley is inapplicable on its face, however, and the controlling authority for the issue in this case is L.F.S. Corp. v. Kennedy, 287 S.C. 162, 337 S.E.2d 209 (1985), a case discussed in Crowley. When these two decisions are considered together it is evident that Kennedy is controlling under the facts of this case and that Plaintiffs' legal malpractice cause of action fails as a matter of law.

In Kennedy, a client sued its lawyer alleging that the lawyer failed to follow the client's instructions concerning settlement negotiations and permitted summary judgment to be entered based on an unauthorized agreement. 287 S.C. at 163, 337 S.E.2d at 210. The court found that, despite the lawyer's alleged failure to follow his client's instructions, the client ratified its lawyer's actions by accepting funds pursuant to the settlement agreement and taking action to enforce the agreement. Id. These facts are very similar to the present case, in which Plaintiffs allege that McAdams acted without authority, yet Plaintiffs accepted the funds and repeatedly cited the agreement to the Master in Equity and to the South Carolina Court of Appeals in aid of an argument to avoid a judgment.

In Crowley, a client sued her lawyer alleging that the lawyer was negligent in advising her in settling the property division issues in her divorce action. 327 S.C. at 70, 488 S.E.2d at 334. The lawyer relied on Kennedy and argued that, by accepting settlement funds and suing to

time, Judge Cross' Order of June 18, 2008 recites that the claims against Hyatt had been settled. Plaintiffs cannot deny knowledge of the settlement from that date forward.

enforce the agreement, the client had ratified the agreement. Id. at 70, 488 S.E.2d at 335. The court distinguished Kennedy, noting that in Kennedy, “the malpractice claim was premised on allegations that the attorney had exceeded his authority in settling the client’s case [and] *despite knowledge of this problem*, the client ratified its attorney-agent’s acts by accepting the benefits of the settlement.” Id. (emphasis in original). The court found that the claim in Crowley was “entirely different” from the claim in Kennedy in that the claim in Crowley concerned “the adequacy of the attorney’s advice to their client.” Id. at 71, 488 S.E.2d at 335. The court thus held that “where . . . the settlement itself cannot be attacked and the issue is not one of agency but of negligence, the fact the client has accepted the benefits of the settlement and judicially sought to enforce its terms are not bars to maintenance of a malpractice claim.” Id.

Thus, two distinct legal principles emerge from Kennedy and Crowley. If, on the one hand, the basis for the client’s legal malpractice claim is that the lawyer was negligent in advising the client concerning settlement, then accepting settlement funds and affirming the settlement agreement do not constitute ratification. Crowley, 327 S.C. at 71, 488 S.E.2d at 335. If, on the other hand, the basis of the client’s legal malpractice claim is that the lawyer exceeded his authority in settling the client’s case, then accepting settlement funds and affirming the settlement agreement will constitute ratification. Kennedy, 287 S.C. at 163-64, 337 S.E.2d at 210.

This distinction is very logical. Ratification is a concept in the principal-agent context. Where, as in Kennedy, the lawyer-agent purports to contract with a third person on behalf of the client-principal, the client-principal can confirm the lawyer-agent’s authority to do so by acts of ratification or can disclaim the lawyer-agent’s authority by not performing acts of ratification. In contrast, the lawyer’s authority to commit the client is never an issue when the client acts

directly, even when that action is in reliance on negligent advice from the lawyer. In that instance, Crowley confirms that ratification is not appropriate.

Clearly, this case is controlled by Kennedy and not by Crowley. Here, Plaintiffs allege that McAdams settled Plaintiffs' claims against Hyatt without Plaintiffs' authority. Kennedy is directly on point and the undisputed facts of this case compel the conclusion that Plaintiffs ratified the settlement agreement with Hyatt and are barred from recovering on their legal malpractice claim against McNair.

C. Plaintiffs Are Bound by the Mutual Release Executed by Lemons.

Finally, Plaintiffs are bound by the Mutual Release executed by Lemons and cannot now recover against McNair for allegedly misrepresenting the terms of that document. It is well-established under South Carolina law that a party who signs a document is responsible for reading the document and understanding its contents. See, e.g., Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2000); Burwell v. South Carolina Nat'l Bank, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986); Wachovia Bank v. Blackburn, 394 S.C. 579, 585, 716 S.E.2d 454, 458 (Ct. App. 2011); Regions Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003). A party cannot simply rely on the representations of others as to the contents of a written document, even when that person is in a fiduciary relationship. Marion Partners, LLC v. Weatherspoon & Voltz, LLP, 716 S.E.2d 29, 31 (N.C. App. 2011) (finding that plaintiff's attorney owed plaintiff a duty to explain the consequences of a document, but holding that "this duty does not relieve [plaintiff] from her own duty to ascertain for herself the contents of the contract she was signing"). Additionally, "one cannot complain of fraud in the misrepresentation of the contents of a written instrument in his possession when the truth could

have been ascertained by his reading the instrument.” Doub v. Weathersby-Breeland Ins. Agency, 268 S.C. 319, 326, 233 S.E.2d 111, 114 (1977).

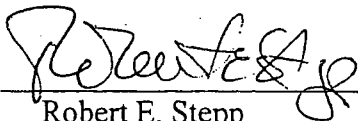
This legal authority, which Plaintiffs cannot and do not contradict, demonstrates that Plaintiffs cannot recover against McNair in this case. The Mutual Release is a two-page document and the first sentence clearly explains the document’s effect. Lemons readily acknowledges that he would have understood the document if he had read it. Nevertheless, Lemons signed the document twice, claims to have relied exclusively on McAdams’ representation as to its import, and now complains that the contents of the Mutual Release were misrepresented to him. South Carolina law simply does not allow Plaintiffs to recover against McNair under the facts of this case. Accordingly, McNair is entitled to summary judgment.

II. CONCLUSION

There are no issues for a jury to decide in this case because this case is controlled entirely by the application of well-established legal principles to undisputed facts. Plaintiffs’ claim for legal malpractice fails as a matter of law for multiple independent reasons, and McNair is entitled to summary judgment in its favor.

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

Robert E. Stepp
William H. Jordan
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendant McNair Law Firm, P.A.

Columbia, South Carolina
August 2, 2012

10-CP-26-9113
Gold Coast, et al. v. McNair Law Firm, P.A.

EXHIBIT A
TO DEFENDANT MCNAIR LAW FIRM, P.A.'S REPLY MEMORANDUM
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

STATE OF SOUTH CAROLINA)

)

COURT OF COMMON PLEAS

COUNTY OF HORRY)

)

C.S.E. Enterprises, Inc.,)
d/b/a RE/MAX At the Coast)
and Tom Naomi,)

)

)

)

Plaintiffs,)

)

-versus-)

)

CASE NO: 2006-CP-26-6300

Scott L. Lemons and Gold)
Coast Resorts, LLC,)

)

)

)

Defendants.)

)

Scott L. Lemons and Gold)
Coast Resorts, LLC,)

)

)

)

Third Party Plaintiffs,)

)

-versus-)

)

Kenny Hyatt,)

)

)

Third Party Defendants.)

)

**THE DEPOSITION OF
SCOTT LEMONS**

Tuesday, March 11, 2008
9:18 a.m. -10:46 a.m.

COPY

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

- 1 Q: And you decided not to buy it from Mr. Delduca;
2 is that correct?
- 3 A: I've not decided that. The property is still
4 available and I'll be more than happy to close on
5 it.
- 6 Q: All right. Do you think you had the obligation
7 to buy it, to own it before you sold it to Kenny
8 Hyatt?
- 9 A: Sure.
- 10 Q: How do you sell something that you don't own?
- 11 A: How do you sell something you don't own?
- 12 Q: Right.
- 13 A: Well, I would own it prior to us closing on it.
- 14 Q: Okay. You would own it but you didn't own it
15 before November 23rd, did you?
- 16 A: No.
- 17 Q: Okay. Did you ever tell Mr. Hyatt that you
18 didn't own this property when you entered into
19 Exhibit 1 ---
- 20 A: I never had any communication with Mr. Hyatt.
- 21 Q: You've never spoken to him at all, have you?
- 22 A: (Indicates negatively.)
- 23 Q: How long have you known Tom Naomi?
- 24 A: I would say two and a half, three years.
- 25 Q: Have y'all ever been in any business dealings

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) IN THE FIFTEENTH JUDICIAL CIRCUIT

Scott Lemons and Gold Coast Resorts,) Civil Action No. 10-CP-26-9113
LLC,)

Plaintiffs,)

vs.)

Mark McAdams and The McNair Law)
Firm, P.A.,)

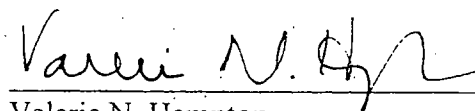
Defendants.)

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendant McNair Law Firm, P.A., do hereby certify that I have served all counsel in this action with a copy of the document specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Document: Defendant McNair Law Firm, P.A.'s Reply Memorandum in Support of Motion for Summary Judgment

Counsel Served: Mark W. Hardee, Esquire
The Hardee Law Firm
2301 Devine Street
Columbia, South Carolina 29205
Attorney for Plaintiffs


Valerie N. Hampton

August 2, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Scott Lemons and Gold Coast Resorts, L.L.C.)
)
Plaintiffs,)
)
v.)
)
Mark McAdams and McNair Law Firm)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A: _____

Complaint
Jury Trial Demanded

FILED
10 SEP 28 PM 2:24
CLERK OF COURT
HORRY COUNTY

The Plaintiffs complaining of the Defendants would respectfully show:

1. The Plaintiff, Scott Lemons is a citizen and resident of Horry County, South Carolina.
2. The Plaintiff, Gold Coast Resorts, L.L.C. is a Limited Liability Company organized under the laws of South Carolina and does business in Horry County, South Carolina.
3. Mark McAdams upon information and belief is a citizen, and resident of Horry County, South Carolina.
4. The Defendant, McNair Law Firm is a professional association practicing law throughout South Carolina, including Horry County, South Carolina, where it has an office.
5. Mark McAdams was a full partner and shareholder with McNair Law Firm during all relevant time periods described in this complaint.

6. The Plaintiffs retained Mark McAdams of McNair Law Firm to represent them regarding a breach of contract case occurring in Horry County, South Carolina.
7. The case for which the Plaintiffs hired the Defendants to represent them, involved the sale of fourteen (14) acres of waterfront property.
8. The Plaintiffs paid twenty thousand dollars (\$20,000.00) for an option to buy this property for one million, four hundred thousand dollars (\$1,400,000.00).
9. After signing the option to buy, the Plaintiffs were approached by a realtor who produced a buyer for the property, named Kenny Hyatt, for two million, nine hundred thousand dollars (\$2,900,000.00), with a ten percent (10%) commission due to the realtor at closing. The Sales Contract with Mr. Hyatt contained no contingencies
10. Kenny Hyatt, without legal cause or justification refused to close on the property, which resulted in the Plaintiffs being unable to exercise their option to buy.
11. The realtor then sued Mr. Lemons for his ten percent commission (10%) on the sale which never occurred.
12. After Mr. Hyatt breached his contract of sale with the Plaintiffs, they hired the Defendant to sue on their behalf.

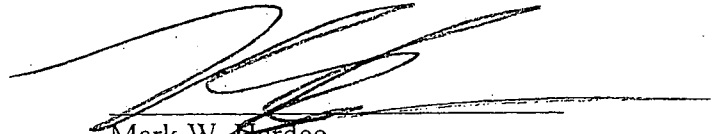
13. At the initial meeting the Plaintiffs had with Mr. McAdams, Mr. McAdams expressed his opinion that they had an excellent case against Mr. Hyatt, and agreed to represent them on a contingency fee basis. The Plaintiffs paid Mr. McAdams twenty thousand dollars (\$20,000.00), to be used for the litigation costs.
14. Mr. McAdams continued to express optimism about the case, telling the Plaintiffs that he was diligently working on it.
15. During Mr. McAdams representation of the Plaintiffs, he pressured them for more money allegedly for expenses involved in the Hyatt lawsuit.
16. While the Defendants represented the Plaintiffs, Mr. Lemons brought Mr. McAdams additional business, including his representation of Mr. Lemons in a European business deal.
17. Unknown to Mr. Lemons, Mr. McAdams cut him out of the deal, and instead pursued the business deal himself.
18. The Plaintiffs began having difficulties with Mr. McAdams, who refused to take their phone calls.

19. During his representation, Mr. McAdams asked Mr. Lemons to come to his office and met him out in the lobby of McNair Law Firm, and gave him some papers to sign. Mr. Lemons was told that the papers were merely a release of the earnest money regarding the Hyatt case. Mr. Lemons specifically asked if this would in any way effect the lawsuit against Mr. Hyatt, and was told by Mr. McAdams that it would not.
20. Mr. Lemons increasing found it difficult to communicate with Mr. McAdams and finally called McNair Law Firm in Columbia to help set up an appointment with Mr. McAdams. At that meeting Mr. McAdams told him that his case with Mr. Hyatt was over and that the papers he signed were in actually releases of that lawsuit, all unknown to Mr. Lemons at that time.
21. The realtor who was involved in the Hyatt case sued Mr. Lemons, and successfully obtained a judgment of two hundred and ninety thousand dollars, (\$290,000.00) against Mr. Lemons.
22. The Defendants were negligent, grossly negligent, willful, wanton and reckless in the following particulars:
 - (a) In failing to diligently represent the Plaintiffs in his case against Kenny Hyatt for breach of contract.
 - (b) In failing to properly communicate with the Plaintiffs.

- (c) In failing to fully inform the Plaintiffs of the consequences of signing the release in the Hyatt litigation.
- (d) By pressuring the Plaintiffs to end the law suit against Mr. Hyatt without properly advising him or explaining to him the consequences of his actions.
- (e) By the Defendant McNair Law Firm failing to properly supervise Mr. McAdams as their partner, even though they knew or should have known that he was not acting properly in various matters with various clients.
- (f) By failing to have the proper procedures in place, to protect their clients from the type of activities that occurred in this case.

23. Due to the negligent, grossly negligent, willful, wanton and reckless behavior of the Defendants, the Plaintiffs suffered severe financial damages, including the loss of a lawsuit that was worth over one million, five hundred thousand dollars (\$1,500,000.00) which had disastrous and foreseeable consequences on the Plaintiffs' financial affairs.

WHEREFORE, having fully complained of the Defendants, the Plaintiffs would pray for judgment against the Defendants in an amount to be determined by a jury for both actual and punitive damages, the cost of this action and for such other and further relief as the Court deems just and proper.



Mark W. Hardee
Hardee Law Firm
2301 Devine Street
Columbia, South Carolina 29205
Telephone: (803) 799-0905
Facsimile: (803) 799-0470

Columbia, South Carolina
September 27, 2010

Attorney for the Plaintiffs

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2006-CP-26-6300

C. S. E. Enterprises, Inc.,)
d/b/a RE/MAX At The Coast)
and Tom Naomi)
Plaintiffs,)

vs.)

COMPLAINT

Scott L. Lemons and Gold)
Coast Resorts, LLC)
Defendants.)

FILED
HORRY COUNTY
05 DEC 19 PM 2:29
CLERK OF COURT

The Plaintiffs, C. S. E. Enterprises, Inc., d/b/a RE/MAX at the Coast and Tom Naomi, complaining of the Defendants, Scott L. Lemons and Gold Coast Resorts, LLC, would respectfully show unto this Honorable Court as follows:

1. That the Plaintiff, C. S. E. Enterprises, Inc., d/b/a RE/MAX At The Coast (hereinafter referred to as "RE/MAX") is a corporation organized and existing under the laws of the State of South Carolina and conducts business in Horry County, as a real estate brokerage under the name of RE/MAX at the Coast.

2. The Plaintiff, Tom Naomi (hereinafter referred to as "Naomi") is a citizen and resident of Horry County, South Carolina and a real estate agent for RE/MAX.

3. The Defendant, Scott L. Lemons (hereinafter referred to as "Lemons") is, upon information and belief, a citizen and resident of Horry County, South Carolina.

4. The Defendant Gold Coast Resorts, LLC (hereinafter referred to as "Resorts"), is, upon information and belief, a limited liability company organized and existing under the laws of the State of South Carolina and conducting business in Horry County, South Carolina.

5. Upon information and belief, the Defendants are the equitable owners of approximately 15 acres of land located along the Intercostal Waterway in Horry County, South Carolina, identified as Horry County Tax Map numbers 179-00-03-063, 179-10-01-006, 179-10-01-005, and 179-10-01-002, (hereinafter the "Property") by virtue of a Contract for the purchase of said Property from the legal title owner, Custom Construction, Inc.

6. That on or about September 27, 2006, the Plaintiffs and Lemons did enter into a verbal agreement wherein the Plaintiffs agreed to show the Property to buyer-clients of the Plaintiffs. In exchange, Lemons agreed to pay the Plaintiff 10% of the gross selling price as a commission at the time of closing in the event the Plaintiffs procured a party ready, willing and able to purchase said Property. A copy of the Compensation Agreement referenced above and dated September 27, 2006 is attached hereto as Exhibit A and made a part and parcel hereof.

7. The Compensation Agreement attached hereto as Exhibit A was modified on September 28, 2006 to more particularly describe the Property by Horry County Tax Map Numbers 179-00-03-

063, 179-10-01-006/-005/-002 and to identify the gross selling price of \$3,400,000.00. A copy of the September 28, 2006 Compensation Agreement Modification is attached hereto as Exhibit B and made a part and parcel hereof.

8. On or about October 28, 2006, the Plaintiff procured a buyer, Kenny Hyatt, as a party ready, willing and able to purchase the Property, and entered into an exclusive Buyer Agency Contract with Kenny Hyatt, a copy of which is attached hereto as Exhibit C and made a part and parcel hereof. On the same date, the Plaintiffs, Defendants and Kenny Hyatt also entered into a Dual Agency Agreement, authorizing the Plaintiffs to act as agents for the Defendants and Kenny Hyatt. A copy of said Dual Agency Agreement is attached hereto as Exhibit D and made part and parcel hereof.

9. That on October 28, 2006, the Defendants and Kenny Hyatt did enter into that certain Agreement to Buy and Sell Real Estate wherein the Defendants agreed to sell and Kenny Hyatt agreed to purchase the Property for the sum of \$2,900,000.00 with closing occurring on or before November 23, 2006, not later than 9:00 p.m., time being of the essence. A copy of said Agreement to Buy and Sell Real Estate is attached hereto as Exhibit E and made a part and parcel hereof.

10. That the September 27, 2006 Compensation Agreement attached hereto as Exhibit A and modified by Exhibit B was modified

a second time on October 28, 2006, wherein and whereby the Contract between the Defendants and Kenny Hyatt attached hereto as Exhibit E was identified as the transaction from which the 10% commission would be paid. A copy of the October 28, 2006 Compensation Agreement Modification is attached hereto as Exhibit F and made a part and parcel hereof.

11. That Kenny Hyatt informed the Plaintiffs on November 24, 2006 that he was ready, willing and able to close the transaction on November 23, 2006. However, Kenny Hyatt has failed and refused to close said transaction, and the Defendants have failed and refused to pay the Plaintiffs their commission as required under the Compensation Agreement as modified.

12. That a binding Contract for the payment of compensation in the amount of \$290,000.00 existed between the Plaintiffs and Defendants as referenced above.

13. That the Plaintiffs have performed all conditions precedent to the payment of said compensation by procuring a party ready, willing and able to purchase the property, and have earned their compensation accordingly.

14. That the Defendants have breached the contract with the Plaintiffs by failing to pay to the Plaintiffs the \$290,000.00 compensation on or about November 23, 2006. That the Plaintiffs have suffered damages in the amount of the unpaid compensation.

15. That the Plaintiffs are informed and believe that

they are entitled to judgement against the Defendants in the amount of \$290,000.00 arising out of Defendants breach of their Compensation Agreement with the Plaintiffs.

WHEREFORE, the Plaintiffs pray for judgement against the Defendants as herein above set forth in the amount of \$290,000.00 dollars, together with prejudgement interest, consequential damages and the costs of this action.

THOMPSON & HENRY, P.A.

Conway, South Carolina

12/18, 2006


Philip C. Thompson
Attorney for the Plaintiff
Post Office Box 1533
1318 Third Avenue
Conway, South Carolina 29528
Telephone (843)248-5741



RE/MAX AT THE COAST
2120 SEA MOUNTAIN HWY., SUITE 2102
NORTH MYRTLE BEACH, SC 29582
843-663-5663 OFFICE

In the event RE/MAX AT THE COAST procures a party ready, willing and able to purchase the following described property:

property Along waterway/waccamaw as discussed
_____ and

upon terms and conditions acceptable to Owner(s), the Owner(s) agree to pay the RE/MAX AT THE COAST agent at the time of closing a commission of 10 % of the Gross Selling Price agreed upon or as described below:

Given written notice to the Owner(s) from the RE/MAX AT THE COAST agent, including name and address of the party procured, shall suffice for "registration" of procuring party to Owner(s) and shall be binding on Owner(s) unless Owner(s) advise the RE/MAX AT THE COAST agent in writing to the contrary within ten (10) days of the date of the RE/MAX AT THE COAST agent's "registration".

Date: 9/27/06

[Signature]
Owner

Owner

Owner

RE/MAX AT THE COAST

[Signature]
Agent

EXHIBIT A

MCNAIR_GOLD_COAST_00021



RE/MAX AT THE COAST
2120 SEA MOUNTAIN HWY., SUITE 2102
NORTH MYRTLE BEACH, SC 29582
843-663-5663 OFFICE

In the event RE/MAX AT THE COAST procures a party ready, willing and able to purchase the following described property:

Tax Map Numbers 179-00-03-063, 179-10-01-006/-005/-002 approx. 15 ac. +/-

and

upon terms and conditions acceptable to Owner(s), the Owner(s) agree to pay the RE/MAX AT THE COAST agent at the time of closing a commission of 10% of the Gross Selling Price agreed upon or as described below:
Three million four hundred thousand dollars

Given written notice to the Owner(s) from the RE/MAX AT THE COAST agent, including name and address of the party procured, shall suffice for "registration" of procuring party to Owner(s) and shall be binding on Owner(s) unless Owner(s) advise the RE/MAX AT THE COAST agent in writing to the contrary within ten (10) days of the date of the RE/MAX AT THE COAST agent's "registration".

Date: 9/28/2006

Owner

Owner

Owner

RE/MAX AT THE COAST

Agent

EXHIBIT B

MCNAIR_GOLD_COAST_00022



EXCLUSIVE AGENCY BUYER AGENCY CONTRACT

1. APPOINTMENT OF BROKER: By this contract KENNY HYATT ("Buyer") appoints Broker in Charge of RE/MAX AT THE COAST Company ("Broker") as Buyer's agent, subject to the terms and conditions stated in this Contract. By appointing Broker as Buyer's agent, Buyer agrees to conduct all negotiations for the types of property described in Section 2 below through Broker, and refer to Broker all inquiries made to Buyer about such properties from other brokers, salespersons, sellers and others during the term of this contract. "Negotiation" as used in this agreement shall mean property shown, negotiated, or information requested by Buyer through Broker.

2. PURPOSE OF AGENCY: Buyer desires to purchase or lease real property (which may include items of personal property) described as follows:

Type: ☐ Residential ☐ Commercial ☐ Industrial ☒ Vacant Land ☐ Other

General Description/Address: 179-00-03-063 179-10-01-006/005/002

Approximate Price Range: \$ 2,900,000 - 3,400,000

General Location/Address: SOCASSEE SC

Preferred Terms: CONVENTIONAL

Other: N/A

3. BROKER'S DUTIES: (a) The Broker shall provide to Buyer a meaningful explanation of agency and shall use Broker's professional real estate knowledge and skills to represent the Buyer in a diligent and effective manner and to locate property which is available for purchase or lease and suitable to the Buyer, (b) if the Broker is not representing the seller, the Broker shall represent solely the interest of the Buyer in all negotiations and transactions regarding the acquisition of real property, and repudiate any agency or subagency relationship with the seller or the company representing the seller and shall not claim the subagency compensation offered to the selling broker in the Multiple Listing Service; (c) if the Broker represents the seller as well as the Buyer (i.e., disclosed dual agency), the Broker shall not disclose to the Buyer information obtained within the confidentiality and trust of the fiduciary relationship with the seller, nor disclose to the seller information similarly obtained from the Buyer, without the consent of the party adversely affected by the disclosure; (d) the Broker may represent other buyers who may be interested in the same property as the Buyer. Upon the termination or completion of this agreement, Broker shall keep confidential all information received during the course of this agreement which was made confidential by written request or instructions from the client, except as provided for under South Carolina law.

Broker represents that Broker is duly licensed under the laws of the State of South Carolina as a real estate broker. Broker will use his best efforts as Buyer's agent to locate property of the type described in Section 2 of this contract and to negotiate acceptance of any offer by Buyer to purchase or lease such property. During the term of this Contract, Broker will give Buyer information describing and identifying properties which appear to Broker to substantially meet the conditions set forth in Section 2.

4. BUYER'S DUTIES. BUYER AGREES TO:

(A) **Work with Broker and its Affiliated licensees during the term of this agreement by:** (1) allowing Broker or Salesperson to identify property, negotiate for Buyer and otherwise to represent Buyer, and (2) holding Broker harmless from liability as a result of incomplete/inaccurate information provided to Broker by Buyer or Seller, (3) holding Broker harmless from liability as a result of Seller's failure to provide a complete Seller's Property Condition Disclosure statement and (4) indemnifying Broker against all claims, damages, losses, expenses, or liability arising from the handling of earnest money by anyone other than Broker.

(B) **Assist Broker and its Affiliated Licensees in the process of identifying, negotiating and contracting to purchase, lease or otherwise acquire by:** (1) providing Broker with reliable information (including financial information and written authorization to obtain verification of funds) that Broker deems necessary for the performance of this Agreement; and (2) making himself available to meet with Broker and to see properties, in order that the Broker will be able to perform the promises of the Brokerage Engagement.

(C) **Provide Broker and its Affiliated Licensees the following information:** (1) general nature, location, and requirements of desired property; and (2) price range, and other terms and conditions relating to desired property.

(D) **To authorize Buyer's attorneys and the settlement agent to furnish to Broker copies of the final HUD-1 settlement statement for the transaction prior to the closing date.**

☒ BUYER ☐ BUYER ☒ BROKER HAVE READ THIS PAGE

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EXHIBIT C

MCNAIR_GOLD_COAST_00023

5. COMPENSATION OF BROKER: Brokers fees will be deemed earned when Buyer is under contract to purchase any property presented by Broker. This fee will be due and payable at closing or upon Buyer's default. If Buyer defaults, the total compensation that would have been due Broker will be due and payable immediately in cash from the Buyer. In consideration of the services performed by Broker under the terms of this Contract, Buyer agrees to pay Broker the following fee(s): Buyer shall pay Broker a Brokerage Fee which is the greater of \$ N/A or 1% of the purchase or total lease price (renewal, if applicable) of property purchased or leased by Buyer provided that the purchase or lease shall be made to a person with whom Broker shall have negotiated during the term hereof, and provided that Broker, prior to any such purchase, has become entitled to compensation in accordance with the terms hereof.

If within 90 days after the expiration of this Contract, Buyer purchases or leases any property that Broker has shown him during the term of this Contract, Buyer will pay Broker the Brokerage Fee stated above. **BROKER SHALL OBTAIN PAYMENT OF THE BROKERAGE FEE OUT OF THE TRANSACTION, BUT BUYER SHALL HAVE THE OBLIGATION TO PAY BROKER THE BROKERAGE FEE SET FORTH IN THIS CONTRACT IF BROKER CANNOT OBTAIN PAYMENT OF SUCH FEE OUT OF THE TRANSACTION. ANY FEES PAID BY THE SELLER OR SELLER'S AGENT SHALL BE CREDITED AGAINST THE BROKERAGE FEE.**

6. TERM OF AGENCY:

Broker's authority to act as Buyer's agent under this Contract shall begin on 10/28, 2006 and shall end at 11:59p.m. on NOV 23, 2006. Buyer reserves the right to purchase any property (including "For sale by owners"—FSBOs) during the term hereof, without incurring liability for any compensation to Broker, provided that the purchase shall not be made to a person with whom Broker shall have negotiated during the term hereof, and provided that Broker, prior to any such purchase, has not become entitled to compensation in accordance with the terms hereof. In the event that Buyer shall purchase the property, Buyer shall immediately notify Broker in writing, specifying the name of the Seller and the purchase price to be paid. In the event that Buyer does not advise Broker, in writing, within ten (10) days that Buyer has negotiated with said Seller, it shall be conclusively presumed that Buyer has not notified Broker, which shall result in Brokerage fee becoming due and payable in full. Upon the receipt by Broker of such notice, the agency granted hereby shall terminate. However, in the event the purchase or lease is made through a person with whom Broker has negotiated, the rights of Broker hereunder shall continue for the balance of the term hereof.

7. CONSENT TO DISCLOSED DUAL AGENCY/DESIGNATED AGENCY: (INITIAL APPLICABLE CHOICES)

☒ Buyer acknowledges receiving an explanation of the types of agency relationships that are offered by brokerage and an Agency Disclosure Form at the first practical opportunity at which substantive contact occurred between the Broker and Buyer.

Buyer acknowledges that after entering into this written agency contract, agent might request a modification in order to act as a dual agent or a designated agent in a specific transaction. If asked:

☐ Permission to act as a dual agent will not be considered.

☒ Permission to act as a dual agent may be considered at the time I am provided with information about the other party to a transaction. If Buyer agrees, Buyer will execute a separate written Dual Agency Agreement.

☒ Permission to act as a designated agent will not be considered.

☐ Permission to act as a designated agent may be considered at the time I am provided with information about the other party to a transaction. If Buyer agrees, Buyer will execute a separate written Designated Agency Agreement.

8. OTHER POTENTIAL BUYERS: Buyer understands that other potential buyers have entered into similar agency contracts with Broker which may involve the purchase or lease, through Broker of the same or similar property or properties as Buyer is attempting to purchase or lease. Buyer consents to Broker's representation of such other buyers.

9. INDEMNIFICATION OF BROKER: Buyer promises to disclose to Broker whether Buyer has signed any agency agreement with any other Broker, or has been given prior information about any property that is the subject of this Contract by any other Broker or salesperson, or has previously been shown any such property by any other broker or salesperson. If Buyer fails to tell Broker about such other broker's or salesperson's involvement, and Broker incurs any loss or damage as a result of any claim being brought against him on account of such involvement, due to no fault of Broker, then Buyer shall pay Broker all such losses and damages incurred by Broker because of such claim.

10. DISCLOSURE OF BUYER'S IDENTITY/CONFIDENTIALITY: The Broker [] does or [] does not have the Buyer's permission to disclose Buyer's identity to all property owners and other third parties. The Buyer is advised of the possibility that seller or seller's agent may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by confidentiality agreement of the parties.

☒ BUYER ☐ BUYER ☒ BROKER HAVE READ THIS PAGE

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MCNAIR_GOLD_COAST_00024

11. **NONDISCRIMINATION:** Broker and Buyer agree that all actions carried out under this contract shall be in full compliance with local, state, and federal fair housing laws against discrimination.

12. **PROFESSIONAL COUNSEL:** Buyer acknowledges that Broker is being retained solely as a real estate agent and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, home inspector or other professional service provider. Buyer agrees to seek professional advice concerning the condition of the property, legal, tax and other professional service matters.

13. **MEDIATION CLAUSE:** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Buyer or Broker in connection with the services to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

14. **SEX OFFENDER REGISTRY INFORMATION:** The Buyer and Broker agree that during the course of the agency relationship, referred to in the above mentioned agreement, the Broker and all affiliated agents shall not be responsible for obtaining or disclosing any information contained in the official South Carolina Sex Offender Registry. The Buyer understands that no course of action may be brought against the Broker or his affiliates for failing to obtain and disclose information contained in the official South Carolina Sex Offender Registry. The Buyer understands and agrees that the Buyer shall be responsible for obtaining any such information. The Buyer understands that Sex Offender Registry information may be obtained from the local Sheriff's Department or other appropriate law enforcement officials.

15. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on the reverse, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Broker. It can be changed only by a subsequently written instrument signed by both parties.

16. **CONTINGENCIES:** _____

17. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that this Agreement may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

THIS IS A LEGALLY BINDING AGREEMENT. BUYER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BUYER AND BROKER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. BUYER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

BUYER _____ Date _____ Time _____

Email: _____
Phone: _____
Fax: _____

BUYER _____ Date _____ Time _____

Email: _____
Phone: _____
Fax: _____

Buyer Address: _____

RE/MAX AT THE COAST
BROKER/BUYER'S AGENT COMPANY

BY: _____
Broker/Licensee Date Time

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

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☒ BUYER

☐ BUYER

☐ BROKER HAVE READ THIS PAGE

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DUAL AGENCY AGREEMENT



THIS DOCUMENT IS A MODIFICATION TO THE SELLER'S LISTING AGREEMENT AND THE BUYER'S AGENCY REPRESENTATION AGREEMENT.

This Dual Agency Agreement is entered into between KENNY HYATT, Buyer, and
RE/MAX AT THE COAST Real Estate Company,
GOLD COAST RESORT Seller, and
RE/MAX AT THE COAST Real Estate Company
for Property located at 179-00-03-063, 179-01-01-006/005/002

The term "Broker" includes the real estate firm, broker-in-charge and associated licensees.

1. **DUAL AGENCY:** Seller and Buyer agree that Broker shall serve as both Seller's agent and Buyer's agent in the sale of Seller's property to Buyer in accordance with Section 40-57-137(M)(1) of the South Carolina Code of Laws, which provides in part that "...in acting as a dual agent, a licensee represents clients whose interest may be adverse and that agency duties are limited." The parties agree that without permission from the party about whom the information pertains, Broker shall not disclose to the other party the following information:

- That a party may agree to a price, terms, or any conditions of sale other than those offered;
- The motivation of a party for engaging in the transaction, unless disclosure is otherwise provided by state law or regulation; and
- Any information about a party which that party has identified as confidential unless disclosure is otherwise required by state law or regulation.

2. **BROKER'S DUAL AGENCY ROLE:** Because Broker is serving as Agent for both Seller and Buyer in this transaction, Broker shall make every reasonable effort to represent Seller and Buyer in a balanced and fair manner. Broker shall also make every reasonable effort to encourage and effect communication and negotiation between Seller and Buyer. Seller and Buyer understand and acknowledge that:

- Prior to the time this agreement was entered into, Broker acted as the exclusive Agent of Seller and acted as exclusive Agent of Buyer.
- In those separate roles Broker may have obtained information which, if disclosed, could harm the bargaining position of the party providing such information to Broker.
- Broker is required by law to disclose to Seller and Buyer any known material facts concerning the property or the transaction. Seller and Buyer agree that Broker shall not be liable to either party for (1) disclosing known material facts concerning the property required by law to be disclosed and (2) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party.

3. **SELLER'S AND BUYER'S ROLES:** Because of Broker's Dual Agency relationship, Seller and Buyer understand and acknowledge that:

- Seller and Buyer have determined that the advantages of entering into this Dual Agency Agreement, with Broker acting as Agent for both, outweigh the disadvantages.
- Seller and Buyer each have the responsibility of making their own decisions as to what terms are to be included in any agreement to buy and sell between the Seller and Buyer.
- Seller and Buyer are fully aware of, and understand, the implications and consequences of Broker's Dual Agency role as expressed herein to provide balanced and fair representation of Seller and Buyer and to encourage communication between Seller and Buyer rather than acting as an advocate or exclusive agent.
- Seller and Buyer agree to indemnify and hold Broker harmless against all claims, damages, losses, expenses, or liabilities, other than violations of the South Carolina Real Estate License Law and intentional wrongful acts, arising from Broker's role as a Dual Agent.
- Seller and Buyer may seek independent legal counsel to assist them with the negotiation and preparation of a buy and sell agreement or with any matter relating to the transaction which is the subject matter of a buy and sell agreement.

4. **PREVIOUS AGENCY AGREEMENTS:** The parties agree that this Agreement shall modify any agency agreements previously entered into by Seller and Broker or between Buyer and Broker. If those previous agency agreements contain expiration or termination dates prior to the termination date for this Agreement as set forth below, the expiration or termination dates of the previous agency agreements are hereby extended until the termination of this Agreement. If this Agreement terminates prior to the termination date of any previous agency agreement, the previous agency agreement shall remain in force and effect in accordance with its terms. In any areas where this Agreement contradicts or conflicts with those agency agreements, this Dual Agency Agreement shall control.

5. **DURATION OF DUAL AGENCY:** The term of this Agreement shall commence when this document is executed by Seller, Buyer and Broker, and unless extended by written agreement of all parties, shall terminate upon the closing of the sale of the property.

(Rev. 10/04)

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EXHIBIT D

MCNAIR_GOLD_COAST_00026

6. **FAIR HOUSING:** The Broker shall conduct all brokerage activities in regard to this Agreement without regard to race, color, religion, sex, handicap, familial status, or national origin and shall conduct business in full compliance with local, state, and federal fair housing laws.

7. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the execution of this dual agency agreement and acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

8. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed original but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement shall not be necessary to produce more than one such counterpart.

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A SIGNED COPY OF THIS DUAL AGENCY AGREEMENT.

Seller

Date

Time

Seller

Date

Time

Buyer

Date

Time

Buyer

Date

Time

Real Estate Brokerage (Name of Real Estate Co.)

By: Broker/Assoc. Licensee

Date



AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL

1. PARTIES: This legally binding Agreement entered into on OCT. 28 2006
between, Buyer(s), KENNY HYATT, (hereinafter called "BUYER"), and
Seller(s), GOLD COAST RESORTS, (hereinafter called "SELLER"). The
property shall be deeded in the name(s) of Palms @ marist Cove LLC OR ASSIGNED
THE BUYER SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the
following described property with improvements and fixtures thereon:

Lot 1ms Block N/A Section N/A Subdivision N/A
Address AS PER TMS #5 - KARLS PLAK RD.
Tax Map # 179-00-03-063 179-10-01-006 City SOCKETT Zip 29927
County of Horry State of South Carolina.

Seller represents that the property is connected to [] public sewer system or to [] septic tank or to [] public water or
to [] well system or to [] other N/A

No personal property will convey as a part of this sale, except as described: N/A

3. CONVEYANCE SHALL BE MADE: Conveyance shall be made subject to all easements as well as covenants of record
(provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller
agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except
as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place
of closing, and transaction closed on or before NOV. 23 2006, not later than 9:00 p.m. Time is of the
essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and
Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. POSSESSION: Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property
free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained
in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear
excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a
separate agreement to be executed prior to closing or occupancy.

5. PURCHASE PRICE shall be \$ 2.9 million
Two million nine hundred thousand dollars.

6. METHOD OF PAYMENT: Purchase price shall be paid as follows: [X] Cash; or [] Subject to Financing. Financing to
be obtained by [] Conventional [] Seller [] VA [] FHA [] Other terms: _____

7. EARNEST MONEY: This offer is accompanied by an earnest money deposit of \$ 10000
Buyer and Seller authorize Remed @ THE COAST, as Escrow Agent, to hold and
disburse earnest money according to the terms of this agreement. Earnest money paid by [] Cash, [] Check, or [] Other.
Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be
deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the
consummation of this sale, the earnest money deposit shall be credited to the Buyer.

[Signature] BUYER [] BUYER [Signature] SELLER [] SELLER HAVE READ THIS PAGE

FORM 310 PAGE 1 of 6

EXHIBIT E

MCNAIR_GOLD_COAST_00028

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 11.4 % loan (loan-to-value ratio) within 15 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 15 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.

FHA Mortgage Insurance ☐ will ☒ will not be added to the mortgage. VA funding fee ☐ will ☒ will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.

(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: 11.4

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☐ will ☐ will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐ Buyer or ☐ Seller not to exceed \$ 11.4

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 2:00 o'clock P M. on 10-29-06 unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 15 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorrations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The ☒ Buyer or the ☐ Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorrations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

☒ BUYER ☐ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

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MCNAIR_GOLD_COAST_00029

16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☐ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et. seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents has fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by 1/14, 2004. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☐ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before 1/14, 2004. Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer

☒ BUYER ☐ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

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MCNAIR_GOLD_COAST_00030

shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.

If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) **Repairs:** The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) **Residential Dwellings Built before 1978:** (check one of the following)

☒ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on 1/14, 2004. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within 14 days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have 14 days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

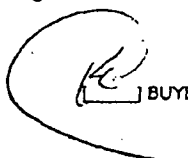
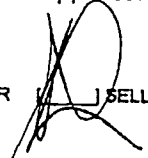
☐ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) **Megan's Law:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) **Disclaimer:** The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller. Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

☒ **APPRAISED VALUE:** (check one)

☒ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price.

 ☐ BUYER ☐ BUYER  ☐ SELLER ☐ SELLER HAVE READ THIS PAGE

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MCNAIR_GOLD_COAST_00031

JA This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

21. DISCLAIMER BY BROKERS AND AGENTS: The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. COASTAL TIDELANDS & WETLANDS ACT: In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☒ Buyer's ☐ Seller's expense.

23. MEDIATION CLAUSE. Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. ENTIRE BINDING AGREEMENT: This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. FACSIMILE AND OTHER ELECTRONIC MEANS: The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest ☒ BUYER ☐ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

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MCNAIR_GOLD_COAST_00032

earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker [] may [] may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.

28. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) NONE

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: [Signature]

Date 10-28-06

Time 6:35

WITNESS: [Signature]

Date 10-28-06

Time 6:35 pm

BUYER: _____

Date _____

Time _____

WITNESS: _____

Date _____

Time _____

SELLER: [Signature]

Date 10/28/06

Time 7:30 pm

WITNESS: _____

Date _____

Time _____

SELLER: _____

Date _____

Time _____

WITNESS: _____

Date _____

Time _____

LISTING AGENT AND COMPANY _____

SELLING AGENT AND COMPANY _____

SELLING AGENT IS PRESENTING THIS OFFER AS A [] BUYER'S AGENT OR [] SUBAGENT OF THE SELLER.

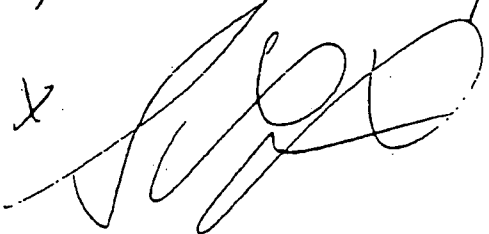
ESCROW AGENT ACKNOWLEDGMENT [Signature]

[Signature] BUYER [] BUYER [] SELLER [] SELLER HAVE READ THIS PAGE

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MCNAIR_GOLD_COAST_00033

I Scott Lyons agree to
Pay RE/MAX @ The Coast (Ref. Tom Neri)
a 10% commission upon close of the
Referral Prop. on the way appear 15a
w/ contract for w/ll Kenny Hyatt.

x  10/28/06

x Amy Love Oglesby 10/28/06

Shed Goyton
839 - 2100

EXHIBIT F

MCNAIR_GOLD_COAST_00034

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2006-CP-26-6300

C. S. E. Enterprises, Inc.,)
d/b/a RE/MAX At The Coast)
and Tom Naomi)

Plaintiffs,)

vs.)

Scott L. Lemons and Gold)
Coast Resorts, LLC)

Defendants.)

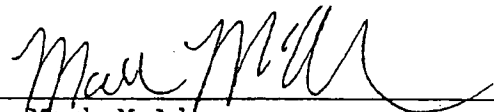
ACCEPTANCE OF SERVICE

FILED
HURRY COUNTY
JAN -2 2007
CLERK OF COURT

The undersigned Defendant Gold Coast Resorts, LLC in the above entitled action hereby accepts and acknowledges the due personal service of the:

Summons and Complaint

upon the undersigned at P.O. Box 336, Myrtle Beach, South Carolina 29578, this 22 day of December 2006; and receipt of true copies is hereby acknowledged.



M. Mark McAdams

Attorney of Record for Defendant
Gold Coast Resorts, LLC

MCNAIR_GOLD_COAST_00035

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2006-CP-26-6300

C. S. E. Enterprises, Inc.,)
d/b/a RE/MAX At The Coast)
and Tom Naomi)

Plaintiffs,)

vs.)

Scott L. Lemons and Gold)
Coast Resorts, LLC)

Defendants.)

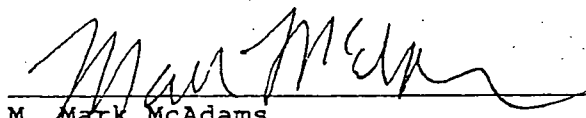
ACCEPTANCE OF SERVICE

HORRY COUNTY
FILED
2006 JUN 23 11:23
CLERK OF COURT

The undersigned Defendant Scott L. Lemons in the above
entitled action hereby accepts and acknowledges the due personal
service of the:

Summons and Complaint

upon the undersigned at P.O. Box 336, Myrtle Beach, South
Carolina 29578, this 22nd day of December, 2006; and receipt
of true copies is hereby acknowledged.



M. Mark McAdams

Attorney of Record for Defendant
Scott L. Lemons

MCNAIR_GOLD_COAST_00036

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS

) IN THE FIFTEENTH JUDICIAL CIRCUIT

Scott Lemons and Gold Coast Resorts,
LLC,

Plaintiffs,

vs.

Mark McAdams and The McNair Law
Firm, P.A.,

Defendants.

) Civil Action No. 10-CP-26-9113

ANSWER OF DEFENDANT
McNAIR LAW FIRM, P.A.

McNair Law Firm, P.A. (improperly styled as The McNair Law Firm, P.A.) ("McNair"),
answering Plaintiffs' Complaint, alleges:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter specifically admitted, qualified or explained is denied.
2. McNair lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph one of the Complaint and therefore denies same.
3. In response to the allegations of paragraph two, McNair admits, upon information and belief, that Gold Coast Resorts, L.L.C. is a limited liability company organized under the laws of South Carolina. McNair lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph two and therefore denies same.
4. McNair lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph three of the Complaint and therefore denies same.
5. McNair admits the allegations of paragraph four of the Complaint.

6. In response to the allegations of paragraph five of the Complaint, McNair admits that Mark McAdams was a shareholder with McNair Law Firm, P.A. from on or around March 30, 2006 through approximately August 7, 2008. McNair denies the remaining allegations of paragraph five of the Complaint.

7. McNair admits the allegations of paragraph six of the Complaint upon information and belief.

8. McNair admits, upon information and belief, the allegations of paragraph seven of the Complaint that allege that the case for which Plaintiffs hired the Defendants to represent them involved vacant land in or near the Socastee area of Horry County, South Carolina. McNair lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph seven of the Complaint and therefore denies same.

9. McNair lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph eight of the Complaint and therefore denies same.

10. McNair lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph nine of the Complaint and therefore denies same.

11. McNair lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph ten of the Complaint and therefore denies same.

12. McNair admits the allegations of paragraph eleven of the Complaint upon information and belief. In connection therewith, McNair states, upon information and belief, that Plaintiff Scott Lemons wrote the commission agreement for that transaction, and that a copy of that commission agreement is attached as **Exhibit A** hereto.

13. In response to the allegations of paragraph twelve of the Complaint, McNair admits that Plaintiffs hired Mark McAdams of McNair to represent them in connection with a

breach of contract action. McNair lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph twelve and therefore denies same.

14. McNair lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph thirteen of the Complaint and therefore denies same.

15. McNair lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph fourteen of the Complaint and therefore denies same.

16. McNair lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph fifteen of the Complaint and therefore denies same.

17. McNair lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph sixteen of the Complaint and therefore denies same.

18. McNair lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph seventeen of the Complaint and therefore denies same.

19. McNair lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph eighteen of the Complaint and therefore denies same.

20. McNair lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph nineteen of the Complaint and therefore denies same.

21. In response to paragraph twenty of the Complaint, McNair admits that on or around June 23, 2008, Plaintiff Scott Lemons called McNair and a representative of McNair helped Plaintiff Lemons set up an appointment with Mark McAdams. McNair lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph twenty of the Complaint and therefore denies same.

22. McNair admits the allegations of paragraph twenty-one of the Complaint upon information and belief. In further response to the allegations of paragraph twenty-one of the

Complaint, McNair states, upon information and belief, that the judgment against Lemons in favor of the realtor was overturned on appeal. Plaintiffs paid no portion of the judgment and suffered no damage as a result of the judgment.

23. McNair denies the allegations of paragraph twenty-two of the Complaint, including all subparts.

24. McNair denies the allegations of paragraph twenty-three of the Complaint.

25. McNair denies the allegations contained in Plaintiffs' prayer for relief.

FOR A SECOND DEFENSE

26. The Complaint fails to state facts sufficient to constitute a cause of action against McNair and therefore should be dismissed as to McNair.

FOR A THIRD DEFENSE

27. At all times pertinent to this engagement, Mark McAdams, as a shareholder of McNair, acted in consultation with and pursuant to instructions received from Plaintiffs. All actions taken, and all actions omitted to be taken, by McNair were done after consultation with Plaintiffs. McNair is therefore informed and believes that it is not liable to Plaintiff for any action done or not done in connection with this engagement.

FOR A FOURTH DEFENSE

28. Any damages or losses suffered by Plaintiffs were the result of the acts or omissions of others for which McNair is not responsible as a matter of law.

FOR A FIFTH DEFENSE

29. Any acts or omissions of McNair were not the proximate cause of any losses or damages alleged to have been suffered by Plaintiffs.

FOR A SIXTH DEFENSE

30. Any damages or losses alleged to have been suffered by Plaintiffs were the result of the intervening and superseding negligence of third parties for which McNair is not responsible as a matter of law.

FOR A SEVENTH DEFENSE

31. Any and all damages or losses alleged to have been suffered by Plaintiffs were caused by the comparative negligence, comparative fault, recklessness, assumption of the risk and/or other culpable conduct of Plaintiffs and thus Plaintiffs cannot recover anything against McNair.

FOR AN EIGHTH DEFENSE

32. Any and all damages or losses alleged to have been suffered by Plaintiffs were caused, in whole or in part, by the comparative negligence, comparative fault, recklessness, assumption of the risk and/or other culpable conduct of Plaintiffs and the amount of damages recovered, if any, shall therefore be diminished in that proportion which said culpable conduct attributable to Plaintiffs bears to the culpable conduct which caused said damages or losses.

FOR A NINTH DEFENSE

33. Plaintiffs' claims are barred because Plaintiffs failed to mitigate their alleged damages.

FOR A TENTH DEFENSE

34. Plaintiffs' claims are barred by the doctrine of waiver.

FOR AN ELEVENTH DEFENSE

35. Plaintiffs' claims are barred by the doctrine of estoppel.

FOR A TWELFTH

36. Plaintiffs' claims are barred by the doctrine of release.

FOR A THIRTEENTH DEFENSE

37. Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A FOURTEENTH DEFENSE

38. Plaintiffs' claims are barred because Plaintiffs acquiesced in the conduct about which they complain.

FOR A FIFTEENTH DEFENSE

39. Plaintiffs' claims are barred as to McNair because some or all of the conduct of Mark McAdams about which Plaintiffs complain was not within the course and scope of McAdams' employment with McNair.

FOR A SIXTEENTH DEFENSE

40. Plaintiffs' claims are barred because, upon information and belief, Plaintiffs are sophisticated parties with extensive experience in litigation and in matters of contract.

41. If it is found that Mark McAdams did not properly advise Plaintiffs as to the terms of the settlement agreement and release, Plaintiffs could not have suffered any harm because Plaintiffs were aware, or should have been aware, of the terms and conditions of the settlement agreement and release which they signed. The release, which is attached hereto as **Exhibit B**, is titled "MUTUAL RELEASE" which should have put Plaintiffs on notice that the document being signed was not simply a release of earnest monies.

42. McNair had no duty to inform Plaintiffs as to matters on which Plaintiffs already possessed sophisticated knowledge.

FOR A SEVENTEENTH DEFENSE

43. Plaintiffs are not entitled to an award of punitive damages because such an award would violate the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

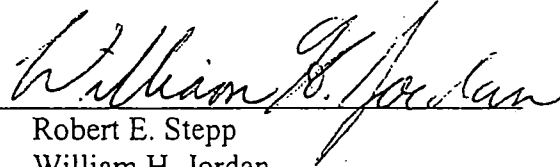
- i. The judiciary's ability to correct a punitive damages award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;
- ii. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- iii. Any award of punitive damages based upon the wealth of the defendant violates due process guarantees;
- iv. The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- v. Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness;
- vi. Plaintiffs' claim for punitive damages violates the Equal Protect Clause of the Fourteenth Amendment of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the defendant; and
- vii. Plaintiffs' claim for punitive damages violates the federal doctrine of separation of powers and Article I, Section 8 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

Wherefore having fully answered Plaintiffs' Complaint, McNair prays that it be dismissed with prejudice and that McNair be awarded the costs associated with this action.

[Signature Page Follows]

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By:

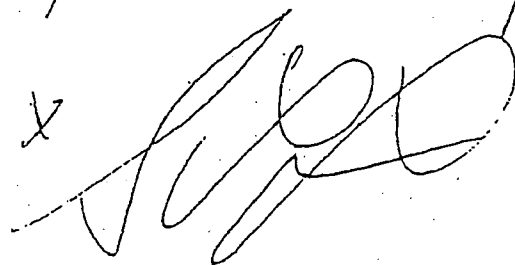


Robert E. Stepp
William H. Jordan
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendant McNair Law Firm, P.A.

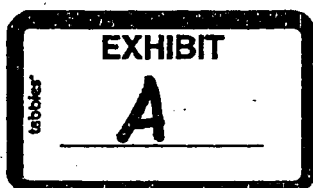
Columbia, South Carolina
January 3, 2011

I Scott Lyons agree to
Pay RE/MAX @ The Coast (Ref. Tom Nien)
a 10% commission upon close of the
Referenced Prop. on the way approx 15a.
w/ contact for/will Kenny Hyatt.

X  10/28/06

X Amy Love Oglesby 10/28/06

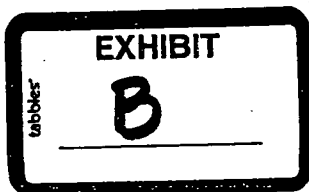
Shep Goyton
839 - 2100



MUTUAL RELEASE

KNOW ALL MEN BY THESE PRESENTS that Scott L. Lemons and Gold Coast Resorts, LLC (hereinafter referred to as "Third-Party Plaintiffs") for and in consideration of \$5,000 and the mutual releases contained herein, have released and discharged and by these presents do for ourselves and our successors, heirs, executors, administrators and assigns, release and forever discharge Kenny Hyatt, his insurers, heirs, executors, administrators, assigns, indemnitors and indemnities, masters, agents, servants, successors, and properties (hereinafter referred to as "Third-Party Defendant"), of and from all claims, demands, damages, actions, causes of action or suits at law or in equity, of whatsoever kind or nature, known or unknown, past, present, or future, foreseen or unforeseen, of whatsoever kind or nature, for or because of any matter or thing done, omitted or suffered to be done by said other parties, from the beginning of the world to the date of this agreement, and particularly, but without in any manner limiting the foregoing, including all claims connected with an action pending in the Horry County Court of Common Pleas, entitled, *C.S.E. Enterprises, Inc. d/b/a ReMax at the Coast and Tom Naomi v. Scott L. Lemons and Gold Coast Resorts, LLC v. Kenny Hyatt*, Civil Action No.: 2006-CP-26-6300.

The Third-Party Defendant likewise, does hereby release and forever discharge Third-Party Plaintiffs from any and all claims, counterclaims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever arising out of Third-Party Plaintiffs' actions, or any other matters which have arisen out of said actions from the beginning of time to the execution of this Release.



IT IS FURTHER AGREED that contemporaneous with the execution of this release, all parties will sign an appropriate Stipulation of Dismissal with prejudice in the above-referenced civil case.

IT IS FURTHER AGREED that this Mutual Release is given in settlement of disputed claims for which said parties do not admit liability and this Mutual Release may be pleaded as a complete defense to any action or other proceeding which may be instituted by any party to this action or anyone claiming through them or on their behalf against said other parties.

IT IS FURTHER AGREED, that there are no collateral or outside agreements of any kind between the parties hereto, that said payment is in accord and satisfaction of a disputed claim, and no party admits liability.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 21 day of May, 2008.

WITNESSES:

Mary Mayson
Joseph Green

Scott E. Lemons
Scott E. Lemons

Gold Coast Resorts, LLC

Mary Mayson
Joseph Green

By: [Signature]
Its: mbk/pwnc

Kenny Hyatt

IT IS FURTHER AGREED that contemporaneous with the execution of this release, all parties will sign an appropriate Stipulation of Dismissal with prejudice in the above-referenced civil case.

IT IS FURTHER AGREED that this Mutual Release is given in settlement of disputed claims for which said parties do not admit liability and this Mutual Release may be pleaded as a complete defense to any action or other proceeding which may be instituted by any party to this action or anyone claiming through them or on their behalf against said other parties.

IT IS FURTHER AGREED, that there are no collateral or outside agreements of any kind between the parties hereto, that said payment is in accord and satisfaction of a disputed claim, and no party admits liability.

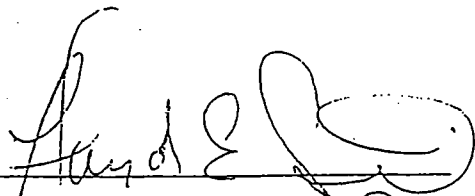
IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2008.

WITNESSES:

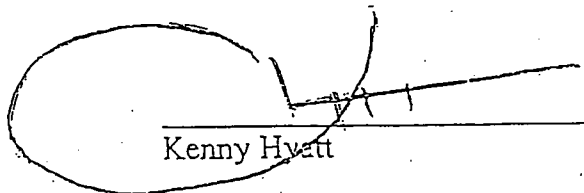
Scott L. Lemons

Gold Coast Resorts, LLC

By: _____
Its: _____



Harold E. Ward



Kenny Hyatt

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
)
) IN THE FIFTEENTH JUDICIAL CIRCUIT

Scott Lemons and Gold Coast Resorts,
LLC;

Plaintiffs,

vs.

Mark McAdams and The McNair Law
Firm, P.A.,

Defendants.

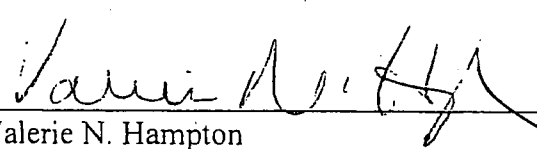
Civil Action No. 10-CP-26-9113

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendant McNair Law Firm, P.A., do hereby certify that I have served all counsel in this action with a copy of the pleading hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Pleadings: Answer of Defendant McNair Law Firm, P.A.

Served: Mark W. Hardee, Esquire
The Hardee Law Firm
2301 Devine Street
Columbia, South Carolina 29205


Valerie N. Hampton

Columbia, South Carolina
January 3, 2011

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
2010-CP-26-9113

COUNTY OF Horry

SCOTT LEMONS and GOLD COST)
RESORTS, LLC,)

-vs-)

THE McNAIR LAW FIRM,)
Defendant.)

July 30, 2012

B E F O R E:

HONORABLE LARRY B. HYMAN, JR.

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

MARK W. HARDEE, Esquire
Attorney for the Plaintiffs

ROBERT E. STEPP, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

2
1 P-R-O-C-E-E-D-I-N-G-S

2 (Convened at 9:55 a.m., July 30, 2012).

3 THE COURT: All right, what do we have here?
4 It looks like we have a motion for summary judgment
5 and a motion in limine. Is that correct?

6 MR. STEPP: Yes, Your Honor. We have the
7 defendant the McNair Law Firm motion for summary
8 judgment, we have several motions in limine, two or
9 three filed by the defendant and one filed by the
10 plaintiff.

11 THE COURT: Okay. Should we hear the motions
12 in limine first?

13 MR. STEPP: I think we ought to hear the
14 motion for summary judgment first, it might
15 eliminate the necessity --

16 THE COURT: Will the motions in limine affect
17 the motion for summary judgment?

18 MR. STEPP: No, Your Honor.

19 THE COURT: Okay, all right.

20 MR. STEPP: Thank you.

21 May it please the Court, I will use this if
22 you don't mind. Your Honor, this is a legal
23 malpractice case, I'm Bobby Stepp from Columbia, I
24 represent McNair Law Firm. Mark McAdams is on the
25 caption of this case but is not a party, so I just

1 point that out because last time Judge John told
2 the jury Mark Adams was a party and he turned out
3 not to be and that caused problems, so I just
4 wanted to let Your Honor know right up front that
5 the only defendant in this case is the McNair Law
6 Firm and that is my client.

7 THE COURT: Okay.

8 MR. STEPP: And with me today from McNair Law
9 Firm is Craig Garner, one of the shareholders. Of
10 course I'm sure you know the Horry County members
11 of the McNair Law Firm who are before you
12 regularly.

13 THE COURT: Certainly.

14 MR. STEPP: Your Honor, this is a legal
15 malpractice case and the claim is that Mark McAdams
16 while he was a lawyer with the McNair firm settled
17 a breach of contract case without the authority of
18 his clients and those clients are the plaintiffs in
19 this case, that is Scott Lemons and Gold Coast
20 Resorts, LLC, and I need to go into that case a
21 little bit, as Your Honor no doubt knows, because
22 in any legal malpractice case we're dealing with
23 the case within the case concept.

24 THE COURT: Let me ask you this. Was there a
25 Rule 43 compliance on settlement agreement or any

1 attempt to meet Rule 43?

2 MR. STEPP: No, Your Honor, no. The
3 settlement agreement was signed by Mark McAdams.

4 THE COURT: Signed by the parties as well?

5 MR. STEPP: It was signed by other parties
6 but not Mr. Lemons or Gold Coast.

7 THE COURT: Obviously it is clear that Rule
8 43 requires both.

9 MR. STEPP: Correct, no dispute about that.

10 THE COURT: Okay.

11 MR. STEPP: But that is, so that is the
12 claim. Now, that claim arose out of a real estate
13 flip transaction and here is what happened. Scott
14 Lemons signed a contract to buy a piece of property
15 from a fellow named Delduca and he agreed to pay
16 1.4 million dollars for it and while that contract
17 was pending and prior to any closing with Delduca
18 Mr. Lemons, really Gold Coast, entered into a
19 contract to sell the same piece of property to a
20 fellow named Kenny Hite, so you've got two
21 contracts, Lemons' contract to buy from Delduca,
22 Gold Coast's contract to sell to Hite.

23 The problem is that nobody closed. Hite
24 didn't close and time was of the essence in his
25 contract, and I will come back to that in a minute.

1 But neither did Lemons. Lemons never acquired
2 title to the property from Delduca, Gold Coast
3 never acquired property, title to the property from
4 Lemons or Delduca or anybody, and Hite didn't close
5 either, so as far as I know, I haven't checked the
6 title but that property is still sitting there
7 today in the name of Mr. Delduca, title never
8 changed hands.

9 Everything probably would have been okay
10 except the realtor filed suit for his commission
11 claiming, and he sued Lemons and Gold Coast,
12 claiming he had brought a ready, willing and able
13 buyer to the table in the person of Mr. Hite and
14 the fact he didn't close did not mean that the
15 realtor was not entitled to his commission. That
16 realtor was named Tom Niomi, and his company, he
17 was with ReMax Realty. So, litigation gets filed.
18 Niomi and ReMax filed suit against Lemons and Gold
19 Coast seeking a \$290,000 real estate commission for
20 procuring the sale to Hite, and Lemons and Gold
21 Coast in that litigation were represented by Mark
22 McAdams, and McAdams files a third-party complaint
23 against Kenny Hite asserting that Hite breached his
24 contract with Lemons and Gold Coast because he did
25 not buy the property. So, that is the case within

1 the case.

2 Now, as Your Honor probably knows as well as
3 I do, in any legal malpractice case the plaintiff
4 has got to show that he would have prevailed and
5 that he should have prevailed in the case within
6 the case as a condition to having any claim against
7 the lawyer in a legal malpractice case. It is just
8 a fancied up version of an proximate cause issue.

9 THE COURT: Let me back up here a minute.

10 MR. STEPP: Yes, sir.

11 THE COURT: So, Lemons and Gold Coast hire
12 McAdams to sue Hite?

13 MR. STEPP: To defend the claim by Niomi and
14 to sue Hite.

15 THE COURT: Okay. And what happens with that
16 lawsuit?

17 MR. STEPP: Well, there is a mediation and as
18 you will hear, Mr. Lemons was not at the mediation,
19 there is a mediation in which Niomi, Niomi's lawyer
20 is there, Mark McAdams is there, Mr. Hite is there
21 and Mr. Hite's lawyer was there and at that
22 mediation a settlement agreement is signed and the
23 settlement agreement is only with respect to Hite
24 and the settlement agreement says that Hite will
25 pay \$5,000 to Lemons and Gold Coast and \$20,000 to

1 Niomi and ReMax in settlement of everybody's claims
2 against Hite. There is no settlement or no
3 settlement agreement with respect to Niomi's claims
4 for the commission against Lemons or Gold Coast,
5 okay? And so it's that, what happened at that
6 mediation that is the crux of the complaint against
7 McNair, that McAdams did that without authorization
8 or authority from Lemons, that is their contention,
9 and their contention is that the claim against Hite
10 was worth more than \$5,000 and that they should
11 have prevailed had the case against Hite proceeded
12 and not been settled, that they would be entitled
13 to more than \$5,000 and that is what they've got to
14 show in this case, the plaintiff would have to show
15 in this case before Your Honor today that they
16 should have prevailed in the breach of contract
17 claim against Hite. Now, that's an objective --

18 THE COURT: Let me ask you this. Why didn't
19 Hite close?

20 MR. STEPP: He was trying to flip it, too,
21 and his testimony was he didn't have the money to
22 close and he couldn't close.

23 THE COURT: But that is the same problem with
24 Lemons.

25 MR. STEPP: Yes, sir.

1 THE COURT: That is why Lemons didn't close.

2 MR. STEPP: Yes, sir, he wanted the money
3 from Hite. Nobody closed.

4 THE COURT: Needed it from Hite?

5 MR. STEPP: Well, no. He said, he has
6 testified he could have bought the property himself
7 either with his own money or with seller financing,
8 that is what Mr. Lemons says, we don't argue with
9 that, so he could have closed but he didn't and he
10 didn't because Hite didn't close.

11 THE COURT: Okay.

12 MR. STEPP: Okay. So, that's the case within
13 the case and this question of whether Lemons should
14 have prevailed against Hite is an objective test,
15 that is what the South Carolina Supreme Court said
16 in the case of Doe versus Howell, I will come back
17 to that case in a minute, but the question is not
18 what would have happened in the case against Hite,
19 it is what should have happened in the case against
20 Hite. So, that frames up for Your Honor in this
21 case the pretty discreet question of whether under
22 the undisputed facts Lemons and Gold Coast were
23 entitled to recover against Hite, whether they
24 should have recovered, because if the answer to
25 that is no for some legal reason or for any reason,

1 then they can't proceed in a malpractice case
2 against McNair because they can't show that they
3 would have had a better outcome, that they should
4 have had a better outcome in the case below.

5 I told you the case was mediated, Lemons
6 signed -- Lemons did not sign a settlement
7 agreement but a couple weeks thereafter he signs a
8 release. Let me see if I can find that real quick.
9 Here is a mutual release that he signed in the
10 office of McNair releasing Hite and he signs it for
11 himself and he signs it for Gold Coast and Hite had
12 already signed it, so this is on May the 21st. May
13 21st Lemons and Gold Coast execute this release.

14 Now, his testimony is he didn't read it,
15 that the contents were misrepresented to him, he
16 didn't understand it, he thought it was something
17 else, but he does not dispute his signature, he
18 signed it and there it is.

19 He also took the \$5,000 and kept it, never
20 tried to give it back. And a lot of things
21 happened thereafter that I will touch on briefly
22 because I think they are pertinent to a couple of
23 the issues we raised on summary judgment. As Your
24 Honor asked, the case Niomi was not settled so it
25 proceeded to trial and there was a trial in front

1 of Judge Cross, it was referred to the Master when
2 Judge Cross was the Master and it was tried in June
3 of 2008 and Judge Cross entered an order in favor
4 of Niomi, Judge cross ruled that Niomi had produced
5 a ready, willing and able buyer and that under
6 those circumstances Niomi was entitled to his
7 commission. Higher is a part of that order and for
8 my purposes at the moment I want to point out that
9 that order recites that after the mediation of the
10 matter, the order recite, that Kenny Hite agreed to
11 pay the plaintiffs the sum of \$20,000 and agreed to
12 pay the defendants the sum of \$5,000 in exchange
13 for a release and then the order goes on to say
14 that Kenny Hite established that he couldn't
15 purchase the property unless he also flipped it.
16 So that was Judge Cross' order June 18th of 2008.

17 THE COURT: Well, how is Niomi entitled to
18 anything if he had a buyer who was willing but not
19 able?

20 MR. STEPP: Well, as it turns out Your Honor
21 is correct, this order gets reversed and that is
22 what the Court of Appeals ultimately ruled, you're
23 ahead of me already.

24 But for purposes of my story, the next things
25 that happens really is that Mark McAdams files a

1 motion to alter or amend that judgment, this is in
2 July, I think, of 2008, and in August of 2008
3 McAdams leaves the McNair firm and that motion is
4 pending and --

5 THE COURT: Was that pre notice of appeal?

6 MR. STEPP: Yes, sir.

7 THE COURT: Okay.

8 MR. STEPP: Yes, the motion to alter or
9 amend.

10 THE COURT: He filed a motion to reconsider.

11 MR. STEPP: Stayed the time to appeal.

12 THE COURT: Okay.

13 MR. STEPP: And subsequently because McAdams
14 leaves McNair, Lemons and Gold Coast hire Tommy
15 Brittain, and Tommy Brittain comes in and picks up
16 that motion and files a memorandum. By this time
17 Judge Cross of course is very ill, Judge Stromann
18 is the interim Master, so Tommy Brittain on behalf
19 of Lemons and Gold Coast argues the motion, the
20 motion to alter or amend in front of Judge
21 Stromann, and Tommy, Mr. Brittain, files a brief in
22 support of that. I think I have that -- well, I
23 don't as it turns out but that is okay. He files a
24 brief with Judge Stromann and in the brief he says
25 well, the case against Hite was settled for \$5,000,

1 I can hand up a copy, I just don't have it blown
2 up, he says the case against Hite was settled for
3 \$5,000 and Niomi's claim was settled for \$20,000
4 and there is a hearing on that and apparently at
5 the hearing Mr. Brittain reiterates the same thing
6 to Judge Stromann.

7 Now, there is no evidence anywhere anytime of
8 any protest by Mr. Lemons or by Gold Coast about
9 any of these statements being made to the Court.
10 The motion to alter or amend Judge Cross' order
11 doesn't say anything about settlement, it is about
12 as Your Honor points out, whether the realtor was
13 entitled to a commission when nobody closed. And
14 so Judge Stromann then enters an order and, you
15 know, Mr. Brittain does a great job, he gets Judge
16 Stromann to reverse himself. Here it is right
17 here, this is, this is the memorandum.

18 THE COURT: Judge Stromann to reverse?

19 MR. STEPP: Judge Cross.

20 THE COURT: Okay.

21 MR. STEPP: Here is the portion of the memo
22 that Tommy Brittain filed, defendant's memorandum
23 in support of motion to alter or amend. Again he
24 recites the settlement, bare facts, no protest, no
25 dispute, this is --

1 THE COURT: Don't we have at that juncture
2 Mr. Lemons adopting the settlement as his position
3 in the case?

4 MR. STEPP: Exactly, Your Honor, that is a
5 ratification of the settlement, and it goes on,
6 there are additional facts. Let me tell you what
7 Judge Stromann, Judge Strohman's order is very
8 favorable to Mr. Lemons and to Gold Coast.

9 THE COURT: Well, let me ask Mr. Hardee.
10 Wouldn't that constitute judicial estoppel?

11 MR. HARDEE: No, sir. If you see this case
12 right here, Crowley versus --

13 THE COURT: I'm going to come back to you,
14 okay?

15 MR. STEPP: Yes, sir.

16 MR. HARDEE: Mr. Lemons had no idea this case
17 had settled, he wasn't at mediation, he was never
18 sent the settlement agreement Mark McAdams signed,
19 never saw it. He was told by Mark McAdams who at
20 that time had a serious conflict of interest in
21 another matter and was angry with Mr. Lemons to
22 come down to his office and sign a release for the
23 earnest money, \$5,000. That is his testimony,
24 uncontradicted. Mark McAdams said come down and
25 sign this release for the earnest money, he came to

1 his office, he said this is just for the earnest
2 money, he signed it unbeknownst to him it was, that
3 was not true,.

4 THE COURT: But doesn't Mr. Lemons' attorney
5 Mr. Brittain take the position later in the, at
6 least at the motion to reconsider doesn't he take
7 the position that there was a settlement?

8 MR. HARDEE: That is what the Crowley case
9 addresses, there was a settlement, once he signed
10 that release there is a settlement as to Hite, you
11 cannot attack it, Hite has every right to rely on
12 that but you can sue for malpractice for negligence
13 in settling this, so that is what the Crowley case
14 says.

15 THE COURT: That is where you're going?

16 MR. HARDEE: Exactly, it was settled.

17 THE COURT: I understand, I understand a
18 little bit better where you're going. I'm just
19 trying to follow this through to make sure I
20 understand everybody's position.

21 All right sir.

22 MR. STEPP: Thank you very much, Your Honor.
23 Let me just walk on through what happens after that
24 because I think Your Honor is focused on exactly
25 the right thing. So Judge Stromann enters an order

1 and he finds a couple things. Once again he finds
2 that the case settled, that there was an agreement
3 to settle. He finds that Mr. Hite has made it
4 clear he never intended to close and he finds that
5 Hite did not have the wherewithal to consummate the
6 transaction and he find that the agreement between
7 Lemons an Hite, because of that, was null and void.
8 That is Judge Stromann's order. And part of that
9 order focuses on the fact that the case against
10 Hite was settled, and I will show you, I will hand
11 up that order, but Judge Stromann's order uses the
12 fact of the settlement to justify in part the
13 reversal of Judge Cross, so we've got this
14 representation to the Court about the settlement
15 and then the Court adopting that as part of the
16 basis for its ultimate findings in the case.

17 Well, again there is no motion to alter or
18 amend, there is no reservation by Lemons about
19 that. Niomi, of course, is not happy that his
20 judgment has gone away, so he appeals to the South
21 Carolina Court of Appeals.

22 THE COURT: All right.

23 MR. STEPP: And Mr. Brittain continuing to do
24 his great job for Mr. Lemons files a brief in the
25 South Carolina Court of Appeals in which he is

1 defending Judge Strohman's order and he says in his
2 brief, this is a portion of it, on May 21, 2008,
3 all parties entered into a settlement agreement
4 whereby Mr. Lemons agreed to dismiss Mr. Hite from
5 the lawsuit in exchange for \$5,000. That is on
6 page four.

7 He also says at some point before the case
8 was settled Lemons entered into a settlement
9 agreement. And then he re-enforces the notion
10 that Judge Stromann found that the contract between
11 Lemons and Hite was null and void.

12 So, this is Mr. Brittain's, part of his
13 presentation to the courts of a policy trying to
14 defend the ruling of Judge Stromann and again he
15 says Mr. Lemons agreed to release Mr. Hite from the
16 lawsuit after it was settled but that Mr. Lemons
17 agreed to the settlement. And there is actually,
18 we'll come back to this if we need to, but there is
19 actually an issue, Niomi on appeal raised the issue
20 whether it was even proper for the settlement to be
21 discussed with Judge Stromann and --

22 THE COURT: I have a problem with that as
23 well.

24 MR. STEPP: Well, Mr. Brittain defended that
25 but it was an issue before the Court of Appeals.

1 THE COURT: That is whether or not Judge
2 Stromann could hear a motion to reconsider Judge
3 Cross' order.

4 MR. STEPP: Yes, sir. That issue was raised
5 and the Court of Appeals, the Court of Appeals
6 addresses that and finds, I don't know that I
7 highlighted it here but part of that opinion, which
8 I will be happy to hand up the whole opinion, was
9 that Judge Stromann did have the authority to rule
10 on it because of Judge Cross' incapacity, so that
11 issue was raised. The issue was raised about
12 mentioning the settlement, so you know, if there
13 was going to be an opportunity to say well, yes,
14 maybe we shouldn't have mentioned the settlement or
15 we did mentioned the settlement but, oh, by the way
16 it was done without Mr. Lemons' authority or
17 without his consent. There was adequate
18 opportunity in this brief to do so if that were in
19 fact the position that is being asserted. But at
20 the end of the day the Court of Appeals affirmed
21 Judge Stromann and you see this is where they talk
22 about it, Niomi argues that the interim Master
23 erred in considering the partial settlement, and
24 they go on, they talk about how Judge Cross
25 mentioned it and how Judge Stromann mentioned it

1 and they affirm on all of that, they found no
2 error.

3 THE COURT: So that Niomi now is once and
4 finally out and there is no pending claim by Niomi?

5 MR. STEPP: Right. Niomi is out, the
6 property has never changed hands.

7 THE COURT: The only issue is whether or not
8 Mr. Lemons settled too cheap or his attorney
9 settled too cheap, isn't that the only issue?

10 MR. STEPP: Yes, sir, that's right, and let
11 me tell you -- well, I don't -- let me tell you
12 there are three issues that we think are
13 appropriate for summary judgment that are before
14 Your Honor. The first one is a principle of law
15 and it is just a flat principle of law that one who
16 does not own property that he has conveyed to sell
17 may not enforce a contract to sell it. Let me back
18 up. The law is pretty clear that I can agree to
19 sell you something that I don't own and I don't
20 have to own it at the time of the contract but on
21 the closing date I have to have title and if I
22 don't have title I can't sue you for not closing,
23 and the cases are legion about that and the South
24 Carolina cases fall right in line. Your Honor,
25 that principle is so well engrained as a part of

1 the law of this country that it is even called the,
2 quote, American rule; the American rule is that in
3 order to enforce a contract to convey property the
4 seller must have title on the day performance is
5 due, on the closing date.

6 THE COURT: And, Mr. Hardee, how do you get
7 around that?

8 MR. HARDEE: Your Honor, it's interesting
9 because that very issue was looked at by the McNair
10 Law Firm prior to bringing the counter-claim, it
11 says -- hold on, it says he can contract to sell
12 property he did not own at the time of contract.

13 THE COURT: You said at the time of contract,
14 not the time of contract performance.

15 MR. HARDEE: Okay. Here is what it is.

16 THE COURT: Isn't that a difference?

17 MR. STEPP: Yes.

18 MR. HARDEE: Here it is, repudiation of a
19 contract. Before the time for performance the
20 adverse party has the right to approve the entire
21 contract and there is no need to perform a futile
22 act. That is from a jury charge from the South
23 Carolina charge book. It is a futile act if he
24 tells him, "I'm not going forward." He is not
25 required to do a futile act. He goes to Mr.

1 McAdams upon Mr. Hite saying, "I'm not going to go
2 through with my contract," and follows his advice
3 from that point forward, he does what he tells him
4 to do, he says he's ready, willing and able to do
5 it. As a matter of fact in his deposition in an
6 underlying case he says, "I still might buy this
7 property but I'm going to wait and see what happens
8 in this case," and he also says later in his
9 deposition that's because he went to Mark McAdams,
10 follows his advice all the way through.

11 THE COURT: Was there any action brought by
12 the original owners?

13 MR. STEPP: No, Your Honor.

14 THE COURT: On the contract.

15 MR. HARDEE: They got, he had an option, he
16 didn't have a contract, he had an option, he paid
17 \$20,000 so they kept the \$20,000.

18 MR. STEPP: It was a contract, it wasn't an
19 option. That is really neither here nor there.
20 Let me respond to that in a couple ways, Your
21 Honor.

22 We provided the Court with a memorandum on
23 this subject and I invite your attention to the
24 authorities we have cited. We have, we can't find
25 any authority to the contrary of this principle

1 anywhere in the United States. It is firmly
2 engrained and this business about you don't have to
3 have it at the time you contract, that's right, and
4 you don't necessarily have to have it at the time
5 of the closing but if you don't you can't sue for
6 breach. That is where it ends up and that is
7 exactly what we have got here. We've got Hite, I
8 mean got Lemons trying to sue Hite for breach of a
9 contract when Lemons and Gold Coast didn't own the
10 property on the date performance was due and there
11 is no dispute about that and the law is pretty
12 clear.

13 THE COURT: What if Mr. McAdams advised him
14 he does not have to take title, that he does not
15 have to have the property to maintain his action
16 for breach --

17 MR. STEPP: We're not being sued for that,
18 Your Honor. That is not the claim in this case.
19 We would dispute that, that any such advice was
20 ever requested or rendered, we think the evidence
21 is that he doesn't even come to McNair until after
22 the Hite contract is expired. It expired on
23 Thanksgiving Day of 2006 and time was of the
24 essence, so anything after November the 23rd
25 wouldn't matter because Hite was out and gone, you

1 couldn't cure it.

2 THE COURT: But McNair wasn't involved in the
3 initial negotiations between Lemons, Hite, anyone
4 else.

5 MR. STEPP: No, sir, had nothing to do with
6 any of this until the default occurred, we were
7 hired for the litigation only.

8 THE COURT: All right.

9 Well how about that, Mr. Hardee? How could
10 he have advised him, you know, you don't have to
11 have it on the date of the sale if he wasn't even,
12 the date of the closing if he wasn't even involved
13 at that time.

14 MR. HARDEE: I agree that he wasn't involved
15 until -- here is how it happened. Mr. Lemons has
16 the option on this property, he doesn't find Hite,
17 Hite finds him, does a no contingency contract. He
18 then says he can't find a flip so he is not going
19 to go forward with it. Mr. Lemons then would be,
20 he still has an option, he can buy the property, so
21 he could have done a simultaneous closing he
22 testified to but since Mr. Hite never had his
23 closing, at that time there was no need for him to
24 do it, there is no need to do a futile act under
25 the law. Why would he go forward with getting the

1 property?

2 THE COURT: But Mr. McAdams would not have
3 advised him that. He would not have relied on Mr.
4 McAdams. Mr. McAdams may have told him that after
5 the fact.

6 MR. HARDEE: It would have been after the
7 fact.

8 THE COURT: But he didn't advise him and he
9 did not rely on Mr. McAdams in that regard.

10 MR. HARDEE: Not before the fact.

11 THE COURT: All right, okay.

12 MR. STEPP: That's right.

13 THE COURT: All right.

14 MR. STEPP: Your Honor, the futile act is, if
15 this property, if he could buy it for 1.4 and it
16 was worth 2.9 you would think he would have every
17 reason in the world to buy it and especially if he
18 wants to enforce the contract because that's
19 plainly what the law requires. So this brings us
20 exactly to this case within the case situation.
21 This is exactly like we recited in our memo, the
22 case of Doe versus Howell, and I want to tell you
23 about that case just for a minute because we're on
24 all fours with it.

25 Doe versus Howell is a legal malpractice case

1 in which a client of Gedney Howe sued him for
2 settling a case too cheap. It involved a sexual
3 abuse claim down at Porter-Goud back in the
4 nineties and Gedney represented one of many
5 claimants against Porter-Goud, very similar,
6 similar to the Penn State situation today, and the
7 case was settled. Mr. Howe's client, Mr. Howe
8 settled with his client's consent. One difference,
9 a claim against Porter-Goud subsequently, and part
10 of his rationale for the settlement was that there
11 was a huge statute of limitations defense because
12 all this had happened, at that point I think it was
13 a six year statute but more than six years
14 previously and so he settled his client's case for
15 \$88,000.

16 Subsequently one of the cases got tried, it
17 was a huge verdict, I think \$110,000,000 verdict
18 and everybody is scrambling and so Mr. Howe's
19 client sues Mr. Howe to say, "You settled this case
20 too cheap, you told me it was barred by the statute
21 of limitations and yet here this other case
22 proceeded and it wasn't barred by the statute and
23 so I'm entitled to some relief against you."

24 That case was decided in favor of Mr. Howe on
25 motion for summary judgment on the basis that the

1 statute of limitations did apply. Objectively the
2 case should have been barred by the statute of
3 limitations and so the trial court simply applied
4 that principle of law to the undisputed facts,
5 granted summary judgment to Mr. Howe, that was
6 affirmed on appeal by the South Carolina Court of
7 Appeals who confirmed that yes, that's the
8 standard, it's a question of law.

9 The question of how the underlying case would
10 be resolved is a question for the Court, that is
11 what Doe versus Howe holds, so that puts it
12 squarely in your lap. The principle of law that
13 you've got to own property at the time of closing
14 to enforce the contract operates to defeat Lemons
15 and Gold Coast's claim against Hite, which operates
16 to defend their claim against the McNair firm in
17 this case, so that is one issue and we think we're
18 absolutely entitled to summary judgment, no dispute
19 of fact and there is really not any dispute about
20 that law.

21 Secondly, as Your Honor has already pointed
22 out, there is a huge ratification issue. Now, Mr.
23 Hardee argues that, "Well, Mr. Lemons didn't know
24 the case was setted." Well, from the time of Judge
25 Cross' order of June 18, 2008, he knew it was

1 settled because Judge Cross said it was settled, so
2 he cannot contend from that point forward that he
3 did not know that the case had been settled, and yet
4 from that point forward let me show you what all he
5 does.

6 Well, he had already signed the mutual
7 release. I'm going to come back to that because I
8 think that is an independent act of ratification, I
9 think he is charged with knowledge of that. He
10 also cashed the check and kept the money, never
11 tried to give it back. He never from June 18th or
12 at anytime filed any motion to set aside the
13 dismissal of the claim, to have a court declare the
14 settlement agreement invalid because he hadn't
15 signed it, took no action to avoid the settlement,
16 which I think is sort of a mitigation issue if
17 nothing else.

18 I mean, that alone would constitute
19 ratification as a matter of law but this case, as
20 Your Honor points out, goes from ratification to
21 judicial estoppel. It is the most sort of, the
22 best lining up of facts you could have. Typically
23 you can have many acts of ratification that would
24 never involve a court and yet the court would find,
25 "Well, you did this, that and the other and

1 therefore you ratified it."

2 Here we've got acts of ratification that
3 involve representations made to two different
4 courts on two different times and which resulted in
5 favorable orders. You've got what Mr. Brittain
6 reported to Judge Stromann, you've got Judge
7 Strohman's order that actually uses the settlement
8 to justify reversing the judgment against Lemons
9 and Gold Coast.

10 THE COURT: But isn't that the position
11 adopted for the purpose of appeal before the Court
12 of Appeals as well?

13 MR. STEPP: Yes, sir, absolutely, and you
14 just can't have it both ways. Ratification, Mr.
15 Hardee says, "Well, he didn't know." Ratification
16 assumes that the original act was unauthorized,
17 okay, that is where you start, you go, okay, you've
18 got an act of an agent not authorized by the
19 principal which would be right then and there not
20 binding on the principal. But thereafter three
21 things happen. Not only is the act deemed to be
22 ratified, it relates back to the moment that the
23 agent acted.

24 What are the three things? Acceptance of
25 benefits of the agreement with full knowledge of

1 the facts and either silence or acquiescence for a
2 long period of time that would make it unreasonable
3 to hold otherwise. We've got all three of those.
4 He kept the money. Not only did he get the benefit
5 of the money, he got the benefit of these orders,
6 all of which were premised in part on the
7 settlement, and he never does a thing, never tells
8 a single court, "I didn't agree to that," never
9 seeks to undo it, never tries to set aside a
10 judgment, never tries to give the money back.

11 Your Honor, this is a classic case of
12 ratification as a matter of law and there is no
13 dispute about this. Now, he may say, "I didn't
14 know it happened," but at some point you can't do
15 that, you can't keep going to the well, to the
16 courts and saying, "I setted, I settled, I
17 settled," and then turn around later to your agents
18 and say, "You didn't have my authority to do that."
19 You just can't have it both ways, that's pretty
20 basic and pretty elemental. And, so, that arises
21 to, as a matter of law, ratification, which would
22 be completely inconsistent with a claim against
23 McAdams or McNair for acting without authority.

24 Finally, the third issue that we wanted to
25 raise was just, you know, the fact that it's a

1 pretty fundamental principle of law in this country
2 that you're bound by what you sign and charged with
3 knowledge of what you sign. This is not some
4 archaic thirty page document, it's a page and a
5 half release signed by Mr. Lemons who has testified
6 that had he read it he would not have signed it,
7 yet he says he did not read it, or he did not read
8 it and yet he did. And, you know, I anticipate the
9 argument is, "Well, that is all different if you're
10 relying on your attorney." Well, Your Honor, it
11 isn't all different.

12 THE COURT: Wasn't he given a copy of it?

13 MR. STEPP: He was mailed a copy of it.
14 There is a dispute about this so I didn't mention
15 it on summary judgment. We've got a letter sent to
16 him before this, he says he didn't get the letter.
17 But he doesn't deny his signature and so, you know,
18 there is absolutely no basis, you just can't let
19 people sign something and say, "I agreed to do X,"
20 and then turn around later and look to their lawyer
21 and say, "I didn't agree to do X." At some point
22 you just can't have it both ways, and under these
23 facts, because the case really wasn't worth
24 anything to begin with and because Lemons and Gold
25 Coast accepted all the benefit of that transaction

1 for a long period of time and because they
2 represented to two different courts, including
3 South Carolina Court of Appeals, that the case was
4 settled and let two different courts enter orders
5 without protest or objection that the case had been
6 settled and because he is charged with knowledge of
7 what he signed in a simple page and a half document
8 he cannot in this case proceed against McNair on
9 the theory that what Mark McAdams did was
10 unauthorized and without his knowledge.

11 We're entitled to summary judgment in this
12 case, Your Honor, we don't need to go to trial,
13 there is not one fact in dispute.

14 THE COURT: Let me ask you this. Did I hear
15 Mr. Hardee say this case has already been tried
16 once?

17 MR. STEPP: We tried it for a day and a half,
18 Your Honor, there was a mistrial back in May.

19 THE COURT: What happened to summary judgment
20 at that time?

21 MR. STEPP: I didn't move for summary
22 judgment. I hadn't gotten it FILED, Your Honor,
23 entirely my fault.

24 THE COURT: You did not move for summary
25 judgement?

1 MR. STEPP: I did not.

2 THE COURT: All right. Let's hear from Mr.
3 Hardee.

4 MR. STEPP: Yes, sir.

5 THE COURT: Mr. Hardee.

6 MR. HARDEE: Yes, sir.

7 THE COURT: Let me tell you kind of what I'm
8 thinking here.

9 MR. HARDEE: Okay.

10 THE COURT: And it will help you address my
11 concerns.

12 MR. HARDEE: Okay.

13 THE COURT: First of all I understand that
14 our courts have taken a very liberal view of Rule
15 43.

16 MR. HARDEE: Yes, sir.

17 THE COURT: Have consistently failed to
18 uphold settlements that did not strictly comply --

19 MR. HARDEE: Absolutely.

20 THE COURT: -- with the requirements of Rule
21 43.

22 MR. HARDEE: Yes, sir.

23 THE COURT: That is signed by the attorneys
24 and their parties.

25 MR. HARDEE: Yes, sir.

1 THE COURT: Okay, I understand that fully but
2 I think the issue here is not whether or not that
3 document was a settlement or whether it was
4 settled, I think what we have to look at in this
5 case is what took place afterward.

6 MR. HARDEE: Yes, sir.

7 THE COURT: I think this mutual release that
8 was signed which does meet the requirements of Rule
9 43 would very well satisfy the statute or the rule,
10 let's look at that, let's look at what happened
11 afterwards.

12 MR. HARDEE: Yes, sir.

13 THE COURT: That is where I see the problems.
14 I also see problems in the issue of whether or not
15 Mr. Lemons has a claim against Mr. Hite based upon
16 his failure to purchase this property. I
17 understand Crowley versus Beattie, or Battie, I
18 know what you're talking about there, but let's
19 talk about that as well.

20 MR. HARDEE: First of all, had Hite and Mr.
21 Lemons had a settlement at that time, then
22 everything he said would be true, he could have
23 gone on, he couldn't complain to the court he
24 didn't have authority, that is why Mark McAdams
25 told him that the mutual release was only for the

1 earnest money.

2 THE COURT: What is the earnest money?

3 MR. HARDEE: There was earnest money, \$10,000
4 earnest money paid by Mr. Hite so what he was told
5 by Mr. McAdams was, "We're just settling the
6 earnest money, the earnest money has been held,
7 here, you get \$5,000, sign this, this is just the
8 earnest money." He goes, "Well, how about my case
9 against Hite?" "It still goes forward, this is
10 just for the earnest money."

11 THE COURT: Does the contract have a damages
12 clause in it, where damages are liquidated to the
13 earnest money?

14 MR. HARDEE: No, it did not.

15 THE COURT: All right, go ahead.

16 MR. HARDEE: So he thought, as a matter of
17 fact there is evidence Mr. McAdams had represented
18 him before, getting the \$5,000 earnest money back,
19 it didn't seem unusual to him, "While we're waiting
20 to sue for this breach of contract, that the money
21 is sitting in somebody's escrow account would be
22 settled," that is what he was told by Mr. McAdams,
23 our theory is Mr. McAdams knew he had settled this
24 case without Mr. Lemons' authority at a mediation.
25 Mr. Lemons did not attend, wasn't even there.

1 THE COURT: What was that about?

2 MR. HARDEE: Well, that is very curious. He
3 was in rehab right before that, it is a long story
4 but he was in relab right before that, I don't
5 know, he doesn't know, he didn't know the mediation
6 was happening.

7 THE COURT: Mr. McAdams, or Mr. Lemons?

8 MR. HARDEE: Mr. Lemons was in rehab so he
9 couldn't be communicated with. They had a
10 mediation unbeknownst to him, he was out of rehab
11 at the time but he didn't, he said he didn't know
12 about it. He didn't know about the settlement.
13 They say they have a cover letter sending the
14 mutual release which is a question of fact, he says
15 he didn't get it. There is no cover letter sending
16 the settlement agreement, that was never given to
17 him, nobody has ever claimed he has ever seen that
18 until now.

19 THE COURT: At the mediation?

20 MR. HARDEE: Anytime, and so until he brought
21 this lawsuit he had never seen the settlement
22 agreement that he supposedly settled this case.

23 THE COURT: All right.

24 MR. HARDEE: The mutual release, as far as
25 the release goes, once he signed that, that is what

1 the Crowley case says, he settled the case and the
2 Crowley case says it's settled, as to Hite it
3 settled whether he liked it or not, he can't sue
4 Mr. Hite, he has to sue Mr. McAdams, that is what
5 Crowley says.

6 In the Crowley case, it was a domestic case,
7 she signed a domestic release, and what that case
8 there was, she later found out it was based on
9 negligent advice. She continued under that order,
10 continued living by it and they argued, "Well, she
11 ratified it because she continued taking the
12 benefits, she continued taking the alimony, she
13 continued taking all this stuff," and what the
14 court said is, first her getting negligent advice
15 has nothing to do with the third party, this is as
16 valid as it is day's long, that release is as valid
17 as the day is long, he had counsel who advised him
18 and he signs it.

19 So, it's valid as to Hite, it is settled. As
20 a matter of law that case is settled but he has a
21 case against, what the Crowley case says, against
22 the law firm for telling him the wrong information,
23 for him signing it, and that is what Crowley says
24 and that is what Crowley allows him to do. There
25 is no need for him to tender back the money under

1 Crowley because that is mitigation of damages,
2 there is nobody to tender it to. Had he given the
3 \$5,000 back to Hite he still would have been
4 released, Hite would have had an air tight case
5 saying, "I have Mr. Lemons' signature on a release,
6 case over, he had a lawyer, the lawyer explained it
7 to him." What our position is, he didn't know what
8 he was signing and if you look at ratification, one
9 is has acceptance ever been filled. Second is
10 knowledge of the facts. He didn't know the case
11 was settled. He was told it was not settled.

12 THE COURT: That agreement, I mean, it
13 doesn't seem to be a very complicated writing
14 there.

15 MR. HARDEE: It wasn't. His story was Mr.
16 McAdams was very angry with him at this time, and
17 that is because of a different business deal, a
18 local holdings deal which Mr. McAdams unbeknownst
19 to Mr. Lemons at the time was cutting him out of
20 what he thought was a lucrative deal. Mr. Lemons
21 will say Mr. McAdams became very erratic, wouldn't
22 take his calls, was yelling at him when he did see
23 him and says, his explanation was, "Sign this, I'm
24 your lawyer, trust me, this is just for the earnest
25 money," and he signs it.

1 He also has a witness who, after signing
2 this, overheard a speaker phone conversation
3 between Mr. Lemons and Mr. McAdams where Mr.
4 McAdams tells him, "Yes, the case against Hite is
5 still going, trust me, I'm your lawyer, that was
6 just \$5,000 earnest money, the case is going
7 forward against Mr. Hite." It also confirms Mr.
8 McAdams told him that.

9 There is no way anyone can say this is mutual
10 release as to Mr. McAdams when he told him
11 erroneously what it was. It is toward Hite, he's
12 right about that, that's why they say it settled.
13 Did it settle it as a matter of law, did it settle
14 as to Hite because he was told the wrong thing
15 prior to the settlement agreement, then they would
16 have a point, and prior to the release.

17 THE COURT: Talk to me about Mr. Lemons even
18 having an action again Mr. Hite.

19 MR. HARDEE: First let me do this, to protect
20 myself on the record, let me hand you my response,
21 my response to defendant's motion for summary
22 judgment. Included in that is a memo done by the
23 McNair Law Firm at the time he came to them with
24 the Kenny Hite case, addressing the issues you just
25 said, and they addressed that issue and at that

1 time they knew all the facts, they knew he hadn't
2 had the property, knew everything else and they
3 said --

4 THE COURT: But is that correct?

5 MR. HARDEE: I think it is, because at that
6 time he knew Mr. Hite wasn't going to go through
7 with it and the law doesn't require him to do a
8 futile act, he doesn't have to, he was ready,
9 willing and able under his contract to go forward
10 with it at the same time Hite did and Hite didn't
11 do it. There is nothing in the law to require him
12 to do that futile act. He could have sued Hite
13 upon Hite's breach of the contract and Hite was not
14 going to go forward with the closing so nothing in
15 the law would require him to go forward with the
16 closing but Hite wasn't going through with the
17 closing.

18 Your Honor, in support of that I have the
19 deposition of John Freeman who is our expert in the
20 case. His testimony is uncontradicted in this
21 matter. I have Mr. Lemons' deposition, Mr. Lemons'
22 two volume deposition, I have the settlement
23 agreement that Mark McAdams signed for Scott Lemons
24 without Scott Lemons signing it or knowing about it
25 or being at the mediation, he didn't attend the

1 mediation. I have the summons and third-party
2 complaint signed by Mark McAdams claiming in the
3 underlying lawsuit that Mr. Hite had a case. I
4 have a letter from Thompson & Henry who represented
5 Mr. Niomi, who takes the same position that Mr.
6 McAdams took, that is that Mr. Lemons did have a
7 viable case against Mr. Hite. He says that Mr.
8 Lemons had a right to convey the property, that is,
9 a valid and enforceable contract with Mr. Hite.
10 That is what Mr. Thompson's opinion was. I have
11 the mutual release which was signed on the advice
12 of Mr. McAdams it was only for the earnest money.
13 I have the contract Mr. Hite signed which is a no
14 condition contract for the property. And I have a
15 letter from the McNair Law Firm dated December 4th,
16 2006, to Mr. Hite in which they set out what he
17 thinks, Mr. McAdams thought.

18 To answer your question, yes, I think there
19 was a contract and I think there was a breach and
20 he thought he should get when he says sell,
21 authenticating damages of 1.5 million dollars.
22 That is how much the case was worth. That was his
23 letter to Mr. Niomi, that is what the case was
24 worth. You will notice in the Hite case there was
25 no summary judgment motion deciding this issue. In

1 other words, Mr. Hite didn't go to summary
2 judgement and say the case was gone.

3 THE COURT: Let me ask you this. On what
4 basis, then, if Mr. Lemons' contract against Mr.
5 Hite was enforceable, on what basis was Mr. Niomi
6 denied relief in the Court of Appeals?

7 MR. HARDEE: Well, because what they said was
8 that he, just because he was not able to come up
9 with the funds, he still breached the contract.

10 THE COURT: Who did?

11 MR. HARDEE: Mr. Hite breached the contract
12 because he didn't have, he said he didn't have the
13 money to go forward with the contract.

14 THE COURT: All right, if he breached it --

15 MR. HARDEE: It is a different issue, though,
16 because that is, "Are you a ready, willing and able
17 buyer? They are saying you're not able." For
18 breach of contract, able isn't one of them. If you
19 sign a contract and you're not able I can still sue
20 you.

21 THE COURT: Okay.

22 MR. HARDEE: Or else every mortgage
23 foreclosure you would say, "Wait a minute, I didn't
24 have the ability to pay my mortgage, I'm not able."
25 The contract with Mr. Lemons, what the Court of

1 Appeals is saying, he is not able to, "So far as
2 the contract with Mr. Niomi, you did not supply a
3 ready, willing and able buyer."

4 THE COURT: I got you.

5 MR. HARDEE: That was the issue on that.

6 I also have the deposition of Mr. Lemons in
7 an underlying matter where he testified what I said
8 earlier, why he didn't go forwrd with it. He said
9 he was waiting to see what happened in the case, he
10 was ready, willing and able at the time, before
11 even then, at the time of the deposition, but he
12 was waiting to see what happened to the breach of
13 contract case before he did anything.

14 So, you know, my position is the law does not
15 require him to take a futile act, does not require
16 him, once he knows Hite is not going to go forward
17 with his contract, he has the ability to do it, he
18 is ready, willing and able to do it, has the right
19 to do it, and under this case that was cited by
20 McNair Law Firm when they brought this lawsuit, if
21 you, here, I will hand up my memo, it is Searles
22 versus, Searles versus Auld, which is a 1922 case
23 but it is still good law, he didn't have to do it
24 once Mr. Hite breached the contract.

25 THE COURT: Are these for me?

1 MR. HARDEE: Yes, sir, that is what I have
2 been quoting from, the depositions and those are
3 the exhibits that I detailed. And if you look at
4 Mr. McAdams' letter to Mr. Hite that is the
5 position he takes in the underlying case, that Mr.
6 Hite had a case, and if you look at Mr. Thompson's
7 letter to Mr. Hite and Mr. Lemons he tells Mr. Hite
8 Mr. Lemons had a right to buy the property, was
9 ready, willing and able to do it, he had a right to
10 contract, "You breached the contract and therefore
11 you owe him the money," the difference.

12 That is the key, it's the difference between
13 what Mr. Lemons was going to buy the property for
14 and what Mr. Hite was going to buy the property for
15 and we have already talked about ratification.
16 There is no way this is ratification. This is a
17 ratification as to Hite. I mean, Hite signed a
18 release, there is no question about it, but in
19 order for ratification he has to know about the
20 facts. He did not know about the facts when he
21 signed that release, he was told the opposite and
22 that is what John Freeman testifies.

23 THE COURT: All right, gentlemen, let me just
24 say this. I see no way that we can try this case
25 this week. I think that this case may or may not

1 be disposed of on this motion. You have given me a
2 lot of stuff here and I want to take a few days to
3 rule. I'm just not sure where I should go with it.
4 I don't think it is ripe for trial.

5 MR. STEPP: May I file a reply, Your Honor?

6 THE COURT: Yes.

7 MR. STEPP: Thank you.

8 THE COURT: You certainly may.

9 MR. HARDEE: And, Your Honor, one more thing,
10 I handed up two more cases.

11 THE COURT: Well, let me tell you, I'm going
12 to allow you to --

13 MR. HARDEE: Do a brief?

14 THE COURT: I will allow you to have other
15 submittals. I usually keep it open about two days.

16 MR. HARDEE: Yes, sir.

17 THE COURT: But anything you send me I want
18 you to make sure, Mr. Stepp, everything you send me
19 I want you to make sure Mr. Hardee has got.

20 MR. STEPP: Yes, sir.

21 THE COURT: We'll see what happens, okay?

22 MR. STEPP: So, Your Honor, what did I
23 understand about the two days?

24 THE COURT: I will keep it open for a couple
25 days if you want to submit something, as long as

1 you let counsel have it. Then counsel has an
2 opportunity to look at it, reply to it. I usually
3 will let attorneys, give them a couple days.

4 MR. STEPP: Thank you. I just didn't
5 understand. I appreciate it.

6 THE COURT: Let's take a quick break, just a
7 quick break, okay?

8 MR. STEPP: So, we're excused at this point?

9 THE COURT: Yes.

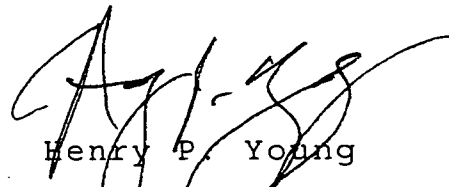
10 (Hearing Concluded).
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Horry County, South Carolina, on the 30th day of July, 2012.

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

December 5, 2012



Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) COURT OF COMMON PLEAS
C.S.E. Enterprises, Inc.)
d/b/a RE/MAX At the Coast)
and Tom Naomi)
Plaintiffs.)
-versus-) CASE NO: 2006-CP-26-6300
Scott L. Lemons and Gold)
Coast Resorts, LLC.)
Defendants.)
Scott L. Lemons and Gold)
Coast Resorts, LLC.)
Third Party Plaintiffs.)
-versus-)
Kenny Hyatt.)
Third Party Defendants.)

**THE DEPOSITION OF
SCOTT LEMONS**

Tuesday, March 11, 2008
9:18 a.m. -10:46 a.m.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

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SCOTT LEMONS

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APPEARANCES:

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Cara-Leigh V. Richardson
Verbatim Reporter

ALSO PRESENT:
Scott Ellis
Ty Bellamy
Tom Naomi
Kenny Hyatt

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1 A: Yeah.
2 Q: Where were those?
3 A: Thirteen acres on the Waccamaw River I've never
4 had it delineated. I don't know how much wet is
5 on there. It was disclosed to me approximately
6 six, but I don't know.
7 Q: Do you still own it?
8 A: Yes.
9 Q: What portion of the Waccamaw River?
10 A: Riverside Drive, off Highway 90.
11 Q: Have you developed that property?
12 A: No, I have not.
13 Q: Any other properties that you've had wetlands on?
14 A: Not that I'm aware of.
15 Q: Did Delduca have the property listed with a
16 realtor at the time you signed Exhibit 1?
17 A: No, not that I'm -- I mean, no. I'm very sure
18 that he didn't.
19 Q: Why didn't you buy the property from Mr. Delduca?
20 A: Why didn't I buy the property? I'm ready to buy
21 right now, but I didn't buy because I was, you
22 know, looking forward to a good clean deal with
23 Mr. Hyatt.
24 Q: Why don't you buy it?
25 A: Why don't I buy it?

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1 Q: And you decided not to buy it from Mr. Delduca
2 is that correct?
3 A: I've not decided that. The property is still
4 available and I'll be more than happy to close on
5 it.
6 Q: All right. Do you think you had the obligation
7 to buy it, to own it before you sold it to Kenny
8 Hyatt?
9 A: Sure.
10 Q: How do you sell something that you don't own?
11 A: How do you sell something you don't own?
12 Q: Right.
13 A: Well, I would own it prior to us closing on it.
14 Q: Okay. You would own it but you didn't own it
15 before November 23rd, did you?
16 A: No.
17 Q: Okay. Did you ever tell Mr. Hyatt that you
18 didn't own this property when you entered into
19 Exhibit 1 ---
20 A: I never had any communication with Mr. Hyatt.
21 Q: You've never spoken to him at all, have you?
22 A: (Indicates negatively)
23 Q: How long have you known Tom Naomi?
24 A: I would say two and a half, three years.
25 Q: Have you ever been in any business dealings

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1 Q: Right.
2 A: I will. I'll buy it today if we can honor the
3 contract sitting in front of us.
4 Q: Exhibit 1? Why didn't you buy it before November
5 23rd?
6 A: I was waiting on Mr. Hyatt.
7 Q: Mr. Hyatt for what?
8 A: To close on the property, to be prepared to close
9 on the property.
10 Q: Well, doesn't your contract with Mr. Hyatt state
11 that you have to provide him with a deed in order
12 for him to buy it?
13 A: I can provide him with a deed in the next three
14 days if he'd like to buy it at that contract
15 price.
16 Q: But the contract with Mr. Hyatt has expired,
17 hasn't it?
18 A: Well, so has my contract.
19 Q: I guess that's not my question.
20 A: What is your question?
21 Q: You're saying you never acquired the deed to the
22 property in Exhibit 1 because Mr. Hyatt ---
23 A: Because I had a clean contract with no
24 contingencies by Mr. Hyatt to purchase the thing,
25 cash.

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1 before?
2 A: We've talked about other properties but this is
3 the only one.
4 Q: And you've known him professionally, socially?
5 A: Professionally.
6 Q: And that's by being a realtor?
7 A: That's correct.
8 Q: How did you get in touch with Tom Naomi about
9 this property?
10 A: Because I know he's a good realtor and I know he
11 can get stuff done.
12 Q: So, you contacted him to do what?
13 A: To help me on some other properties and this
14 property just happened to be brought up.
15 Q: What was the conversation regarding the property
16 that is listed here on Exhibit 1?
17 A: I mean, when was that contract dated again?
18 Q: Yours with Mr. Delduca is September 29th.
19 A: How about the other one? What year?
20 Q: '06.
21 A: Okay. I can't recall that conversation
22 specifically. I'm sorry.
23 Q: But, you contacted Mr. Naomi about helping you
24 market to sell the property?
25 A: I don't remember the conversation. It's been two

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1 property. don't you?
2 A: And I believe I did that.
3 Q: You told your realtor that
4 A: That's that's correct
5 Q: And you expected him to disclose that on your
6 behalf to Mr. Hyatt. is that correct?
7 A: That's correct.
8 Q: And you would consider wetlands to be a material
9 defect in the property. wouldn't you?
10 A: I would consider that to be an issue.
11 Q: A material issue?
12 A: Okay
13 Q: Is that right? Yes?
14 A: It depends on what you call material. but yeah. I
15 would ---
16 Q: Significant.
17 A: Significant? It's an issue on a lot of
18 properties. I'd consider it an issue.
19 Q: Now did you ever tell Kenny Hyatt that you were
20 wanting to close on this transaction?
21 A: I've never talked to Mr. Hyatt.
22 Q: And did you ever tell Mr. Naomi that you were
23 ready to close on the transaction?
24 A: I believe I did.
25 Q: What lawyer was going to help you with this

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1 Q: Have you terminated your contract with Mr
2 Delduca?
3 A: The contract has expired to my knowledge.
4 Q: And your ten thousand dollars was nonrefundable?
5 A: That is correct.
6 Q: Did you ever ask for the money back?
7 A: No. I did not.
8 Q: Did you speak with Mr. Delduca at any time
9 during. say November of 06?
10 A: Did I speak with him?
11 Q: Yes.
12 A: I'm. I'm sure I did.
13 Q: What were y all talking about?
14 A: What's the status?
15 Q: Did you tell him you weren't going to buy the
16 property?
17 A: I told him I had another opportunity on it.
18 Q: What does that mean?
19 A: It means that I had another opportunity to sell
20 Q: I'm talking about buying it. Did you tell him,
21 "I'm going to buy it regardless of whether I sell
22 it." or "I'm not going to buy it now cause this
23 guy's not going to buy it from me."
24 A: I don't recall any conversation like that.
25 Again, we're getting back into two-year-old

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1 transition?
2 A: At first, it was going to be Dickie Lester. Then
3 it was going to be Shep Guyton. I wasn't too
4 sure on that. yet.
5 Q: Is Shep in private practice?
6 A: Shep is in private practice.
7 Q: He is?
8 A: (Indicates affirmatively)
9 Q: And had you ever performed any kind of title work
10 on the property?
11 A: I believe title work had been pulled through
12 Dickie Lester's office but I think it was
13 supposed to have been transferred. if I remember
14 correctly to Guyton Law Firm. and I don't
15 remember I don't know if it had ever gone that
16 far
17 Q: Were you aware of any mortgages or other liens
18 that Mr. Delduca had against the property?
19 A: I don't. No I don't.
20 Q: Any other title defects that Mr. Lester or Mr.
21 Guyton discovered from doing this title search?
22 A: No not that I'm aware of I don't
23 Q: And Mr. Delduca has not returned your ten
24 thousand dollar deposit?
25 A: No

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1 conversations. I don't remember specifically any
2 real conversations. other than the contract.
3 there was some wetlands. I was ready to close.
4 I'm still ready to close but I do not recall any
5 two-year-old conversations. I've had a lot of
6 conversations since then.
7 Q: How about with Mr. Delduca since then?
8 A: Not many. no
9 Q: Did you have the money available on November 21st
10 to purchase this property?
11 A: Yes.
12 Q: Now, when you were answering Mr. Thompson's
13 questions, you said, "I diverted monies other
14 places. 'cause I didn't have it." Did you ---
15 A: No, you're incorrect.
16 Q: Okay
17 A: I'm sorry to cut you off, but I didn't say that.
18 I said that I did put some money somewhere else.
19 but I did not say I did not have it.
20 Q: Okay You could've paid cash for it on November
21 ---
22 A: I could've closed on it multiple different ways.
23 Closing a real estate deal is fairly it's not
24 that complicated.
25 Q: Did you have the money either through a bank or

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1 STATE OF SOUTH CAROLINA

2 COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
Civil Action No. 10-CP-26-9113

3
4 Scott Lemons and Gold Coast
Resorts, LLC.,

5 Plaintiff,
6 vs.

7 Mark McAdams and The McNair
Law Firm, P.A.

8 Defendants.

9

10 _____
DEPOSITION

11 WITNESS: Scott Lemons

12 DATE: Friday, December 9, 2011

13 TIME: 10:05 a.m.

14 LOCATION: Sowell Gray Stepp & Laffitte, LLC
15 1310 Gadsden Street
Columbia, South Carolina

16 TAKEN BY: Attorney for the Defendant

17 REPORTED BY: LISA GARSON
Certified Court Reporter

18 -----

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25

1 STIPULATION: It is stipulated by counsel
2 that this deposition is being taken in accordance with
3 the South Carolina Rules of Civil Procedure, and that
4 the deponent does not waive the right to read and sign
5 the deposition transcript.

6 - - - - -

7 SCOTT L. LEMONS, being first duly
8 sworn, testified as follows:

9 EXAMINATION

10 BY MR. JORDAN:

11 Q. Good morning, Mr. Lemons. My name is Will
12 Jordan, I think we met one time at mediation in this
13 case, but I'm an attorney here at Sowell Gray, and our
14 firm represents McNair Law Firm in a lawsuit that you
15 have brought on behalf of yourself and your company,
16 Gold Coast.

17 In preparing for your deposition, I see that
18 you have been deposed before, but I'm just going to go
19 over a few ground rules that our Supreme Court requires
20 us to tell you about before we get started.

21 You understand that you're under oath today
22 just like if you were in front of a Judge. If I ask you
23 a question that you don't understand, I'm going to ask
24 you to tell me that and to ask me to explain it.

25 I will do my best to ask clear questions, but

4

1 if you don't understand something, let me know. If you
2 answer a question that I ask, I'm going to assume that
3 you understood it; is that fair for me to assume?

4 A. That's fair.

5 Q. If at any time you need a break, get some
6 coffee or a Coke, or go to the bathroom, let me know.
7 I'm not trying to make you uncomfortable so certainly
8 let me know any time you need a break. Do you have any
9 questions before we get started?

10 A. No.

11 Q. Will you give me your full name, please?

12 A. Scott Lowell Lemons.

13 Q. How many times have you been deposed before
14 today?

15 A. I believe it's three.

16 Q. Can you tell me what cases you were deposed
17 in?

18 A. I was deposed in a Cornerstone Group versus
19 Shelley and me. I was also deposed in -- what was the
20 other ones -- the one right here that we're sitting here
21 today.

22 Q. That would be the lawsuit involving C.S.E.?

23 A. C.S.E. Enterprises.

24 Q. Did you say there was one other or today is
25 the third?

1 A. I believe today might be the third.

2 Q. I'm going to go back a little bit later to
3 talk about the other cases in more detail.

4 Are you under the influence of any alcohol or
5 drugs today that would impair your ability to understand
6 my questions and provide truthful answers?

7 A. No.

8 Q. What is your date of birth?

9 A. September 7, 1977.

10 Q. What is your current address?

11 A. 511 Lake Shore Drive, Surf Side, South
12 Carolina.

13 Q. Is that a house?

14 A. Yes.

15 Q. Do you own that house?

16 A. No.

17 Q. Are you renting it?

18 A. Yes.

19 Q. How long have you lived there?

20 A. Two years.

21 Q. What was your address prior to the Surf Side
22 address?

23 A. 916 Windshore Court; I had been leasing this
24 house too, and that belonged to a friend. I had to sub
25 lease my house out a little bit, but prior to that it

6

1 was 1514 Chianni Lane.

2 Q. You said you were at the 511 Lakeshore for
3 about two years, and prior to that it was 916 Windshore?

4 A. Prior to 511 Lakeshore it was 1514 Chianni
5 Lane.

6 Q. How long did you live there?

7 A. Approximately, three years.

8 Q. And you said that you own that house?

9 A. I did own that house.

10 Q. Do you still own it?

11 A. No.

12 Q. When did you sell it?

13 A. I didn't. It got foreclosed on in 2009.

14 Q. When did you purchase that house?

15 A. 2006.

16 Q. Did a bank foreclose on it?

17 A. That's correct.

18 Q. What bank was it?

19 A. Washington Mutual, or Chase.

20 Q. Now, the Chianni Lane, was the foreclosure
21 action commenced in 2009 or was it finalized in 2009?

22 A. Finalized.

23 Q. Do you know when it was commenced?

24 A. I don't know the date it was commenced.

25 Q. Do you know, was it foreclosed for your

1 purposes that have been foreclosed on?

2 A. Yes.

3 Q. Can you tell me what other homes you've had
4 that have been foreclosed on?

5 A. I owned -- 710 South Ocean Boulevard got
6 foreclosed on.

7 Q. Where was that located?

8 A. Second Row, North Myrtle Beach.

9 Q. Do you recall when that foreclosure was?

10 A. It was in 2008, end of 2008, beginning of
11 2009, I believe.

12 Q. Do you recall when you stopped making payments
13 on that?

14 A. Roughly the end of December 2007, into
15 January 2008; if I remember correctly.

16 Q. You've named 710 South Ocean; you've named
17 1514 Chianni Lane; can you think of other residences
18 that you've had that have been foreclosed?

19 A. I had another property on the Second Row,
20 233rd South Ocean Boulevard. I had some tracts of land,
21 of course, didn't lose any of the land.

22 Q. The 233rd South Ocean Boulevard, do you recall
23 when that foreclose was?

24 A. Around the same time.

25 Q. About when did you stop making payments?

10

1 A. Around the same time.

2 Q. You mentioned some tracts of land that you had
3 that were foreclosed on, can you tell me the time frame
4 of that foreclosure?

5 A. It was all around the same time.

6 Q. So is it fair to say that most of these
7 foreclosures involved you stopping making payments
8 towards the end of 2007, early 2008, and the
9 foreclosures proceeded?

10 A. That is a fair assumption.

11 (Defendant's Exhibit 1 marked for identification)

12 Q. I'm going to hand you a document marked as
13 Defendant's Exhibit Number 1, and ask if you've seen
14 that document before?

15 MR. JORDAN: And I'm happy to give you as much
16 time as you'd like to look through it. I'll
17 represent to you that these are the discovery
18 responses that your attorney has provided to us.

19 A. It's absolutely familiar. I've seen so many
20 documents in the last several years, they all kind of
21 blend together.

22 BY MR. JORDAN:

23 Q. But you have provided your attorney with
24 certain information in order for him to respond to it?

25 A. To the best of my ability.

1 Q. If you look, probably halfway through your
2 packet, there's a document that's labeled, Plaintiff,
3 Scott Lemons' Answer to Defendant's First Supplemental
4 Interrogatories.

5 A. Okay.

6 Q. And you see there is some numbered items on
7 the left-hand side, and if you look at number 31 says it
8 identify all schools attended by Lemons and state the
9 degree or certificates received from each; do you see
10 that?

11 A. Yup.

12 Q. And there are some schools listed there; is
13 that an accurate and complete description of the
14 education that you've received?

15 A. Yes.

16 Q. What is New Dominion School in Virginia?

17 A. New Dominion School, it's like a private
18 wilderness school, boys, all guy's school.

19 Q. Is it a high school?

20 A. No, it's a private wilderness men's school,
21 boy's schools.

22 Q. Did you receive a GED from that school?

23 A. I did.

24 Q. When was that obtained?

25 A. I was 16 years old.

12

1 Q. And Fortune Academy Real Estate in South
2 Carolina, did you obtain a degree from that institution?

3 A. A real estate license.

4 Q. When did you obtain that?

5 A. I recall it was early 2003, I believe.

6 Q. Have you attended any other educational
7 institutions?

8 A. Just continuing education, ethics and stuff
9 like that, as needed and required.

10 Q. In connection with your real estate?

11 A. That's correct, yes.

12 Q. Are you married?

13 A. Nope.

14 Q. Have you ever been married?

15 A. Yes.

16 Q. Are you divorced?

17 A. Yes.

18 Q. When were you married?

19 A. I think I got married May 6, 2000.

20 Q. What was your wife's name?

21 A. Wendy.

22 Q. What was her last name?

23 A. Lemons.

24 Q. What was it prior to being married?

25 A. Layman, L-A-Y-M-A-N.

1 Q. When were you divorced?

2 A. Oh, gosh, I don't know the exact year or date
3 when the divorce went through, but it was 2002 to 2003,
4 early 2003.

5 Q. Do you have any children?

6 A. No.

7 Q. Are your parents living?

8 A. Yes.

9 Q. What are their names?

10 A. Linda and Lowell.

11 Q. Where do they live?

12 A. Waynesboro, Virginia.

13 Q. Do you have any relatives in Horry County?

14 A. Not that I'm aware of.

15 Q. Can you tell me the names of any individuals
16 who you would call to testify as a character witness on
17 your behalf?

18 A. Yeah, Richard Hubbard, Charlie Floyd, Zack
19 Burkett, Nelson Baulcom, Pastor Ken Timmerman, Bobby
20 Hatfield. I can keep on going, it's going to take me a
21 little while.

22 Q. Can you tell me where Richard Hubbard lives?

23 A. Myrtle Beach, South Carolina.

24 Q. What about Charlie Floyd?

25 A. Myrtle Beach, South Carolina.

14

1 Q. Jack Burkett?

2 A. Myrtle Beach, South Carolina.

3 Q. Nelson Baulcom?

4 A. Charlotte, North Carolina.

5 Q. Ken Timmerman?

6 A. Myrtle Beach, South Carolina.

7 Q. You mentioned that he's a pastor, what church?

8 A. First United Methodist.

9 Q. What about Bobby Hatfield?

10 A. Murrells Inlet, South Carolina. Would you
11 like me to keep going on the character witnesses?

12 Q. That's okay, thank-you.

13 If you look at item number 32 on the same
14 page, we asked you to identify all jobs or other forms
15 of employment, including self-employment that you had
16 from age 21 through the present.

17 Do you see that question?

18 A. Yes.

19 Q. Is your response there a complete and accurate
20 response of all the jobs that you've held?

21 A. It's not D and D Distributing, it's DOD
22 Distributing. I worked briefly at Blue Ridge Beverage,
23 I forgot about that.

24 Q. Are you currently employed?

25 A. Self-employed.

1 Q. Do you have a company that you work through
2 currently?

3 A. Currently through M-B-I Development
4 Incorporated.

5 Q. And how long have you been, has M-B-I been
6 incorporated?

7 A. I believe since 2006.

8 Q. How long has your work through M-B-I or as
9 M-B-I been your primary job?

10 A. I can't honestly answer that.

11 Q. What line of business is M-B-I in?

12 A. It was in the real estate business, and
13 development business.

14 Q. This was in the real estate business?

15 A. Well, there is very little real estate and
16 development going on now, so...

17 Q. Are you still operating as M-B-I presently?

18 A. Yes.

19 Q. When was the last real estate or development
20 project you had through M-B-I?

21 A. The last one I had was the acquisition of
22 Cypress Bay Golf Course, 2010.

23 Q. Did M-B-I purchase Cypress Bay Golf Course?

24 A. No, the deal fell apart.

25 Q. What is your role at M-B-I?

16

1 A. Vice president, I would think.

2 Q. Are there other members of M-B-I or
3 shareholders?

4 A. There's a shareholder named Robert Smith, my
5 friend.

6 Q. Have there ever been any other shareholders
7 other than yourself and Robert Smith?

8 A. No.

9 Q. You mentioned the Cypress Bay Golf Course deal
10 that fell through, what other deals has M-B-I been
11 involved in?

12 A. Do you want the exact addresses or the number
13 of deals?

14 Q. Give me just the number of deals, and I might
15 ask follow-up questions.

16 A. I would say acting under M-B-I Development
17 maybe two small ones.

18 Q. Now, would M-B-I Development be purchasing and
19 selling the property or acting as a broker; what would
20 M-B-I's role be?

21 A. Acting as a broker.

22 Q. And you mentioned, you believe, there were two
23 prior transactions that's M-B-I acted as a broker on?

24 A. I believe that's right, maybe a few more.

25 Q. Can you tell me the value of those deals?

1 A. Maybe \$600,000.

2 Q. Do you recall what M-B-I made as the broker on
3 those?

4 A. Maybe \$18,000 between the two, maybe.

5 Q. Since you mentioned there were only two, can
6 you identify what the properties were?

7 A. Myrtle Beach, South Carolina, multi-family for
8 an investor friend.

9 Q. Both of them were for the same investor
10 friend?

11 A. That's correct.

12 Q. Who was that?

13 A. Ethan Lennon and Brian Devreaux. Brian
14 Devreaux, Senior.

15 Q. Going back through your identified jobs here,
16 when did you work for DOD Distributing?

17 A. I was 20 years old, I believe.

18 Q. What is DOD's business?

19 A. A beer distributorship.

20 Q. When did you work for Century 21 RE/MAX?

21 A. After I moved to Myrtle Beach.

22 Q. Do you know about what year?

23 A. 2003, 2004.

24 Q. What was your role at Century 21?

25 A. Realtor.

18

1 Q. How long were you there?

2 A. Well, I was with RE/MAX about a year and with
3 Century 21, I don't know, six to nine months, if I
4 remember correctly.

5 Q. So Century 21 and RE/MAX are two separate jobs
6 that you held?

7 A. Yes.

8 Q. And for both of them you were a realtor?

9 A. That's correct.

10 Q. What type of property were you selling?

11 A. Residential property at that time.

12 Q. Over the course of your employment with
13 Century 21 and RE/MAX, how many residential properties
14 did you sell?

15 A. I have no idea.

16 Q. Would you say more than 100?

17 A. I have no idea, I have no idea, probably no.

18 Q. Was it more than ten?

19 A. Oh, yeah.

20 Q. Would you say more than 50?

21 A. No, probably not. I honestly don't know.

22 Q. Why did you leave Century 21?

23 A. Because I became a realtor to work for myself
24 and earn better commissions.

25 Q. Were you at Century 21 and you left there and

1 went to RE/MAX?

2 A. No, I was at RE/MAX and went to Century 21.

3 Q. Why did you leave RE/MAX and go to Century 21?

4 A. The fees were too high and the broker was a
5 friend of mine and we just didn't see eye-to-eye on some
6 things.

7 Q. Who was the broker?

8 A. Dean Spencer.

9 Q. When you left Century 21, where did you go to
10 work?

11 A. Keller Williams.

12 Q. Keller Williams is not listed on this response
13 so that would be an additional place?

14 A. Yes.

15 Q. What did you do at Keller Williams?

16 A. Realtor.

17 Q. How long were you there?

18 A. I would say probably year and-a-half maybe.

19 Q. What type of property were you listing?

20 A. Residential investments, I was doing a lot but
21 I was getting more into the investment properties then.

22 Q. Are you able to recall how many properties you
23 sold at Keller Williams?

24 A. I have no idea; a bunch.

25 Q. More than ten?

20

1 A. Oh, yeah.

2 Q. More than 50?

3 A. I could only guess yes, but I honestly have no
4 idea. I was the top sales agent in the entire company
5 out of 180 agents.

6 Q. And that was in the context of investment
7 property as well as residential property?

8 A. Yes, I would say so. I might add another
9 character witness, Randy Wallace.

10 Q. Where is Randy Wallace?

11 A. Myrtle Beach, South Carolina.

12 Q. After you left Keller Williams, where did you
13 go?

14 A. To New Resorts.

15 Q. What type of business is New Resorts?

16 A. It was a real estate company.

17 Q. What was your role there?

18 A. It was a realtor.

19 Q. What type of property were you listing?

20 A. Investments.

21 Q. How long were you at New Resorts?

22 A. I don't recall the time frame, probably six to
23 nine months.

24 Q. Do you have any idea how many properties you
25 sold there?

1 A. I have no idea.

2 Q. Was it more than ten?

3 A. Probably.

4 Q. Where did you go when you left New Resorts?

5 A. I ended up going to Waterfront Real Estate.

6 Q. What was your role at Waterfront?

7 A. Realtor.

8 Q. What type of property were you listing?

9 A. Different types of properties.

10 Q. Do you recall how long you were with
11 Waterfront?

12 A. I was with Waterfront until I kicked them out
13 of my office, so no; six months maybe.

14 Q. Why did you kick them out of your office?

15 A. Because the owner of Waterfront, I didn't
16 agree with a lot of stuff, and I just didn't want that
17 around me.

18 Q. Who was the owner of Waterfront?

19 A. Ford Shelley.

20 Q. Can you estimate how many properties you sold
21 while you were at Waterfront?

22 A. No.

23 Q. More than ten?

24 A. I would say so.

25 Q. When you left or when you stopped working with

22

1 Waterfront, where did you go to work?

2 A. Myself, Gold Coast Resorts.

3 Q. What line of work is Gold Coast in?

4 A. Real estate.

5 Q. Is Gold Coast still an entity?

6 A. It is.

7 Q. Do you still operate as Gold Coast?

8 A. No, I don't.

9 Q. When was the last time that you did any
10 business as Gold Coast?

11 A. About the time that Cornerstone situation came
12 up, if I remember correctly.

13 Q. Gold Coast is a limited liability company, is
14 that correct?

15 A. Yes.

16 Q. How did you decide to form it as a LLC?

17 A. I relied on Jim McDowell, my attorney at that
18 time.

19 Q. Who are the current members of Gold Coast?

20 A. Just me.

21 Q. Has Gold Coast ever had any other members?

22 A. Not that I'm aware of, no. I'm finding out a
23 lot of information as I go.

24 Q. Do you recall when you formed Gold Coast?

25 A. No, I don't. I believe it was 2005.

1 A. No. No, there hasn't. I'd asked Mark McAdams
2 to handle it for me and I don't know quite what happened
3 to it.

4 Q. When you were loaning money through S & L
5 Capital Funding, LLC, did you ever register with the
6 State of South Carolina as a consumer lender?

7 A. I don't know. Again, I'd have to check with
8 Jim McDowell.

9 Q. Has Gold Coast ever had any employees?

10 A. It's had employees -- do you mean W-2?

11 Q. Well, any individuals that you paid for
12 services performed exclusively for Gold Coast?

13 A. Yes.

14 Q. Does it have employees now?

15 A. No.

16 Q. What are the names of employees that it's had
17 in the past?

18 A. There was Shelley Riddle and Scott Titus.

19 Q. What does Shelley Riddle do?

20 A. Secretary.

21 Q. What about Scott Titus?

22 A. Assistant.

23 Q. Have you always been the individual who made
24 the business decisions for Gold Coast?

25 A. Yeah.

34

1 Q. We've talked about a number of different
2 companies and entities that you've operated through real
3 estate investments that you've handled, can you give me
4 an estimate for how many real estate transactions you've
5 been involved in throughout your career?

6 A. I have no idea; a lot.

7 Q. Can you give me any idea of the most expensive
8 real estate transactions you've ever been involved in?

9 A. Probably \$8.6 million, if I had to guess.

10 Q. Was that a deal that you brokered or purchased
11 or sold?

12 A. I was part of.

13 Q. What was your role in that deal?

14 A. I was the original purchaser, one of my
15 organizations.

16 Q. Which organization?

17 A. Cypress Plantation, LLC.

18 (Defendant's Exhibit 3 marked for identification.)

19 MR. JORDAN: I'm going to hand you what's been
20 marked as Defendant's Exhibit Number 3.

21 BY MR. JORDAN:

22 Q. Have you seen this document before?

23 A. No. Is this LinkedIn?

24 Q. It is.

25 A. Never seen that before.

1 Q. Is that your picture at the top?

2 A. Yes.

3 Q. Do you see down at the middle it says Scott
4 Lemons Summary, and it has some information?

5 A. Yes.

6 Q. Is it your testimony that you did not write
7 that?

8 A. Did not write what?

9 Q. Right where it says, Scott Lemons Summary and
10 provides a couple of paragraphs; did you write that?

11 A. I believe one of my web persons may have typed
12 that up.

13 Q. Did you instruct somebody to create a LinkedIn
14 profile on your behalf?

15 A. I'm working with Social Network Marketing,
16 trying to resurrect myself.

17 Q. So if this is your LinkedIn profile, you've
18 seen your LinkedIn profile before, correct?

19 A. I have.

20 Q. Does this appear to be an accurate
21 representation of your information on your LinkedIn
22 profile?

23 A. It appears that way.

24 Q. If you look at the first two sentences below
25 where it says Scott Lemons Summary: Over two hundred

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1 million in real estate transactions in the past ten
2 years. Deal structure and special organization and
3 j/v's over 150 million dollars over last six years. Do
4 you see that?

5 A. I do.

6 Q. And is that an accurate representation of your
7 experience in these areas?

8 A. I've been a part of many, many, many deals.
9 In the hundreds of millions of dollars have I been a
10 part of in some way, shape or form? Yes.

11 Q. So to the best of your knowledge the
12 information in those two sentences is accurate?

13 A. To the best of my knowledge.

14 Q. If you look down to where it says, Scott
15 Lemons Experience, it says: Fortis Consulting,
16 Incorporated. What is Fortis Consulting, Incorporated?

17 A. That is a new organization that I'm trying to
18 get off the ground and running.

19 Q. Are you a shareholder in that company?

20 A. The Articles haven't been done yet.

21 Q. What is it being established for the purpose
22 of?

23 A. Financial consulting and real estate
24 consulting.

25 Q. Has it done any business in that capacity?

1 Q. We've looked at two different mortgages that
2 were filed on -- well, let me start over on that.

3 We looked at two different documents, one
4 being the Beach First mortgage of 800 and some-odd
5 thousand dollars when you purchased the property from
6 2700 North Kings.

7 We also looked at a mortgage that you executed
8 in favor of Ford Shelley, and I realize that you said
9 you don't remember signing that one, but that was for
10 500 and some-odd thousand dollars, and that's on the
11 same property that you purchased from 2700 North Kings.

12 Am I confusing you? Do you need to ask a
13 question?

14 A. No, you just misspoke a little bit.

15 Q. Okay. Tell me.

16 A. What I told you is that I don't remember ever
17 seeing, and don't believe I've ever seen that \$500,000
18 document until litigation.

19 Q. There are two mortgages in connection with
20 your purchase of the property from 2700 North King, and
21 that is an \$803,000 note in favor of Beach First, and a
22 \$570,000 mortgage that we saw in favor of Ford Shelley.

23 You just mentioned that you thought you had
24 about 1.1, or some-odd, million dollars that you were
25 paying on that property. Were you thinking of the note

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1 or the mortgage in favor of Ford Shelley?

2 A. No, to Beach First.

3 Q. So you thought there was a 1.1 million-dollar
4 obligation that you had to Beach First for that
5 purchase?

6 A. That's correct; I believe so.

7 Q. Why would you have borrowed that much money in
8 connection with the purchase of that property?

9 A. That's where I was going back in, and it
10 happened so quickly and so fast. It was my
11 understanding that we were going to acquire and develop
12 that property out. To my understanding that first loan
13 wasn't even secured by the property, I don't think.

14 I think the first was 400 and-some-thousand,
15 and the second was for whatever else.

16 Q. Do you know if you have any documents relating
17 to that first loan?

18 A. I've lost everything that I had. Everything I
19 had, I relied on my attorneys to have and I don't know
20 whether I have the documents or not. I would have to
21 check, but I hope, maybe you can help find some.

22 I mean, they should be sitting up in McNair
23 Law Firm in Myrtle Beach, for all I know.

24 (Defendant's Exhibit 13 was marked for identification.)

25 Q. Let me show you what's been marked as

1 Defendant's Exhibit 13, and I want to turn our attention
2 to the litigation that you were involved in with C.S.E.
3 Enterprises and Tom Naomi and that you brought against
4 Kenny Hyatt.

5 You do recall that you ended up in litigation
6 with C.S.E. and Tom Naomi?

7 A. I do.

8 Q. And when C.S.E. and Tom Naomi brought a
9 lawsuit against you, you recall that you brought a claim
10 against Kenny Hyatt, correct?

11 A. I remember that, yes.

12 Q. Tell me, kind of, the background for the deal
13 that led to that lawsuit; explain what happened.

14 A. I took an option on a piece of property.
15 Naomi actually contacted me about some other properties;
16 he knew I had these properties, and told me he wanted
17 this specific piece of property and he would meet me
18 anywhere, anytime, he's got a cash buyer ready to close,
19 anytime, fully qualified.

20 And he met me at Cracker Barrel restaurant to
21 sign a contract.

22 Q. You said you took out an option to purchase
23 the property at issue, is that correct?

24 A. That's correct.

25 Q. How much did you pay?

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1 A. \$10,000 in cash to Mr. Dalduco and \$10,000 by
2 way of check.

3 Q. What was the purchase price that you were
4 going to buy that piece of property for?

5 A. One-point-four.

6 Q. One-point-four million?

7 A. Yes.

8 Q. And you mentioned that Tom Naomi who -- was
9 Mr. Naomi a real estate agent?

10 A. He was.

11 Q. And he was with C.S.E?

12 A. He was with RE/MAX, whatever.

13 Q. His company doing business as RE/MAX, is that
14 how you understood it?

15 A. He was a licensed agent or broker at RE/MAX at
16 the Coast, or one of those.

17 Q. And he brought a potential purchaser of the
18 property to you?

19 A. That's correct.

20 Q. And you mentioned that you met him at Cracker
21 Barrel to sign a contract?

22 A. No, I was eating dinner at Cracker Barrel with
23 a girl I was dating, and he drove from Little River to
24 the south end of Myrtle at 8:30 at night to bring me a
25 cash-close, no contingency contract for 2.9 million

1 dollars.

2 Q. And who was the purchaser on that contract?

3 A. Kenny Hyatt.

4 Q. At that time had you entered into a commission
5 agreement with Mr. Naomi?

6 A. At the time, I had not.

7 Q. Subsequently, you did enter into a commission
8 agreement, correct?

9 A. At the Cracker Barrel restaurant I hand wrote
10 out an agreement that upon sale and close of the
11 referenced property I agreed to pay RE/MAX, Tom Naomi a
12 commission for that.

13 Q. If you flip, on Exhibit 13 that I just handed
14 you, this is a copy of the Complaint filed against you
15 and Gold Coast by C.S.E., if you flip back to the page
16 marked McNair Gold Coast 00034; is that a copy of the
17 hand written commission agreement?

18 A. It appears to be, yes.

19 Q. And you just testified that you hand drafted
20 this commission agreement?

21 A. Yes.

22 Q. Is this the only commission agreement that you
23 entered into with C.S.E. and Tom Naomi?

24 A. This day, it was.

25 Q. Is this the only commission agreement that you

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1 entered into with Mr. Naomi regarding the sale of this
2 piece of property?

3 A. Several days, or so, however long it was
4 later, he said he had fixed one of the commission
5 agreements to meet his needs and he needed to get some
6 paperwork done and he had another commission agreement
7 done.

8 Q. There was a subsequent -- there was a
9 commission agreement that you entered into with
10 Mr. Naomi after this handwritten agreement?

11 A. That's correct.

12 Q. Which commission agreement did you understand
13 would apply to your arrangement with regard to the sale
14 of this piece of property?

15 A. Well, the first one, as it was explained to
16 me, was exactly the way it was on the second. I signed
17 the second after I signed the dual agency agreement,
18 under full representation of RE/MAX at the Coast.

19 Q. Did you draft this handwritten commission
20 agreement while you were sitting at Cracker Barrel with
21 Tom Naomi?

22 A. I did.

23 Q. Who came up with the language to use?

24 A. I did.

25 Q. He didn't tell you what to write, you just

1 wrote it out?

2 A. Yeah. He would not present the offer until I
3 signed or wrote some kind of agreement ensuring his fee.

4 Q. Now, there's two signatures on this page; is
5 the top one your signature?

6 A. It is.

7 Q. Who is the signature below you?

8 A. Amy Oglesbee.

9 Q. Who is that?

10 A. A girl I dated maybe once or twice.

11 Q. Did she sign as a witness?

12 A. Yes.

13 Q. So she was the individual that you were at
14 Cracker Barrel with when you executed this document?

15 A. Yes.

16 Q. Have you ever drafted any other handwritten
17 contracts?

18 A. Oh, I have.

19 Q. What types of contracts have you drafted up?

20 A. Simple fee agreements, I don't recall all of
21 them.

22 Q. So you're classifying this as a fee agreement,
23 is that accurate?

24 A. I would have to say, yeah.

25 Q. So you've drafted fee agreements; can you tell

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1 me of any other type of contracts that you've drafted?

2 A. I can't recall.

3 Q. Have you ever drafted a purchase and sale
4 agreement?

5 A. No, I don't believe I actually ever have, I
6 don't know. I rely on my attorney for that information.

7 Q. But this one you drafted yourself, is that
8 correct?

9 A. I drafted this commission compensation
10 agreement.

11 Q. Mr. Naomi informed you that he had a purchaser
12 for this piece of property, is that correct?

13 A. He did.

14 Q. And did he tell you who the individual was at
15 that time?

16 A. No.

17 Q. When did you find out -- well, let me start
18 that over.

19 Mr. Naomi brought a purchase agreement to the
20 Cracker Barrel that evening; is that correct?

21 A. That's correct.

22 Q. And it was filled out by the individual who he
23 had lined up to purchase the property from you. Is that
24 correct?

25 A. It was my understanding that Mr. Naomi had

1 filled that out.

2 Q. But did it have the purchaser's name on it?

3 A. I believe it did, yeah.

4 Q. Had you ever dealt with Kenny Hyatt before?

5 A. No.

6 Q. Had you ever met him before?

7 A. No, I didn't even know who was on the contract
8 until I signed the commission agreement.

9 Q. Now, when you were going to purchase this
10 piece of property from -- what was the individual's
11 name?

12 A. John Dalduco.

13 Q. When you were purchasing it from Mr. Dalduco,
14 it was not your intention to hold onto this piece of
15 property, was it?

16 A. Actually, it was. My original intention was
17 to buy it and hold onto it.

18 Q. What were you planning to do with it?

19 A. At that time I was actually looking to build a
20 personal house on the property and maybe selling off a
21 couple of the lots on the side.

22 Q. All right. When you paid Mr. Dalduco the
23 option price, you said you made it in two different
24 \$10,000 payments. When did you make those payments?

25 A. The day I signed the contract.

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1 Q. You made both payments the same day?

2 A. No, I don't believe I did. I believe they
3 were scattered out by maybe a week, over a period of
4 time of a week, if I remember correctly.

5 Q. When you paid the option price at that point,
6 was it your intention to hold onto the property?

7 A. At that time, yes, it was.

8 Q. Did you have sufficient funds to purchase the
9 property and hold onto it yourself?

10 A. I did.

11 Q. Were you going to pay cash?

12 A. I was going to pay cash for some. I had
13 approvals by some lenders on some down payment and I
14 also had owner financing lined up from Mr. Dalduco, if
15 needed. I had the wherewithal to close.

16 Q. Say that again.

17 A. I had the means to close.

18 Q. At some point did you decide you were not
19 going to hold onto this property but that you wanted to
20 sell it immediately upon acquiring it?

21 A. At the time I was brought a clean contract for
22 2.9 million. I originally wanted 3.4.

23 Q. Do you know how Mr. Naomi came to you, how
24 Mr. Naomi came to know that you were interested in
25 selling this property?

1 A. I don't know.

2 Q. Had you dealt with Mr. Naomi before?

3 A. We had talked in the past.

4 Q. Had you talked about this piece of property?

5 A. Not that I recall, not until right before he
6 brought me the offer.

7 Q. So Mr. Naomi just called you one day and said
8 I have somebody that wants to buy this?

9 A. He called me one day and we were talking about
10 properties, and it seemed that he was already familiar
11 with this property that I had already taken an option
12 on.

13 Q. And did he ask you if you were interested in
14 selling it?

15 A. To the best of my recollection, exactly what
16 happened is that.

17 Q. Do you recall what you told him?

18 A. I believe I told him \$3.4 million and I would
19 let it go.

20 Q. And then what happened next, what was your
21 next communication with Mr. Naomi?

22 A. I don't recall the time lines but I know very
23 quickly thereafter he had already had a group --
24 between -- and my understanding from him was he had
25 already known about this piece of property, wanted this

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1 piece of property, and then brought me a clean contract
2 for purchase for 2.9 million.

3 Q. What was your reaction when you got this
4 contract from Mr. Hyatt to purchase it from you for \$2.9
5 million?

6 A. What was my reaction?

7 Q. Were you immediately interested in that
8 prospect?

9 A. Yeah, I was fairly interested in it. I didn't
10 need to be too greedy at 3.4. I figured we had a good
11 deal.

12 Q. What, if any, research or investigation did
13 you do into Mr. Hyatt's ability to purchase the property
14 for 2.9 million?

15 A. I relied on Tom Naomi as my agent, and he had
16 done business apparently prior to. My limited, little
17 bit of research that I did was just asking around the
18 community about his prior business deals. And he had
19 had substantial business dealings especially on the
20 Waterway, from my understanding.

21 Q. And your understanding was that he was going
22 to complete his purchase of the property from you via
23 cash, a cash purchase?

24 A. That is my understanding.

25 Q. For \$2.9 million?

1 A. That's correct.

2 Q. Did you request any information from Mr. Hyatt
3 or from Mr. Naomi about Mr. Naomi's ability to pay cash
4 in the amount of \$2.9 million for this transaction?

5 A. I don't recall. I do recall having some
6 conversation with Mr. Naomi about that and he verified
7 it was not a problem.

8 Q. Did you inquire into Mr. Hyatt's employment
9 situation or his job history?

10 A. Best of my recollection, what I remember was
11 some development on the water in Little River, as well
12 as some land he had for many warehouses. It was also
13 made known to me that his brother-in-law was involved in
14 purchasing the property as well.

15 Q. His brother was involved in purchasing this
16 property from you?

17 A. Evidently his brother was going to him -- his
18 brother wanted to be involved and I don't remember his
19 name.

20 Q. Was Mr. Hyatt's brother named on the purchase
21 contract that was brought to you?

22 A. No.

23 Q. Did you request any further information about
24 the financial ability of Mr. Hyatt's brother to assist
25 in the purchase of this property?

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1 A. No, not that I'm aware of.

2 Q. Did you ask Mr. Hyatt or Mr. Naomi to provide
3 you with any audited financial statements of
4 Mr. Hyatt's?

5 A. I don't remember exactly what it was that I
6 asked for, but I requested -- I wanted to feel secure
7 that I was doing business with somebody and I was
8 assured by Mr. Naomi and RE/MAX that I was dealing with
9 a solid person.

10 Q. Were you provided with any information other
11 than them saying he was in good shape? Did it satisfy
12 you that he was able to perform on this contract?

13 A. I was satisfied that he was able to perform on
14 this contract.

15 Q. I understand that. Did you have any
16 documentation that lead to that satisfaction or was it
17 simply Mr. Naomi's word?

18 A. Mr. Naomi's word and other people in the
19 community, like I said, that knew some of his business
20 dealings.

21 Q. Did you do a background information on
22 Mr. Hyatt?

23 A. I remember looking up his name on tax rolls,
24 he had substantial properties in his possession.

25 Q. Did you ever look into his arrest record or

1 criminal background?

2 A. No.

3 Q. What was your plan going to be in the event
4 Mr. Hyatt was unable to perform on his contract?

5 A. I don't remember. I can't remember. I don't
6 recall even making a plan, it was that clean a deal.

7 Q. Well, you testified that initially your intent
8 was to purchase this property and hold onto it, right?

9 A. That's correct.

10 Q. So if Mr. Naomi wasn't able to perform on his
11 contract, what would you have done with this piece of
12 property? Would you have still purchased it or would
13 you have been unable to purchase it?

14 A. I would have been able to purchase it.

15 Q. You didn't purchase it, correct?

16 A. No, I did not.

17 Q. Why did you not?

18 A. I ended up getting involved in some other
19 transactions in the meantime; didn't think too much else
20 about this; went on about my business and placed
21 commitments elsewhere.

22 Q. So it's your testimony that when Mr. Hyatt
23 failed to go through with his purchase of the property,
24 you just made a decision that you were not going to
25 purchase it either?

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1 A. That's when I went to Jim McDowell, he
2 introduced me to Mark McAdams, and they were both
3 drooling over the situation. I then stopped thinking
4 and I relied -- the rest of my time and effort into Mark
5 McAdams and McNair Law Firm.

6 Q. My question is really before then, before
7 there was ever a lawsuit filed by Tom Naomi, because he
8 didn't get paid his commission on this deal. At some
9 point you made the decision not to purchase this
10 property, right?

11 A. I hadn't made any decisions at that point, I
12 immediately went to talk to my lawyer.

13 Q. You testified that what you wanted to sell
14 this property for was \$3.4 million, correct?

15 A. That's correct.

16 Q. And your option to purchase it was 1.4?

17 A. Yes.

18 Q. Is it accurate to say that you thought the
19 amount that you were paying for this property was a very
20 good deal?

21 A. Absolutely.

22 Q. If you were financially able at the time that
23 Mr. Hyatt failed to go forward with his purchase of the
24 property, to yourself go ahead and purchase it, why
25 would you not go ahead and purchase it?

1 Q. And what was your ultimate decision about that
2 issue?

3 A. To listen to my lawyer.

4 Q. Is that Mr. McAdams?

5 A. That's correct.

6 Q. What did he tell you?

7 A. Exactly what he's done, all these legal
8 documents, I don't know how to interpret what all is
9 going on here, but I followed McNair Law Firm and
10 McAdams.

11 Q. You said that when Hyatt didn't go through
12 with his contract obligation to purchase the property
13 from you, that you kind of forgot about this property
14 and went onto other things that you were working on; is
15 that an accurate summary?

16 A. Can you repeat the question?

17 Q. I believe you testified that when Mr. Hyatt
18 didn't go through with the deal that you forgot about
19 this property and went on to other things that you were
20 looking at investing in, is that a fair summary?

21 A. I wouldn't say it's a fair summary at all; I
22 turned it over to my lawyers at McNair.

23 Q. But I'm talking about in terms of whether you
24 were going to purchase this property, you started
25 looking elsewhere for other investment possibilities, is

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1 that correct?

2 A. Once I turned this over to McNair Law Firm and
3 relied on them I started looking around.

4 Q. Did you stay say to anyone at McNair Law Firm,
5 I'd like to go ahead and buy this property because I was
6 standing to make a \$1.5 million profit off this flip;
7 can I go ahead and buy the property, I think it's worth
8 it?

9 A. I don't recall too many detailed conversations
10 to that effect, you know, wording the way you did; but
11 under the advice of Mark McAdams I waited on his every
12 move.

13 Q. Did Mark McAdams tell you not to purchase this
14 property?

15 A. I don't believe he told me one way or the
16 other. He told me that he wanted to sue and that I had
17 a good damage here; he was very excited about it.

18 Q. But your claim against Kenny Hyatt is separate
19 and apart from your ability to buy this property and
20 sell it for a profit still, right?

21 A. I'm not a lawyer. I relied upon my lawyer to
22 handle my affairs at McNair Law Firm.

23 Q. Did you ever have title to the property that
24 Mr. Hyatt agreed to buy from you?

25 A. I don't believe I did.

1 Q. When was the first time that you contacted
2 Mark McAdams about assisting you with the lawsuit that
3 brought by C.S.E. Enterprises and Tom Naomi?

4 A. I don't remember the exact date. It was
5 shortly, right after, somewhere in the first part of
6 December 2006.

7 Q. If you look at Exhibit 13 that I have in front
8 of you, and flip to page five, labeled McNair Gold Coast
9 00020, and this is the complaint filed against you and
10 Gold Coast, and you see that Philip Thomas, the attorney
11 for Mr. Naomi and RE/MAX apparently signed it on
12 December 18, 2006; do you see that?

13 A. I do.

14 Q. So is that around the time that you first
15 received a copy of this complaint against you sometime
16 late in 2006?

17 A. Yes.

18 Q. And it's your testimony that you contacted
19 Mark McAdams as soon as you received this lawsuit; is
20 that correct?

21 A. If I remember correctly, I contacted Jim
22 McDowell and Jim referred me over to Mark McAdams
23 immediately.

24 Q. Did you contact any other lawyers about
25 assisting you with this lawsuit?

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1 A. No.

2 Q. Was your first communication with Mark McAdams
3 by telephone, in his office or e-mail?

4 A. If I remember, my first communication was at
5 the McNair Law Firm on Oak Street.

6 Q. Do you recall who was there with you?

7 A. No, I don't. As a matter of fact, on the
8 first communication with him I believe it was just me
9 and him.

10 Q. Do you recall what you and Mark discussed
11 during that initial meeting?

12 A. Vaguely. But at the time, I took him what I
13 had. I said very little and I let him tell me what the
14 situation was.

15 Q. And this was the first time that you had met
16 Mark McAdams?

17 A. Yes.

18 Q. What do you recall Mark McAdams saying about
19 this lawsuit?

20 A. He told me that I had -- it was an open and
21 shut case, and that I would be a fool not to pursue it.

22 Q. And he's referring to the lawsuit against
23 Hyatt?

24 A. That's correct.

25 Q. What did he say about the lawsuit that Naomi

1 and RE/MAX brought against you and Gold Coast?

2 A. He hadn't said anything at that time.

3 Q. Throughout the course of Mark McAdams
4 representing you in connection with this litigation, how
5 would you and Mark communicate about this case?

6 A. Phone calls or e-mails, but again, being my
7 first litigating experience, kind of, I really just
8 turned it over to him.

9 Q. Do you have a feel for how often you would
10 talk to Mark while the lawsuit was going on?

11 A. No, I don't recall. I could guess, but I
12 don't wish to do that.

13 Q. I'm going to move into talking about how this
14 case came to be settled and some of those issues, and
15 before I do that I want to give you some documents to
16 set a timeline so we know what we're talking about.

17 The first is the exhibit in front of you,
18 which is the Complaint, and we just looked at that and
19 you can see there's a file stamped on the first page
20 that looks like it was filed December 19, 2006; do you
21 see that?

22 A. I do.

23 Q. Do you recall being deposed in that case?

24 A. Yeah, I do.

25 Q. Do you have any recollection of when that was?

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1 A. Vaguely, had about 400 documents to go through
2 last night before I came here today.

3 (Defendant's Exhibit 14 was marked for identification.)

4 Q. I'm going to hand you what's been marked as
5 Defendant's Exhibit 14, and I have a full copy of your
6 deposition in this lawsuit, but I'll represent this is
7 the front page and it shows you were deposed March 8,
8 2008; do you see that?

9 A. I do.

10 Q. Does that sound about the right time frame?

11 A. That sounds right.

12 Q. Do you have any reason to dispute that is when
13 you were deposed in that case?

14 A. I don't.

15 (Defendant's Exhibit 15 was marked for identification.)

16 Q. Handing you what has been marked as
17 Defendant's Exhibit 15. You spoke a little bit earlier
18 about an arrest that occurred in March 2008, and this is
19 a number of documents relating to that incident and
20 arrest.

21 If you look on the first page, labeled McNair
22 Gold Coast 00668, that is a copy of the indictment and
23 the sentence sheet in this case, and if you look at the
24 top right section it says date of offense 3-12; do you
25 see that?

1 A. I do.

2 Q. Is it accurate that the incident that led to
3 your arrest in Myrtle Beach was on March 12, 2008?

4 A. The date of this incident was the night after
5 this deposition. It was the night of; my arrest was the
6 next day.

7 Q. So your deposition was on the 11th, which
8 we've seen, and this has the date of offense was the
9 12th, would it have been late that night?

10 A. Yeah. I don't remember much of anything after
11 around nine o'clock that night.

12 Q. The 11th?

13 A. On the 11th.

14 Q. If you flip over to page 00669, this is a copy
15 of the arrest warrant. If you look down until the
16 middle of the page at the bottom, it shows the warrant
17 being issued on 3-14-08; do you see that?

18 A. Okay.

19 Q. So your recollection is that the incident
20 occurred the night of, maybe into the next morning,
21 after your deposition, and you were arrested on the
22 12th; is that what you recall?

23 A. To the best of my recollection. If I recall
24 correctly, it was a few days after whatever happened
25 that evening.

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1 Q. So the 14th sounds right?

2 A. That sounds probably about right.

3 (Defendant's Exhibit 16 was marked for identification.)

4 Q. I'll show you what's been marked as
5 Defendant's Exhibit 16, and if you will look, these are
6 some interrogatory responses that have been provided in
7 this case. If you look at page three, paragraph 29.

8 A. This is what now?

9 Q. Take your time to peruse through, these are
10 responses that your attorney provided to us in this
11 case.

12 A. Look at what?

13 Q. Paragraph 29 on page three. You'll see where
14 we asked about whether you were in rehabilitation or
15 treatment facility and the response was that you were in
16 Watershed from March 21st, 2008 to April 10th, 2008; is
17 that correct?

18 A. Those dates sound right.

19 (Defendant's Exhibit 17 was marked for identification.)

20 Q. Handing you what has been marked Defendant's
21 Exhibit 17; have you seen this document before?

22 A. I have.

23 Q. If you look at the second page, is that your
24 signature?

25 A. It is.

1 Q. And this is a copy of a document that's called
2 Mutual Release, and it shows you signed it May 21, 2008;
3 is that correct?

4 A. That's correct.

5 (Defendant's Exhibit 18 was marked for identification.)

6 Q. Now, handing you Defendant's Exhibit 18, and
7 I'll represent to you this is a copy of a Complaint that
8 you filed against Mark McAdams in the Fall of 2008; does
9 that appear to be correct?

10 A. Looks to be correct.

11 Q. And if you look on the front page there's a
12 file stamp and looks like it was filed on October 10th,
13 2008; is that correct?

14 A. I can't tell what that date is.

15 Q. Now, I want to go back and ask you about the
16 events in this timeline that we've just created. From
17 the time that the lawsuit was filed by Tom Naomi and
18 RE/MAX against you, and you brought Kenny Hyatt in, did
19 you ever have any discussions with Mark McAdams about
20 whether or not this case would be mediated?

21 A. I had asked him numerous times in 2007, asking
22 him when the court case was going to come up, what was
23 the next step. And he just continued to tell me that
24 it's steamrolling forward, or whatever the term was that
25 he used.

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1 Q. And this was in 2007?

2 A. 2007.

3 Q. Did he ever mention that there would be a
4 mediation in this case?

5 A. I don't recall. I don't recall ever hearing
6 about a mediation in 2007. I was asking him to please
7 hurry, let's get this resolved of this matter. That's
8 how it went down.

9 Q. Why were you asking him to hurry and get this
10 matter resolved?

11 A. Why not? It's a big case. It's something
12 that's pending and it needed to be resolved.

13 Q. Did you need the money?

14 A. Did I need the money at that time? No, I
15 didn't need the money at that time. I could have used
16 the money at that time, it was creating a lot of other
17 headaches for me.

18 Q. Had you ever been involved in a mediation in
19 one of your other lawsuits before?

20 A. I don't recall.

21 Q. Did you know what a mediation was?

22 A. Not really. I had an idea, yeah.

23 Q. We've talked about your deposition being on
24 March 11th; do you recall where the deposition took
25 place?

1 yeah.

2 Q. Did you tell him anything about what you would
3 be willing to settle for?

4 A. No.

5 Q. All right. You had your deposition on the
6 11th, and did you and Mark talk after that deposition
7 was over that day?

8 A. I believe we did, yeah, it was a pretty
9 stressful day. Same thing we're sitting through now;
10 and we went to T-Bones that evening.

11 Q. Who else was at T-Bones with you?

12 A. At first it was just the two of us, his wife
13 and then my ex joined us.

14 Q. Who is your ex?

15 A. Leah.

16 Q. What's Leah's last name?

17 A. Ellis, E-L-L-I-S.

18 Q. To your recollection you and Mark rode to the
19 deposition together, and you rode back together. Was
20 your deposition the only deposition that took place that
21 day?

22 A. To the best of my recollection it was.

23 Q. Do you recall, were you there all day?

24 A. It was a pretty long day, I remember it being
25 a mentally draining day.

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1 Q. Do you recall how long your deposition took?

2 A. I don't recall.

3 Q. Do you recall what, if anything, you and Mark
4 McAdams discussed on your way back to Myrtle Beach after
5 that day's deposition?

6 A. I don't recall any other conversations in the
7 car ride back, no, I'm sorry.

8 Q. If you'll look back at Exhibit 14, which is
9 the cover page of your deposition.

10 A. Okay.

11 Q. Do you see Tuesday, March 11th, then it says
12 9:18 a.m. to 10:46 a.m. Do you believe that is correct,
13 about how long your deposition was?

14 A. I believe it was longer, but whatever it says,
15 I'll believe it.

16 Q. So you rode with Mark back to Myrtle Beach and
17 you and Mark went to T-Bones?

18 A. It was later that afternoon. We were in
19 Conway for quite some time.

20 Q. Do you recall what time you got back to Myrtle
21 Beach?

22 A. I don't recall.

23 Q. Did you go straight to T-Bones?

24 A. I believe he dropped me off at my car at
25 McNair and we met over there immediately following.

1 Q. And you said Mark's wife was there?

2 A. I believe it was his girlfriend at the time,
3 bartending.

4 Q. What was her name?

5 A. Lisa, I think.

6 Q. And you said that your ex-girlfriend was also
7 there, and her name was Leah?

8 A. Yes.

9 Q. Was anyone else there with you all?

10 A. Not that I can recall.

11 Q. Now, we've looked at some of the documents and
12 seen there was an incident later on that morning that
13 led to your arrest.

14 A. That's correct.

15 Q. Can you tell me what happened from the time
16 you got to T-Bones until the time the incident happened?

17 A. I can tell you that. I don't remember
18 anything. I don't remember leaving T-Bones,
19 unfortunately.

20 Q. What is the first thing that you remember
21 after leaving T-Bones?

22 A. Waking up mid-morning, afternoon, whatever it
23 was, and feeling like I was about to die.

24 Q. What did you do while you were at T-Bones that
25 led you to feel like that the next day?

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1 A. I had been drinking heavily.

2 Q. Had you done anything else?

3 A. No. I had been -- not that night, that I can
4 remember. I remember being very, very stressed out
5 throughout that day, and I was on some anti anxiety
6 medication.

7 Q. Are you talking about the day of the 11th that
8 you were stressed out?

9 A. Yes.

10 Q. What was the reason?

11 A. Combination of McAdams, combination of
12 depositions are fairly stressful in itself, and the
13 whole situation that was going on.

14 Q. Tell me what it was about McAdams that was
15 causing you stress that day.

16 A. I had already learned that there was some
17 stuff that I should be concerned about that I had
18 thought we had maybe gotten it resolved, but I was still
19 nervous about the situation; I had a lot of business
20 trust in him.

21 Q. You just said that you had learned there was a
22 lot of stuff for you to be concerned about; what are you
23 talking about here?

24 A. Talking about attempted to potentially exit me
25 out of a transaction that I was supposed to be involved

1 Q. So the situation that you're referring to that
2 was causing you stress on the 11th was your personal
3 financial situation?

4 A. The failure to collect on the notes owed to me
5 on or before November 9th, 2007 by Dane Freeman and Dale
6 Colovin which McAdams protected my interest in; number
7 two, the situation we have sitting here; number three,
8 the assurance finally after figuring out that I was cut
9 out of a transaction, the reassurance that he was back
10 in place and was assuring me I was not going to be cut
11 out of the transaction and I had millions of dollars
12 coming in on that.

13 Q. So by this time, March 2008, it's your opinion
14 that McAdams had failed to collect money from Colovin
15 and Freeman that he should have collected for you?

16 A. At this time I was trying to figure out what
17 was going on, and I don't know the law, I'm not a
18 lawyer, but at this time he told me he was conflicted
19 out of collecting my money.

20 Q. In March of 2008 Leah Ellis was your
21 girlfriend at that time?

22 A. Yes.

23 Q. Do you have a relationship with her now?

24 A. We're still friends.

25 Q. When was the last time you spoke with her?

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1 A. About a month ago.

2 Q. How often have you seen her?

3 A. I haven't seen her for four, five, six months.

4 Q. What did you talk about a month ago?

5 A. We just talked about life and how we're doing.

6 Q. Where does she currently live?

7 A. Somewhere in West Virginia.

8 Q. Do you have her address?

9 A. No.

10 Q. Do you have her phone number?

11 A. No.

12 Q. How did you speak with her?

13 A. I believe it was over Skype.

14 Q. Do you have an e-mail address for her?

15 A. I don't know it off the top of my head.

16 Q. Where in West Virginia does she live?

17 A. I don't know, somewhere in the mountains.

18 Q. You've testified that you went to T-Bones, you

19 were with McAdams and his girlfriend and Leah Ellis.

20 And you don't remember anything from the time that you

21 left T-Bones to whenever you woke up the next morning;

22 is that correct?

23 A. That's correct.

24 Q. What do you recall taking place while you were

25 at T-Bones?

1 A. The last time thing that I recall is drinking
2 beer and take shots.

3 Q. Did you get into any disagreements with Mark
4 McAdams that evening that you recall?

5 A. No, not that I recall.

6 Q. Explain to me what happened on March 12th,
7 2008; you said you don't remember anything until you
8 woke up. Explain to me what happened after you woke up
9 that day.

10 A. That day is very, very foggy to me. I don't
11 have any idea what time it was that I woke up. I
12 remember not waking up to a very good site. I remember
13 us both going back to sleep and trying to sleep it off,
14 that's why it was a few days later.

15 Q. What do you mean?

16 A. Leah's eye was blackened and her nose had been
17 bleeding.

18 Q. Was this at your house?

19 A. It was.

20 Q. Which residence was this?

21 A. Chianni Lane.

22 Q. Did you and Leah talk that morning about what
23 had happened?

24 A. No, we both came to and both went back to
25 sleep until the next day.

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1 Q. Until the 13th?

2 A. That's correct.

3 Q. So you don't remember after T-Bones, you woke
4 up the next day briefly, and how long were you awake on
5 the 12th?

6 A. I have no idea, I felt like I was about to
7 die, I have no idea.

8 Q. Did Leah go to the hospital that day?

9 A. I don't remember which day it was, but she did
10 go.

11 Q. How did she get to the hospital?

12 A. I had a friend take her.

13 Q. Who was that friend?

14 A. Robert Smith.

15 Q. So after you woke up on the 12th, you went
16 back to sleep to try and sleep it off, and then you
17 remember waking up on the 13th?

18 A. Not really. This time frame becomes very
19 blurry. I made some horrible mistakes under the
20 influence of alcohol that I don't remember. I can't
21 drink alcohol, I blackout, I don't know what happens;
22 therefore, I don't drink alcohol.

23 Q. You mentioned that you were also on some anti
24 depressants; as of the 11th, were you taking any anti
25 depressants?

1 A. As of the 11th?

2 Q. When this whole situation started?

3 A. Define "situation".

4 Q. On March 11th when you went to your deposition
5 and then you went with Mark McAdams and some other
6 people to T-Bones, were you under the influence of
7 anything other than alcohol?

8 A. I had taken a Xanax and-a-half or two or
9 something right at the end of my deposition, if I
10 remember correctly in the time frame.

11 Q. Did you have a prescription for Xanax?

12 A. I did.

13 Q. Were you taking the amount that was
14 prescribed?

15 A. Less than.

16 Q. After your deposition when you got back to
17 T-Bones, did you take anything other than alcohol for
18 the rest of that evening?

19 A. Not that I can recall.

20 Q. Do you recall the day that you were actually
21 arrested?

22 A. Very, very vaguely.

23 Q. How did you come to be arrested?

24 A. The police officers called me and asked me to
25 turn myself in and I told them I had to talk to my

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1 attorney. I talked to my attorney, made arrangements
2 and went to the police department?

3 Q. Is that Tommy Brittain that you're referring
4 to?

5 A. Yes.

6 Q. Where did the police officers call you?

7 A. On my cell.

8 Q. Where were you when they called you?

9 A. I think I was driving somewhere around
10 Pawley's Island.

11 Q. When, in relation to receiving that call, did
12 you go turn yourself in?

13 A. Very shortly thereafter.

14 Q. And you reported to jail in Myrtle Beach, is
15 that correct?

16 A. I went to the Myrtle Beach Police Department.

17 Q. Were you arrested when you arrived at Myrtle
18 Beach Police Department?

19 A. Yes, I was.

20 Q. How long were you in jail?

21 A. Two hours maybe, I don't know.

22 Q. Do you know about what time of day it was when
23 you turned yourself in?

24 A. I think it was somewhere around noon,
25 11:00 a.m. to noon.

1 Q. You mentioned that when you received the call
2 from the police you contacted Tommy Brittain. Did you
3 make any other phone calls from the time that you were
4 contacted by the police to the time that you turned
5 yourself in?

6 A. No, not that I can recall.

7 Q. Did you call Mark McAdams?

8 A. Not that I can recall, no.

9 Q. You said that you were in jail for two or
10 three hours, did you have a bond hearing?

11 A. I did.

12 Q. Did an attorney represent you at the bond
13 hearing?

14 A. I was under the representation of Tommy
15 Brittain at that time.

16 Q. Was Tommy with you at that hearing?

17 A. He was not.

18 Q. Was bond set?

19 A. There was bond set.

20 Q. Do you know how much your bond was?

21 A. I paid \$5,000, I believe it was.

22 Q. And you paid that \$5,000 -- did you pay it in
23 cash?

24 A. Yes.

25 Q. And you paid that so you could be released

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1 from jail during the pendency of the case?

2 A. That's my understanding.

3 Q. Where did you get the cash from to pay the
4 \$5,000?

5 A. From some money that I had been saving up.

6 Q. It was in your personal account?

7 A. It was cash.

8 Q. Did someone bring it to you or did you have
9 \$5,000 in your pocket when you went to jail?

10 A. I had already went and retained Tommy
11 Brittain, and I paid him in full, plus extra if there
12 was any bond set.

13 Q. Before you went and turned yourself in you
14 went to Tommy's office?

15 A. That's correct.

16 Q. So you did not have a bail bondsman?

17 A. No.

18 Q. Did you borrow money from anyone in order to
19 pay Mr. Brittain or the bond?

20 A. No.

21 Q. It was all your money?

22 A. Yes.

23 Q. After the bond hearing and bond being set and
24 you paying it, how did you leave the jail, how did you
25 get home?

1 A. A friend of mine picked me up and took me to
2 his house.

3 Q. Who picked you up?

4 A. Robert Smith.

5 Q. You said you went to Robert Smith's house?

6 A. If I remember correctly. I started
7 immediately seeking out what to do as far as my
8 alcoholism is concerned. I may have gone to my house
9 and packed a bag, I don't remember.

10 Q. Did you call Mark McAdams from jail?

11 A. No, I did not.

12 Q. Did you call him upon your release from jail?

13 A. Not that I can recall.

14 Q. Did you let him know that you had been
15 arrested?

16 A. I had a few days later when I found a place to
17 go for treatment, if my memory serves me. I let him
18 know that I was going away for alcohol rehabilitation
19 treatment.

20 MR. JORDAN: All right. Let's take a break.

21 (Break taken).

22 BY MR. JORDAN:

23 Q. Mr. Lemons, I want to go back and touch on a
24 couple things really quickly. You mentioned that Mark
25 McAdams told you that he had a conflict in seeking to

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1 collect the note against Mr. Colovin and Mr. Freeman; is
2 that correct?

3 A. That was my understanding, yes.

4 Q. What did you understand that he meant by that?

5 A. My understanding was that he became business
6 partners with the people that I had hired him to
7 represent me on.

8 Q. And because of the circumstances he was unable
9 to pursue the collection of that debt on your behalf; is
10 that correct?

11 A. That sounds accurate.

12 Q. Did you contact another lawyer to assist you
13 in the collection of that debt?

14 A. Not at this time.

15 Q. Why not?

16 A. Well, we were into May, or March. There was a
17 lot of stuff going on. And I had been continuing to
18 talk with Mr. Freeman and Mr. Colovin demanding my
19 money, and they kept telling me I was going to get it;
20 until they just cut me off altogether.

21 Q. Did you ever contact another lawyer?

22 A. I did.

23 Q. Did you ever file a lawsuit?

24 A. I did.

25 Q. And did you collect that money?

1 a chance to talk to him I brought up as much of my
2 business as I could before him cutting me off and
3 hanging up.

4 Q. Do you recall why he hung up on you?

5 A. No.

6 Q. Do you recall what you all were discussing?

7 A. No.

8 Q. Were you in an argument?

9 A. He just hung up a lot of times.

10 Q. Once you returned from rehab and talked to
11 Mark McAdams, did you all discuss mediation at all
12 related to the Naomi and Hyatt lawsuit?

13 A. No.

14 Q. Were you aware there was a mediation scheduled
15 in the Naomi and Hyatt lawsuit for April 11, 2008?

16 A. No.

17 Q. Before you left South Carolina and went down
18 to Florida for rehab, did you discuss with McAdams any
19 authority he might have to settle any of your lawsuits
20 on your behalf?

21 A. No.

22 Q. Did you discuss that issue at all?

23 A. No. He knew clearly if he needed anything he
24 could get in touch with Tommy Brittain, and Tommy was
25 well aware of that as well.

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1 Q. Tommy was well aware of your lawsuit involving
2 Hyatt and Naomi?

3 A. No, I don't know what Tommy was aware of on
4 that. He was aware Mark had on going stuff.

5 Q. So Tommy was aware of how to get in touch with
6 you?

7 A. Tommy was aware and so was Mark from my
8 memory.

9 Q. Did you ever talk to Judy Causey at McNair
10 about the status of your lawsuit or your investment?

11 A. I don't know if I've ever talked to Judy
12 Causey. The only time I remember Judy Causey was very
13 vague, I probably got in touch with her a few times
14 because I was calling a hundred times every other day
15 trying to figure out what was going on.

16 Q. What time frame was that?

17 A. Late December 2007 until early, mid-February,
18 maybe somewhere in that time frame, but I don't recall
19 any specific conversations with her.

20 Q. I think you mentioned when you got back from
21 rehab and you were contacting Mark that he was hard to
22 get in touch with and he didn't give you much
23 information when you did get in touch with him, did you
24 ever contact Judy and say, can you give me anymore
25 information about these matters?

1 A. No, I don't recall, I'm sure I tried but I
2 can't tell that you.

3 Q. Did you ever call anyone else at McNair either
4 at Myrtle Beach or Columbia about his handling of the
5 Hyatt and Naomi lawsuit for you?

6 A. If I remember correctly it was brought up to
7 Trinkley at some point but I don't remember what time
8 that was. There was a lot of stuff that was going on in
9 my life around McNair Law Firm that I was very -- trying
10 to be smart, considering the circumstances. I relied
11 heavily on McNair Law Firm, heavily.

12 (Defendant's Exhibit 19 was marked for identification.)

13 Q. I'll hand you what's been marked as
14 Defendant's Exhibit number 19. I'm going to ask you if
15 you've ever seen this document before?

16 A. Only through this court process thing, this
17 is -- but no, I've never seen this specific letter
18 before, except for our court process here, whatever you
19 want to call this, litigation.

20 Q. And what I've handed you is three pages. The
21 first is a letter from Mark McAdams addressed to you, of
22 May 8, 2008, and it attaches the document that we've
23 already looked at that you've identified as having
24 signed, titled financial release. Did you receive this
25 letter from Mark McAdams?

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1 A. I never received a letter in the mail from
2 Mark McAdams.

3 Q. This letter is addressed to Scott Lemon, Gold
4 Coast Resorts, LLC, 2103 Farlow Street, Suite A, Myrtle
5 Beach, South Carolina, 29577.

6 As of May 8, 2008, was that a valid address
7 for you?

8 A. I don't know, that was my office address and
9 I lost my office at some point through this.

10 Q. Do you recall whether or not you received or
11 you lost your office, as you say, prior to or after
12 May 8, 2008?

13 A. I don't recall what the date was.

14 Q. What do you mean when you say you lost your
15 office?

16 A. I had to stop paying rent.

17 Q. And you moved out?

18 A. That's correct.

19 Q. When you moved out of your office, did you
20 arrange for your mail that was being sent to your office
21 to be forwarded somewhere?

22 A. I'm sure I did, I had a secretary at that
23 time.

24 Q. Did you continue to receive mail directed
25 towards your office even after you had moved out of the

1 office?

2 A. I don't know.

3 Q. When you received mail at your office tell me
4 how it would be handled in your office, would your
5 secretary open it?

6 A. Either open it or just give it to me.

7 Q. If she opened it, would she always give it to
8 you or look and see what it was related to and file it,
9 or what was her procedure?

10 A. She would give it to me. And I was not hard
11 to get in touch with. Mark knew exactly how to get in
12 touch with me.

13 Q. And it's your testimony that you never did
14 receive this letter?

15 A. I never did receive this letter.

16 Q. Now, we looked at the document, Exhibit 17,
17 which is the Mutual Release that has your signature on
18 it. So at some point you did come to sign that
19 document, correct?

20 A. The way this thing came about was finally when
21 I got in stuff touch with McAdams, he grumbled, he told
22 me to meet him at the office. I met him at the office,
23 he would not let me back into a conference room to sit
24 down. He met me very abruptly, red-faced, very
25 agitated, and crumpled this paper in my face and told me

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1 this was a release of earnest money from RE/MAX, to get
2 that resolution resolved.

3 Q. What do you do?

4 A. I signed it and left. I thought we were going
5 to end up in a fight. He was borderline spitting in my
6 face.

7 Q. So is it fair to say when you left his office
8 that day, you were angry?

9 A. I would say more scared and depressed.

10 Q. You said that you almost ended up in a fight.

11 A. I thought he was going to hit me.

12 Q. You thought your lawyer was going to hit you?

13 A. It looked that way. He was very red, very
14 belligerent and borderline spitting in my face.

15 Q. Did you know at the time why he was acting
16 that way?

17 A. No. Other than the fact I was constantly
18 calling him and trying to figure out what's going on.
19 Like I said, I'm not hard to get in touch with. You
20 pulled my LinkedIn, I'm pretty easy to get in touch
21 with.

22 Q. Did you read this document before you signed
23 it?

24 A. No.

25 Q. Do you frequently sign legal documents without

1 reading them?

2 A. When I rely on my attorney.

3 Q. Now, you've testified that prior to all of
4 this you've had some concern Mark was cutting you out of
5 a business deal. You'd been contacting McNair Law Firm
6 to complain about that issue and some related issues;
7 did you think that maybe you should read this if you
8 didn't fully trust your lawyer?

9 A. First of all, I thought there's a lot of money
10 involved in this. Lawyers are greedy. So you don't do
11 something like this, so first of all, I didn't think so,
12 he was very aggressive, his face as redder than your
13 tie.

14 Q. Did you see that it said Mutual Release at the
15 top?

16 A. I didn't hardly look at the first or second
17 page. I had it shuffled in my face and I signed it and
18 I quickly left.

19 Q. If you had read this document, would you have
20 signed it?

21 A. If it was made clear what was going to happen?
22 Absolutely not.

23 Q. If it had been handed to you without an
24 explanation of what it was, and you had read the
25 document, would you have signed it?

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1 A. Absolutely not.

2 Q. So you would have understood what it said if
3 you had read it?

4 A. I believe I would have understood that pretty
5 clearly.

6 Q. So you understand what a release is in
7 connection with a lawsuit?

8 A. I do now.

9 Q. Did you at the time?

10 A. No.

11 Q. But you agree that if you had read this you
12 would not have signed it?

13 A. It would have taken me a few times to read it.
14 I can't tell you a hypothetical, but what I can tell you
15 is that I didn't have time.

16 Q. Have you ever before had an occasion where
17 someone was acting aggressively like that to get you
18 to sign a legal document?

19 A. Yeah.

20 Q. Did you sign it?

21 A. Yeah, but I was also given the opportunity to
22 read it.

23 Q. Did you ask Mark McAdams to give you a chance
24 to read this document before you signed it?

25 A. I asked him what it was several times. He

1 hang up.

2 Q. And is Karen Hartley still a friend of yours?

3 A. She is an acquaintance.

4 Q. When was the last time you spoke with her?

5 A. About a week ago.

6 Q. Have you spoken with her about this lawsuit?

7 A. She knows about this lawsuit.

8 Q. Does she still live in Myrtle Beach?

9 A. Yeah. I think she's planning on moving soon
10 though.

11 Q. When was the first time that you learned that
12 the document that you had signed in Mark McAdam's office
13 was a release of your claims against Kenny Hyatt?

14 A. I don't remember the time frames or the court
15 date.

16 Q. Did you learn about the truth of that document
17 before or after you went to court?

18 A. It was right before, right before I went to
19 court, I believe, if my memory serves me correctly.

20 Q. When we say "went to court" we're talking
21 about the trial of Mr. Naomi's claims against you?

22 A. I believe that's correct.

23 Q. So before you went to that trial you
24 understood your claims against Mr. Hyatt had been
25 settled?

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1 A. I believe that's correct.

2 (Defendant's Exhibit 20 was marked for identification.)

3 Q. I'll hand you what's been marked Defendant's
4 Exhibit 20, these are discovery responses that we've
5 received from your attorney in this lawsuit. And if you
6 look over to page number three and down at number seven
7 we asked you to identify communications you had with
8 Mark McAdams regarding the Hyatt lawsuit and asked you
9 for the date and method of the communication and the
10 summary and substance of each.

11 The last sentence of this response says that
12 the Plaintiff is producing numerous e-mails and recorded
13 conversations with McAdams and others, do you see that?

14 A. Yes.

15 Q. Have you provided all of the documents and
16 recorded conversations that you have that would fit that
17 description?

18 A. I believe I provided it to my attorney.

19 Q. Have you searched your e-mail that you use at
20 the time for any documents that are relevant?

21 A. Oh, yeah, I believe I sent everything to my
22 attorney.

23 Q. Look at eight, it says to identify
24 communications with any employee, agent or
25 representative of McNair regarding the Hyatt lawsuit,

1 aren't they?

2 MR. HARDEE: I don't think those are.

3 THE WITNESS: Then I don't know the answer to
4 your question.

5 BY MR. JORDAN:

6 Q. I've looked and I don't see the bank account
7 statements, so we're requesting those and I'll ask you
8 to provide those to your attorney.

9 A. Okay.

10 Q. We have requested state and federal income tax
11 returns for yourself and Gold Coast for the past ten
12 years. Have you provided those to your attorney?

13 MR. HARDEE: Not, 10 years, I've only got
14 five. I'll shoot them over to you.

15 MR. JORDAN: All right. It's about 4:30,
16 Mark, we're not going to finish today. I can go
17 for 30 more minutes or we can call it a day.

18 MR. HARDEE: Let's call it a day, he's tired,
19 I can tell.

20 MR. JORDAN: We're going leave the deposition
21 open to continue our examination as well as until
22 we receive the documents that we've requested
23 through the discovery request.

24 MR. HARDEE: I just sent you the tax returns.

25 MR. JORDAN: Thank-you.

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1 (The deposition was suspended at 4:35 p.m.)

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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF HORRY

3

4 SCOTT LEMONS AND GOLD COAST
RESORTS, LLC,

5

Plaintiff(s),

6

vs.

Case No.: 10-CP-26-9113

7

8 MARK MCADAMS AND THE MCNAIR
LAW FIRM, P.A.,

9

Defendant(s).

10

11

VOLUME II

12

D E P O S I T I O N

13

WITNESS: SCOTT LEMONS

14

DATE: Friday, April 27, 2012

15

TIME: 11:13 a.m.

16

LOCATION: Sowell, Gray, Stepp & Laffitte
1310 Gadsden Street

17

Columbia, South Carolina

18

TAKEN BY: Attorneys for the Defendants

19

20

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

21

22

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1 STIPULATION: It is stipulated by and
2 between counsel that this deposition is being taken in
3 accordance with the South Carolina Rules of Civil
4 Procedure, and that the deponent reserves the right to
5 read and sign the deposition transcript.

6 - - - - -

7 SCOTT LEMONS, being first duly
8 sworn, testified as follows:

9 FURTHER EXAMINATION

10 BY MR. JORDAN:

11 Q. Good morning, Mr. Lemons.

12 A. Good morning.

13 Q. We've obviously met before during the first
14 day of your deposition, but my name is Will Jordan
15 again. And I represent the defendant in this, McNair
16 Law Firm in this lawsuit.

17 Just to go over a few things that we had
18 talked about at the beginning of your first day but
19 just to make sure we're both on the same page, you
20 understand you're under oath today, just like if you
21 were in front of a court and just like you were your
22 first day of your deposition.

23 Do you understand that?

24 A. Yeah.

25 Q. I think I told you this the first day, but if

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1 I ask a question that doesn't make any sense, please
2 ask me to clarify it. Questions about what I ask you
3 need to be directed to me and not to your lawyer during
4 the deposition. And if I ask a question and you answer
5 it, then I'll assume that you understood what I was
6 asking you. Is that fair?

7 A. That's fair.

8 Q. If at any time you need to take a break, let
9 me know. We'll try and take periodic breaks throughout
10 the deposition. But if you need to use the restroom or
11 anything, shout and we'll stop for a few minutes.

12 There's a stack of documents --

13 And here's yours, Mark.

14 There's a stack of documents in front of you,
15 and those are all the exhibits that were marked during
16 the first day of your deposition. I'll refer back to
17 some of those and not all of them. But there they are
18 for you.

19 Do you have any questions before we get
20 started?

21 A. No, not that I can think of.

22 Q. Okay. Are you under the influence of any
23 alcohol or drugs today that would impair your ability
24 to understand and answer my questions?

25 A. No.

1 clip off of the stack.

2 On the prior day you talked about the
3 circumstances under which you came to sign this
4 document that's titled Mutual Release. You talked
5 about going to McNair's office and an encounter with
6 Mr. McAdams. At the top of this document in bold
7 letters it says "Mutual Release." In the context of a
8 lawsuit, what would you expect "mutual release" to
9 mean?

10 A. Well, it's releasing something.

11 Q. Okay. Had you ever been involved in a
12 lawsuit prior to the one with Mr. Hyatt?

13 A. Yeah. Mark McAdams actually represented me
14 on a case that I really don't even know too much about.
15 But I don't remember ever seeing a mutual release.

16 Q. Okay. You said you would understand it to be
17 releasing something. What would you understand it to
18 be releasing?

19 A. Releasing something that is party to the case
20 possibly.

21 Q. Okay.

22 A. Like earnest money.

23 Q. Okay. If you flip over to the second page
24 where your signatures are, and, again, you do agree
25 that those are your signatures, correct?

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1 A. Those look like my signatures.

2 Q. Okay. And it says the 21st day of May 2008.

3 After you signed this release, what was your next

4 contact with Mr. McAdams?

5 A. It wasn't too long thereafter I had to call

6 him a hundred times. But I don't honestly -- I

7 honestly don't know when my next contact or

8 communication was with McAdams, I'm sorry.

9 Q. Okay.

10 A. I mean exactly the time or date.

11 Q. You said you had to call him a bunch of

12 times. What were you calling him about?

13 A. To find out what the status of my case was

14 and to find out the status of different things that he

15 was supposed to be handling for me at that time. But I

16 don't -- again, forgive me, I mean, that's 2008. I

17 know the nuts and bolts of this case, so I mean ...

18 Q. After signing this mutual release, did you

19 receive a check in the amount of \$5,000?

20 A. I did. I don't remember how I really got it.

21 Q. Okay. But you do recognize that you received

22 the \$5,000?

23 A. Oh, yeah, I believe I --

24 Q. You don't remember whether it was mailed to

25 you or whether you picked it up?

1 A. I honestly don't recall, I'm sorry.

2 Q. Do you recall who gave it to you?

3 A. Again, I honestly don't recall, like, how it
4 came in my possession. Forgive me.

5 Q. Did you deposit it?

6 A. I don't even know if I deposited it or not,
7 to be honest with you.

8 Q. Did you return it?

9 A. I don't remember returning it, no. But I
10 don't know if it was me that deposited it or not.

11 Q. Well, did it go into one of your bank
12 accounts?

13 A. I believe it did, yeah.

14 Q. So the best of your recollection, either you
15 or someone at your request deposited the check into
16 your Gold Coast or one of your company's bank accounts?

17 A. I would have to say yeah. Absolutely.

18 Q. What did you do with that money?

19 A. I have no idea.

20 Q. When you got the check, did you call
21 Mr. McAdams and ask him any questions about it?

22 A. I don't know if I called him to ask him
23 questions about that or not. I did -- from what I
24 understood and what I recall, it was a release of the
25 earnest money to get the account settled for RE/MAX at

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1 the Coast or By the Sea or whoever. I'm sorry, I don't
2 even know the RE/MAX right now. But, yeah, it made
3 perfect sense to me, too, being in real estate. I
4 mean, that's the first thing that usually gets, you
5 know, fixed, handled before anything else gets -- moves
6 forward.

7 Q. But wasn't the earnest money \$10,000?

8 A. Yes.

9 Q. Why would it be a check for \$5,000?

10 A. He told me it was \$5,000, and it was getting
11 split.

12 Q. Split between you and who?

13 A. I assume -- I think -- and, again, forgive my
14 memory, but I thought McAdams.

15 Q. Did that make sense to you?

16 A. There wasn't much making sense at that time,
17 and everything was happening very, very quickly. I was
18 being approached very, very belligerently. And I was
19 getting very little communication. And the
20 communication, what I did get, you know, I was
21 continuing to be told that that was ongoing, the case
22 was still moving forward. I actually had witnesses to
23 that fact, too, that actually overheard conversations
24 that will be there at trial in front of a jury.

25 Q. Who are those witnesses?

1 against me, sometime in that time frame I ended up
2 going to Tommy. And just -- Tommy Brittian, being
3 Tommy, you know, "I need some help here. I don't know
4 what's going on." And I turned it over to a good
5 attorney. But I don't recall all the little ...

6 Q. Did you take any action to have the
7 settlement agreement with Mr. Hyatt undone?

8 A. I just trusted McNair. No. I didn't know
9 exactly what to do, to be honest with you. I didn't
10 know I had to be an attorney to practice real estate.
11 I trusted McNair.

12 Q. You didn't know you had to be an attorney to
13 practice real estate. Tell me what you mean by that.

14 A. I trusted McNair with a lot of my affairs,
15 being the most prestigious firm in the state of South
16 Carolina.

17 Q. When you contacted Mr. Brittian, did you tell
18 him that the case had been settled without your
19 consent?

20 A. I don't recall what I said. I was in shock.
21 I was in -- I was in turmoil. I was beaten down to a
22 pulp.

23 Q. Were there any other lawyers, other than
24 Mr. Brittian, that you contacted with respect to the
25 settlement of the Hyatt case at that time?

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1 A. Thomas Pendarvis was contacted at one time,
2 but I don't know exactly when he was even contacted, to
3 be honest with you, the date or somewhere in that
4 vicinity.

5 Q. Did you make any effort to return the \$5,000
6 that you now understood was your settlement proceeds?

7 A. No. At this time I was -- I don't know. To
8 be honest with you, I don't remember. I don't recall
9 exactly what all was going on. There's a lot of stuff
10 that was happening at that time.

11 (DEFT. EXH. 22, Transcript of Hearing held
12 June 10, 2008, was marked for identification.)

13 BY MR. JORDAN:

14 Q. I'm going to show you what's been marked as
15 Defendant's Exhibit Number 22. You mentioned a few
16 minutes ago that you did attend a trial where
17 Mr. McAdams represented you; is that correct?

18 A. I attended a court hearing. I don't know if
19 it was a -- I don't know if it was a trial or not.

20 Q. Okay.

21 A. To be all technical, you know. But I
22 attended a hearing of some sort.

23 Q. Okay. And I've handed you a copy of the
24 transcript from the hearing or the trial held before
25 Judge Cross in the CSE Enterprises versus Scott Lemons

1 and Gold Coast case. That hearing took place on
2 June 10, 2008. Do you see that date in the middle of
3 the page?

4 A. Yeah.

5 Q. Did you attend this hearing?

6 A. Was there multiple hearings? I mean, I don't
7 know.

8 Q. It might help you if you flip a couple of
9 pages, you'll see that your testimony is included.

10 A. Okay. Good.

11 Q. And Mr. McAdams represented you and Gold
12 Coast at that time, correct?

13 A. Yeah.

14 Q. Okay. Do you recall meeting with Mr. McAdams
15 prior to this June 10th, 2008, hearing to discuss it?

16 A. No, I don't recall. I don't remember, to be
17 honest with you. I mean, again, there's a lot of stuff
18 I don't recall. So you've got to forgive me on that.

19 Q. Okay.

20 A. My brain has been on overload for a little
21 while.

22 Q. This hearing or trial included Mr. Naomi's
23 testimony and your testimony and nothing about
24 Mr. Hyatt. So is it fair for me to assume that at the
25 time you went to this trial, you realize that your

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1 claim against Kenny Hyatt was gone?

2 A. I have no idea if that would be fair of you
3 to assume or not. I'm sorry.

4 Q. Okay. Well, you understood that Mr. Naomi
5 had brought a lawsuit against you for his commission,
6 correct?

7 A. That's correct.

8 Q. Okay. And that in turn you had brought a
9 third party complaint against Mr. Hyatt for breaching
10 the contract with you; is that correct?

11 A. I'm learning that. Yeah, I'm learning that.
12 I don't know how -- and I really from the beginning did
13 not understand how all this legal stacking went. I
14 didn't know. I do remember prior to the trial
15 basically Mark's reassurance that everything was okay,
16 just trust him. And I did yet again. Like I really
17 screwed that up, too, I guess. I don't recall this
18 transcript either.

19 Q. Do you recall asking Mr. McAdams or the judge
20 or anyone else during the hearing, "What about
21 Mr. Hyatt?"

22 A. I don't recall much of anything during the
23 hearing or trial or whatever, to be honest with you. I
24 shut up and trusted McNair Law Firm.

25 I want to reiterate the fact, too, since

1 you're hesitating, that, you know, McAdams was a
2 partner in the firm. I really trust McNair Law Firm.
3 I trusted McNair Law Firm implicitly.

4 Q. And that relates to my next question. This
5 mutual release that we've seen signed May 21st of 2008,
6 and then we see the trial date of June 10th, 2008, and
7 you described an encounter where I think you've
8 testified that you were concerned that Mr. McAdams was
9 going to punch you when you went to his office and you
10 signed this document.

11 Can you tell me why it is that you allowed
12 Mr. McAdams to continue to represent you if that had
13 happened?

14 A. Because I trusted McNair Law Firm, and I
15 relied on my attorneys at McNair Law Firm.

16 Q. Did you trust Mark McAdams after he had --

17 A. I trusted and relied on McNair Law Firm.

18 Q. Okay. And I appreciate that.

19 A. He was a partner at McNair Law Firm.

20 Q. Okay.

21 A. He was a partner and shareholder in McNair
22 Law Firm.

23 Q. And I understand that, as well. My question
24 is, after he got red in the face and you thought he was
25 going to hit you and force you to sign this document

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1 under very strange circumstances, did you still trust
2 him?

3 A. I trusted McNair Law Firm.

4 Q. Are you willing to answer my question as to
5 Mr. McAdams?

6 A. I trusted McAdams on behalf as a partner and
7 a shareholder at the McNair Law Firm.

8 Q. Okay. The matter involving Mr. Naomi
9 resulted in a judgment entered against you, correct?

10 A. Apparently, yes. It's my understanding.

11 Q. How did you learn about that judgment?

12 A. I don't recall how I learned about the
13 judgment.

14 Q. Do you recall discussing it with Mr. McAdams?

15 A. Vaguely.

16 Q. What do you recall about discussing it with
17 him?

18 A. Asking him, "What in the world is going on?
19 What in the world happened?" But I don't recall
20 specifics.

21 Q. Do you recall what he said?

22 A. No, I can't recall.

23 Q. When you learned that Mr. McAdams had settled
24 your claim -- or as you allege, when you learn that he
25 had settled your claim against Mr. Hyatt, did you

1 Q. Had you worked with anyone other than
2 Mr. McAdams and Mr. McDowell at the McNair Law Firm?

3 A. No, not that I can recall. I know Henrietta
4 has a really good reputation, and McNair has a great
5 reputation.

6 Q. You mentioned a conversation with Jane
7 Trinkley. I think you testified that you asked her if
8 McNair represented you.

9 A. Uh-huh.

10 Q. What did she say in response to that
11 question?

12 A. My memory serves me correctly, she really
13 couldn't give me a good explanation one way or the
14 other. And it was right around that same time where I
15 got communication back from Garner, if I'm not
16 mistaken, somewhere in that whole little corridor.

17 Q. Okay. What communication did you get back
18 from Garner?

19 A. I believe Craig, didn't you -- I believe
20 Craig called me up and said that he was going to get
21 this thing handled, and he would have McAdams get this
22 stuff taken care of. And then shortly thereafter I got
23 a call from McAdams.

24 Q. Now, is this in reference to the Swiss
25 Investment complaints that you had raised?

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1 A. I don't recall if it was any one specific
2 thing. I believe it was just a combination of all of
3 the above. Again, I was scrambling for my life here.

4 (DEFT. EXH. 23, Letter Dated August 12, 2008,
5 was marked for identification.)

6 BY MR. JORDAN:

7 Q. I'm showing you what's been marked as
8 Defendant's Exhibit Number 23. This is a letter
9 addressed to you from Lynn Stevens at the McNair Law
10 Firm. It's dated August 12, 2008.

11 Do you recall receiving this letter?

12 A. Vaguely. Again, there's so many papers at
13 that time. But, yeah, I remember something to this
14 fact when Mark McAdams got fired from McNair.

15 Q. If you look at the second page, is that your
16 signature?

17 A. Yeah.

18 Q. Okay. And that second page shows that
19 there's a checkmark for files to be delivered to Tommy
20 Brittian; is that correct?

21 A. That's correct.

22 Q. Okay. And the first line of this letter over
23 on the first page says, "As stated in our earlier
24 telephone conversation, Mark McAdams has resigned from
25 McNair Law Firm."

1 At the time that you received this letter,
2 you still had open matters where Mr. McAdams was
3 representing you; is that correct?

4 A. I believe so.

5 Q. Okay. And, in fact, the purpose of the
6 letter was for the McNair firm to determine where you
7 wanted those open files to be sent, correct?

8 A. Let me read the letter.

9 Q. You don't need to read the whole letter,
10 Mr. Lemons. We can withdraw that question and move on
11 to another topic.

12 You mentioned that in the case between
13 Mr. Naomi and you, that there was a judgment entered
14 against you and/or your company Gold Coast, correct?

15 A. I believe there was.

16 Q. Okay. And is it your understanding that that
17 judgment has been overturned?

18 A. That's my understanding.

19 Q. Do you know currently what the status of that
20 case is?

21 A. I believe that case is currently over --

22 Q. Okay.

23 A. -- hopefully.

24 Q. Has any judgment been enforced against you in
25 that case?

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1 A. Not that I'm aware of. I gave -- Tommy
2 Brittian could only do but so much coming in so late in
3 the game trying to -- with the limited information that
4 he had at his fingertips. I only wish I had hired
5 Tommy Brittian to begin with.

6 Q. But the end result of that case was that
7 there was no judgment against you, correct?

8 A. I believe that's correct.

9 Q. And there was no judgment against Gold Coast,
10 correct?

11 A. I hope so. Again, Tommy not having much
12 information, much time to go on and \$60,000 later.

13 Q. All right. In this case you have mentioned
14 that -- or you have alleged that Mr. McAdams cut you
15 out of a European investment deal; is that correct?

16 A. That's correct.

17 Q. Okay.

18 A. In this complaint here? Do you have a copy
19 of the complaint for me?

20 MR. HARDEE: It is in there. It outlines.

21 THE WITNESS: All right. Then yes.

22 BY MR. JORDAN:

23 Q. If you will turn to Exhibit Number 1.

24 A. All right.

25 Q. If you'll turn to Interrogatory Answer Number

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

C.S.E. Enterprises, Inc.,
d/b/a Re/Max At The Coast
and Tom Naomi

Plaintiffs,

vs.

Scott L. Lemons and Gold
Coast Resorts, LLC,

Defendants.

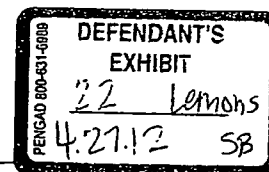
) IN THE COURT OF COMMON PLEAS
) THE FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 06-CP-26-6300

COPY

**THE HEARING HELD BEFORE
HONORABLE J. STANTON CROSS, JR., MASTER-IN-
EQUITY FOR HORRY COUNTY, SOUTH CAROLINA**

Tuesday, June 10, 2008
10:04 a.m. --- 11:07 a.m.

The following is a transcript of the hearing held before Honorable J. Stanton Cross, Jr., Master-in-Equity for Horry County, at the Horry County Courthouse in Conway, South Carolina, on Tuesday, June 10, 2008.



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Conway, South Carolina 29526
(843) 248-5252

APPEARANCES:

FOR THE PLAINTIFF:

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COURT REPORTER:

Stephanie R. Boyd
Verbatim Court Reporter

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Conway, South Carolina 29526
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Deposition of Kenny Hyatt	41
Plaintiff's Exhibit Number 11	
Deposition of Scott Lemons	64
(Plaintiff's Exhibits Numbers 1-9 were premarked.)	

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1 THE COURT: GOOD MORNING AGAIN. LADIES
2 AND GENTLEMEN. THIS IS
3 C.S.E. ENTERPRISES INC.,
4 D/B/A RE/MAX AT THE COAST,
5 ET AL. VERSUS SCOTT L
6 LEMONS AND GOLD COAST
7 RESORT, LLC. IT COMES
8 BEFORE ME UNDER AN ORDER OF
9 REFERENCE OF JUDGE HYMAN
10 DATED APRIL 24, 2008. ARE
11 YOU GENTLEMEN READY?
12 MR. MCADAMS: WE ARE, YOUR HONOR.
13 MR. THOMPSON: WE ARE, YOUR HONOR.
14 THE COURT: ALL RIGHT. MR. THOMPSON.
15 DO YOU WANT TO MAKE AN
16 OPENING STATEMENT?
17 MR. THOMPSON: YES, SIR.
18 THE COURT: YOU MAY.
19 MR. THOMPSON: BEFORE WE GET STARTED, IF I
20 COULD PLEASE THE COURT.
21 I'VE GOT A COUPLE THINGS
22 NUMBER ONE IS I WANT TO
23 APOLOGIZE TO THE COURT FOR
24 NOT HAVING THE COURT
25 REPORTER HERE ON TIME.

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THE COURT:

MR. THOMPSON.

THE COURT:

THAT'S MY FAULT.

I PUT A BLACK MARK BY YOUR
NAME.

THANK YOU. SIR. AND NUMBER
TWO IS MR. MCADAMS AND I
HAVE AGREED ON THE EXHIBITS
THAT WILL BE INTRODUCED IN
THE TRIAL. WE'VE

STIPULATED THAT THEY ARE
EXHIBITS WITHOUT OBJECTION
SO IT'S UNDERSTOOD THAT

THEY COME IN WITHOUT
OBJECTION, WHICH WILL MAKE
IT GO MUCH FASTER. WE

WON'T HAVE TO MARCH BACK
AND FORTH AND SHOW PAPERS
TO PEOPLE. AND I DID READ

THE COMPLAINT AND ANSWER
AND SEE WHAT KIND OF CASE
IT IS, AND THIS WILL MAKE

IT FLOW A LOT MORE
SMOOTHLY. SO WE HAVE THE

UNDERSTANDING THAT THE
EXHIBITS COME IN WITHOUT
OBJECTION. AND IF YOU HAVE

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1 A SPECIFIC OBJECTION TO
2 SOMETHING I'LL BE GLAD TO
3 RULE ON IT.
4 MR. MCADAMS: THANK YOU, YOUR HONOR.
5 MR. THOMPSON: THANK YOU, YOUR HONOR.
6 AND, YOUR HONOR IF I MAY
7 APPROACH.
8 THE COURT: YOU MAY.
9 MR. THOMPSON: I DID MAKE YOU AND I'VE
10 GIVE MR. MCADAMS COPIES AND
11 I'VE ALSO GIVING YOU
12 COPIES. WOULD YOU LIKE FOR
13 THE COURT REPORTER TO SEE
14 THEM NOW. TO MARK THEM?
15 THE COURT: I THINK WE CAN SEE THEY'RE
16 MARKED, AND WE CAN JUST
17 TURN THEM OVER TO HER.
18 MR. THOMPSON: OKAY. THANK YOU, YOUR
19 HONOR. MAY I PLEASE THE
20 COURT?
21 THE COURT: CERTAINLY.
22 MR. THOMPSON: AGAIN, I'M PHIL THOMPSON.
23 AND I REPRESENT THE
24 PLAINTIFFS IN THIS CASE.
25 THIS IS A BREACH OF

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6 THE COURT:
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CONTRACT CASE. AND YOUR
HONOR IS FAMILIAR WITH FROM
A SUMMARY JUDGMENT MOTION
THAT WE DISCUSSED
APPROXIMATELY A WEEK AGO.
WHILE WE ARE ON THAT
SUBJECT. I DENIED THE
SUMMARY JUDGMENT MOTION.
I'LL NOTE ON THE RECORD
THAT YOU MADE AN
APPROPRIATE SUMMARY
JUDGMENT. MR. MCADAMS
ARGUED AGAINST IT. I
DENIED THE MOTION AND WE'RE
HERE TODAY.

16 MR THOMPSON:
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THANK YOU, YOUR HONOR.
THIS IS THE BREACH OF
CONTRACT ACTION OF THE REAL
ESTATE COMMISSION. MY
CLIENT IS A REALTOR AT THE
TIME OF THIS TRANSACTION
WHICH WAS IN OCTOBER OF
2006 HE WAS A REALTOR WITH
RE/MAX AT THE COAST. HE
WAS CONTRACTED BY MR.

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LEMONS, THE DEFENDANT HERE
TO SELL A PIECE OF PROPERTY
THAT WAS LOCATED ON THE
INTRACOASTAL WATERWAY ABOUT
A QUARTER OF A MILE NORTH
OF THE HIGHWAY 544 SWING
BRIDGE ON THE WEST SIDE,
THE CONWAY SIDE OF THE
WATERWAY. BASICALLY, YOUR
HONOR, MR. LEMONS DID NOT
HOLD LEGAL TITLE, HE HELD
EQUITABLE TITLE THROUGH A
CONTRACT THAT HE HAD WITH
THE OWNER. IT WAS
BASICALLY A FLIP WAS WHAT
IT WAS. MY CLIENT BROUGHT
A BUYER TO THE TABLE. A MR.
KENNY HYATT, WHO SIGNED THE
CONTRACT WITH NO
CONTINGENCIES WHATSOEVER.
IT WAS A CASH TRANSACTION.
NO FINANCING CONTINGENCIES,
NO WETLAND CONTINGENCIES.
NO CONTINGENCIES. MR
LEMONS ALSO SIGNED THAT

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1 CONTRACT. MR. LEMONS ALSO
2 SIGNED A COMMISSION
3 AGREEMENT, YOUR HONOR. HE
4 SIGNED TWO TO START WITH
5 WHEN THEY STARTED MARKETING
6 THE PROPERTY, AND THEN
7 LATER ON THE DATE THAT THE
8 CONTRACT WAS SIGNED HE
9 SIGNED A COMMISSION
10 AGREEMENT THAT HE WROTE IN
11 HIS OWN HAND AND THAT
12 COMMISSION AGREEMENT HE
13 PROMISED TO PAY MY CLIENT
14 "A TEN PERCENT COMMISSION
15 UPON CLOSE" TRANSACTION
16 THE CONTRACT WAS 2.9
17 MILLION DOLLARS. TEN
18 PERCENT WOULD BE 290,000.
19 THE CLOSING NEVER TOOK
20 PLACE, YOUR HONOR, AND MY
21 CLIENT HAS NEVER BEEN PAID
22 IN FULL WITH THE
23 COMMISSION IT'S OUR
24 POSITION THAT UNDER THE
25 WELL SETTLED LAW OF SOUTH

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CAROLINA THAT MY CLIENT IS
ENTITLED TO THE JUDGMENT
AGAINST MR. LEMONS FOR THE
COMMISSION SINCE HE BROUGHT
A BUYER TO THE CONTRACT
WITH MR. LEMONS. THANK
YOU, YOUR HONOR.

THE COURT:

MR. MCADAMS.

MR. MCADAMS:

THANK YOU, YOUR HONOR. MAY
I PLEASE THE COURT? I
REPRESENT SCOTT LEMONS AND
GOLD COAST RESORTS. MR.
LEMONS IS ALSO A REALTOR.
THE FACTS OUTLINED BY MR.
THOMPSON ARE CORRECT
CHRONOLOGICALLY IN WHAT
OCCURRED IN THIS CASE AND
TO MOVE THIS ALONG A LITTLE
QUICKER, YOUR HONOR. WE'RE
GOING TO INTRODUCE EVIDENCE
THAT THE PURCHASER THAT MR.
NAOMI BROUGHT TO THE TABLE
IN THIS CASE HAD NO ABILITY
TO CLOSE ON THIS PIECE OF
PROPERTY. HE IN FACT WAS

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1 GOING TO FLIP IT HIMSELF.
2 AND WE TOOK HIS DEPOSITION,
3 MR. THOMPSON AND I, AND MR.
4 HYATT TESTIFIED THAT HE
5 COULDN'T AT ANY TIME.
6 SPECIFICALLY IN '06, THE
7 FALL OF '06 CLOSE ON THIS
8 PROPERTY. SO I WOULD
9 UNDERSTAND MR. THOMPSON'S
10 POSITION ON THE LAW, BUT I
11 BELIEVE THAT THE LAW
12 REQUIRES HIM TO BE READY,
13 WILLING AND ABLE TO CLOSE.
14 IN THIS CASE MR NAOMI DID
15 NOT PRODUCE SOMEONE WHO WAS
16 ABLE TO CLOSE WE BELIEVE
17 THE EVIDENCE IS GOING TO
18 SHOW CERTAINLY IF THIS
19 TRANSACTION WOULD'VE
20 CLOSED, THEN EVERYBODY
21 WOULD BE HAPPY, BUT THAT'S
22 CERTAINLY NOT THE CASE.
23 THANK YOU, YOUR HONOR.
24 THE COURT. MR. THOMPSON.
25 MR. THOMPSON: THANK YOU. YOUR HONOR. AT

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1 THIS TIME WE'D CALL MR TOM
2 NAOMI TO THE STAND
3 TOM NAOMI. HAVING BEEN DULY SWORN, WAS DEPOSED AS
4 FOLLOWS:

5 EXAMINATION

6 BY MR. THOMPSON:

7 Q: Mr. Naomi, if you would, please state your full
8 name for the court reporter.

9 A: Thomas Naomi the third.

10 Q: Where do you reside?

11 A: 1058 Sea Mountain Highway, North Myrtle Beach,
12 South Carolina.

13 Q: And who lives there with you?

14 A: My son.

15 Q: Do you have any other children?

16 A: Yes, I have a 20 year old daughter.

17 Q: Are you married?

18 A: No.

19 Q: Who's the primary provider for your children?

20 A: I am.

21 Q: Did you attend college?

22 A: Yes, I did.

23 Q: Where?

24 A: University of North Carolina at Wilmington.

25 Q: And what year did you graduate, or did you

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1 graduate?
2 A: Yes, I did. 1984.
3 Q: I'm sorry?
4 A: 1984.
5 Q: And what degree did you receive?
6 A: Bachelor of Arts and Speech Communication.
7 Q: Are you currently employed?
8 A: Yes, I am.
9 Q: Where are you employed?
10 A: With Carter Reality.
11 Q: And what do you do there?
12 A: I'm a realtor.
13 Q: And how long have you been a realtor?
14 A: Since 1997.
15 Q: Are you licensed by the State of South Carolina
16 as a realtor?
17 A: Yes, I am.
18 Q: And how long have you had that license?
19 A: Since 1997.
20 Q: Has your license ever been revoked or suspended?
21 A: No, it has not.
22 Q: The contract that we're here about today as I
23 stated to the Court earlier is dated October
24 2006. By who were you employed in October of
25 2006?

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- 1 A: Re/Max at the Coast.
- 2 Q: And as a realtor were you an employee of Re/Max,
- 3 or were you an independent contractor; how does
- 4 that work?
- 5 A An independent contract.
- 6 Q. And how did you come to know the Defendant in
- 7 this matter, Scott Lemons?
- 8 A: One of the things that I do is call on expired
- 9 and withdrawn properties, and I had heard Scott's
- 10 name in the trade, and in reviewing the morning
- 11 properties that had come off of the market I
- 12 noticed the owned home on Paradise Island at
- 13 which point I contacted him about marketing the
- 14 property.
- 15 Q: Did Mr. Lemons ask you to act as his realtor and
- 16 sell the property to subject matter of this
- 17 action on the Intracoastal Waterway?
- 18 A: Yes. he did.
- 19 Q: Will you tell the Court where that property is
- 20 and describe it generally to the Court what that
- 21 property is?
- 22 A That property is approximately a quarter mile
- 23 above the Socastee swing bridge on the west bank.
- 24 Q What's the size of the property?
- 25 A Approximately 19 acres plus or minus.

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1 Q: Wooded, cleared?
2 A: Wooded.
3 Q: Vacant, no buildings or anything on it?
4 A: Vacant land. Yes, sir.
5 Q: Did you reach an agreement with Mr. Lemons as to
6 how you would be paid if you sold this property?
7 A: Yes, I did.
8 Q: I want to show you what's marked as Plaintiff's
9 Exhibit Number 1 and ask you if that's the
10 agreement between yourself and Mr. Lemons with
11 regards to your commission.
12 A: Yes. it is.
13 Q: That's the original agreement, correct?
14 A: That's the agreement that I asked him to complete
15 and sign and return back to me.
16 Q: And what is the date on that agreement?
17 A: 9/27/06.
18 Q: And what were the terms of that agreement; how
19 would you get paid; what would you get paid?
20 A: Per the agreement I was to be paid a commission
21 or a success fee of ten percent of the gross
22 sells price.
23 Q: And it does not list specifically the land on
24 there or the sells price. correct?
25 A: That's correct.

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1 Q: Was Plaintiff's Exhibit Number 1 ever modified?
2 A: Yes. it was.
3 Q: Let me show you what's marked now as Plaintiff's
4 Exhibit Number 2 and ask you is that the
5 modification of the commission agreement?
6 A: Yes, it is.
7 Q: And what's the date on that agreement?
8 A: The following day. 9/28/06.
9 Q: Why was it revised?
10 A: Because I felt that it was not property specific,
11 so I went in and entered the tax map sequence
12 numbers and also his original asking price of
13 three million four hundred thousand dollars, so
14 there would not be confusion as to where we all
15 were in this transaction.
16 Q: And who made the decision to put the purchase
17 price of 3.4 million dollars on it?
18 A: Scott Lemons.
19 Q: After you entered into the commission agreement
20 with Mr. Lemons what steps did you take to market
21 from?
22 A: What I do is I put together preliminary package
23 for all properties as it relates to that
24 property. and then I go out and I contact
25 potential clients that I know. Research more

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1 clients and give them the package, which it
2 introduces the property, you know, there's a
3 number of different components to each property,
4 and it's property specific. It'll vary from
5 piece to piece.

6 Q: Let me show you now what's been marked as
7 Plaintiff's Exhibit Number 3, and tell the Court
8 what that is, please, sir.

9 A: That is what I call my package.

10 Q: And generally if you would briefly explain to the
11 Court what each page is on that.

12 A: Okay. The first page is just a disclaimer to a
13 potential buyer. Second page is an aerial of the
14 property. Most developers are concerned with the
15 frontage, which is the prime part of the
16 property, which is marked here. The next page is
17 an infrared photo of the property. The infrared
18 photos will show water or asphalt. It's black,
19 so it's a way to potentially identify wetlands
20 and on this piece there were a couple. That's
21 why this is in here. The third page is a
22 demography map, which again identifies potential
23 wetlands on a piece of property. The third page,
24 any developer's going to want to know if there's
25 water to the property. so this page shows the

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1 water and sewer lines and manhole covers adjacent
2 to it. The fourth page is a soil description of
3 the property, which again could identify
4 potential wetlands. Although many of the soil
5 types down here are, in my opinion very similar.
6 The last or the next page identifies the
7 different flood zones, and the final page
8 identifies the zoning, which in this particular
9 piece is commercial farm agricultural. And this
10 I give, again to a potential client just as an
11 introductory package to open a dialogue with them
12 to see what questions they have, et cetera, and
13 to move or not move forward.

14 Q: And did you market this property or give this
15 package to a Mr. Kenny Hyatt?

16 A: Yes. I did.

17 Q: How did you come to meet Mr. Hyatt?

18 A: I have a client that I dealt with for several
19 years and he referred Mr. Hyatt to me.

20 Q: And Mr. Hyatt contacted you with regards to this
21 property?

22 A: Yes. There were lots of conversations, but I
23 believe, yes he did.

24 Q: Okay. Did you ever visit the property with Mr.
25 Hyatt?

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1 A: Yes, I did.
2 Q: Did Mr. Hyatt agree to purchase the property from
3 Mr. Lemons?
4 A: Yes, he did.
5 Q: Did Mr. Lemons agree to sell the property to Mr.
6 Hyatt?
7 A: Yes, he did.
8 Q: Let me show you what's marked as Plaintiff's
9 Exhibit Number 4. I want to ask you, is that the
10 contract that Mr. Hyatt and Mr. Lemons entered
11 into with regards to this particular property?
12 A: Yes, it is.
13 Q: Were you present when that was signed by Mr.
14 Hyatt?
15 A: Yes, I was.
16 Q: And Mr. Hyatt is the purchaser in this
17 transaction, correct?
18 A: Yes, sir.
19 Q: If you would, tell the Court about the day
20 leading up to the signing of this contract by Mr.
21 Hyatt and Mr. Lemons.
22 A: We met at the property. We walked the property
23 with Mr. Hyatt. Mr. Hyatt and I met at the
24 property and his brother David. We walked the
25 property. We talked about wetlands. He showed

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1 me pine trees. He said pine trees don't grow on
2 wetlands, and he told me about a piece of
3 machinery that would cut ditches on each side of
4 the property to completely dry the property. He
5 told me that he knew about wetlands. He was
6 great friends with Wayne Beam. Wayne had done
7 work with him, and he had filled in wetlands on
8 Landing Road in Little River That point, you
9 know, he felt -- we went back to my office. His
10 brother, the three of us and we sat down to write
11 the contract. At that point as a realtor we had
12 to disclose or we had to explain agency. so
13 everyone knows who we're working for. We had to
14 have a buyer's agency agree. We have agency
15 disclosure a buyer's agency agreement. In this
16 case we were in dual agency. so there was that
17 agreement to complete also. As I began to
18 explain the agency he knew that as I began to put
19 together the buyer's agency agreement. he said,
20 "You do that, and I'm going to write the
21 contract. I'm going to fill in the contract."

22 And I said. "Well. you know. I'll do it."

23 He said. "No " He said, "I'll do them
24 all the time."

25 And at that point all this contract here

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1 is filled out in his own hand. We also, prior to
2 this I showed him on the laptop, again, I was
3 concerned about the wetlands, and I said, "You
4 know, I want to know make sure that you
5 understand about wetlands," reiterated that, and
6 we moved forward. His brother left prior to he
7 and I leaving. At that point I called Scott
8 Lemons and drove to the south end of the beach
9 where the Coastal Grand Mall area is, and I met
10 him at the Cracker Barrel and he signed the
11 contract.

12 Q: Okay. Back up just a second. As far as this
13 contract goes you said that Mr. Hyatt filled it
14 out?

15 A: Yes, he did.

16 Q: Did Mr. Hyatt initial the pages in signing that
17 document?

18 A: Yes, he did.

19 Q: Did you witness him initial the pages and sign
20 that document?

21 A: Yes, he did.

22 Q: Does that contract have any contingencies
23 whatsoever with regards to the purchase of this
24 property?

25 A: No. he wanted a cash transaction. He did not

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1 require a survey. appraisal. He told me that in
2 no shape, form, or fashion did he want to risk
3 this contract not being excepted, and he was
4 implicit that he wanted a clean contract.

5 Q: And who decided on the amount of the deposit, the
6 escrow deposit?

7 A: He did.

8 Q: Who decided on the amount of the price; what is
9 the price in that contract?

10 A: The price in this contract is 2.9 million
11 dollars. And we felt that that price would be
12 accepted by Mr. Lemons given discussions about
13 the property.

14 Q: You stated that you had a disclosure. From
15 disclosures you had to give to Mr. Hyatt. let me
16 show you Plaintiff's Exhibit Number 5 and ask you
17 what that is.

18 A: That's the exclusive buyer's agency agreement.
19 We don't accept sub agency. so you have to have a
20 buyer's agency agreement and that's what this
21 represents.

22 Q: And did Mr. Hyatt initial that?

23 A: Yes. he did. He initialed every page.

24 Q: Did you witness him initial that?

25 A: Yes, sir.

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1 Q: Let me ask you about Plaintiff's Exhibit Number
2 6, and ask you what that is.

3 A: As I'm representing both parties in the
4 transaction we have to have a dual agency
5 agreement in place. LLR requires that everybody
6 know who's representing who in the transaction
7 and it's basically a disclosure and it shows that
8 everyone's agreed to that.

9 Q: Now, I'm going to show you Plaintiff's Exhibit
10 Number 7 and ask you what that document is.

11 A: That's the agency disclosure document that the
12 LLR requires we provide both seller or buyer
13 client or customer with. It does not require a
14 signature. It was amended so that we did not
15 have to do that. but I still have everybody sign
16 it, so if there's any question that they didn't
17 receive it or I didn't inform them as to what it
18 was there is an initial there.

19 Q: And you witnessed Mr. Hyatt initial that
20 document?

21 A: Yes, I did.

22 Q: Did Mr. Hyatt pay the deposit as required under
23 the contract in Exhibit Number 4?

24 A: Yes, he did.

25 Q: I want to show you Plaintiff's Exhibit Number 8

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1 I want to ask you, is that a copy of the escrow
2 deposit that Mr. Hyatt paid?

3 A: Yes, it is.

4 Q: And was that check negotiated and deposited into
5 your real estate trust account?

6 A: I gave it to the broker in charge, and yes, it
7 was deposited into the trust account.

8 Q: Did Mr. Lemons agree to sell the property per
9 terms of the contract in Exhibit Number 4?

10 A: Yes, he did.

11 Q: And did you witness Mr. Lemons initial and sign
12 the contract in Exhibit Number 4?

13 A: Yes, I did.

14 Q: And you said earlier, I think before I stopped
15 you, that you met him at the Cracker Barrel in
16 Myrtle Beach?

17 A: That's correct.

18 Q: Who else was there with him?

19 A: There was a girl there having dinner with him.

20 Q: Did you also go over the dual agency agreement
21 and the agency disclosure with Mr Hyatt at that
22 time?

23 A: Yes.

24 Q: Did Mr. Lemons sign another agreement with you
25 concerning your commission?

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1 A: Yes, he did.
2 Q: Let me show you Plaintiff's Exhibit Number 9 and
3 ask you, is that the commission agreement that
4 Mr. Lemons signed?
5 A: Yes, it is.
6 Q: And was that signed at the same time that the
7 contract and the other two disclosures were
8 signed at the Cracker Barrel?
9 A: Yes, sir.
10 Q: And did you witness Mr. Lemons signing that
11 document?
12 A: I, I visually witnessed it.
13 Q: Who wrote that document?
14 A: Scott Lemons.
15 Q: There's another name on the bottom of that
16 document. I believe it's Amy Love Oglesbee?
17 A: Yes, sir.
18 Q: Who is that?
19 A: That was the signature witness. That was the
20 lady that was having dinner with Scott.
21 Q: Why did you feel there was a need or why that
22 document whenever you already had two sells
23 commission documents?
24 A: I wanted to make sure there was absolutely no
25 confusion as to the fact that I was to be paid

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1 ten percent of the gross sells price as from the
2 contract with Kenny Hyatt. The original when we
3 began this we had, you know, a number there. I
4 believe it was a 3.4 million. I wanted to make
5 sure we were all going to be on the same page.
6 and that I would be paid as the contract was
7 executed.

8 Q: Is there any mention of you having to bring a
9 buyer ready, willing, and able to the contract in
10 that sells commission?

11 A: No.

12 Q: What is your understanding of when your
13 commission was earned in this transaction?

14 A: My commission is earned when I put together a
15 contract for a buyer and a seller. It is fully
16 executed. All contingencies are met. There are
17 no contingencies whatsoever in this particular
18 contract and all parties have signed off and
19 agreed, you know, it's fully executed, signed by
20 all parties. At that point my job is done

21 Q: And what is your understanding of when you're to
22 be paid your commission, when it's due and
23 payable?

24 A: My commission is due and is scheduled
25 simultaneously with the closing.

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1 Q: Did the closing ever occur?

2 A: No, it did not.

3 Q: Why didn't it occur or do you know?

4 A: It didn't occur in my opinion because Kenny Hyatt
5 originally started to discuss wetland issues. I
6 don't know how much depth that you want me to get
7 into, but I -- again we're dealing with a
8 contract that has no conditions, I mean no
9 contingencies. The other issue when that so to
10 speak was not going to stand up to be a valid
11 issue. since he had written a clean contract he
12 began to question Lemons' ownership of the
13 property, and told me that he was prepared to
14 close prior to Thanksgiving yet Lemons' didn't
15 own the property, so how could he sell something
16 he didn't own.

17 Q: The closing date was what?

18 A: November 23rd.

19 Q: Which what day of the year is that?

20 A: That's Thanksgiving Day. prior to 9 p.m. or
21 before 9 p.m.

22 Q: Did you get a call on that day that Mr. Hyatt was
23 not going to close?

24 A: Yes, I did. I did not -- I was left a voicemail.
25 The call came in at 8 p.m. that he was ready to

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1 close and. you know, couldn't close because Scott
2 Lemons did not own the property.

3 Q: That was Thanksgiving night when you got that
4 call?

5 A: Right, Thanksgiving night, and I, you know,
6 listened to the message after I saw I missed the
7 call, and it was Thanksgiving night, and I did
8 not return the call. I felt there was nothing to
9 be done at 8 p.m., that night.

10 Q: Between the period of time when the contract was
11 signed and November 23rd, did you continue to
12 work with Mr. Lemons and Mr. Hyatt?

13 A: I'm sorry. I missed the first part. What'd you
14 say?

15 Q: I apologize. I probably mumbled. During the
16 period of time when the contract was signed and
17 October 2006 ---

18 A: Right.

19 Q: --- and November 23rd of 2006, ---

20 A: Yes.

21 Q: --- did you continue to work with Mr. Hyatt and
22 Mr. Lemons?

23 A: I spoke with Scott Lemons and Mr. Hyatt both on a
24 daily basis, multiple times daily during the --
25 if we missed two days of communication that would

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1 have been a lot.
2 Q: Have you been paid your commission in full?
3 A: No, I have not.
4 Q: How much was your commission?
5 A: \$290,000.
6 Q: Are you asking this Court for a judgment against
7 Mr. Lemons for the amount of your commission?
8 A: Yes. I am.
9 Q: Thank you. If you would, answer any questions
10 that Mr. McAdams has.
11 THE COURT MR. MCADAMS.
12 MR. MCADAMS: THANK YOU, YOUR HONOR.
13 EXAMINATION
14 BY MR. MCADAMS:
15 Q: Exhibit Number 9. I think you still have that in
16 front of you.
17 THE COURT JUST SOMEWHAT CAVALIER
18 ABOUT THESE EXHIBITS WHY
19 DON'T YOU MOVE INTO
20 EVIDENCE EXHIBIT NUMBER 1
21 THROUGH 9 THAT ARE THE
22 PLAINTIFF'S EXHIBITS.
23 MR THOMPSON: THANK YOU, YOUR HONOR. AT
24 THIS TIME THE PLAINTIFF
25 WOULD MOVE TO HAVE EXHIBITS

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1 THROUGH 9 ADMITTED INTO
EVIDENCE.

PLAINTIFF'S EXHIBITS NUMBERS 1 THROUGH 9
ADMITTED INTO EVIDENCE

THE COURT: ADMITTED WITHOUT OBJECTION.
I APOLOGIZE. GO AHEAD, MR.
MCADAMS.

MR. MCADAMS: THANK YOU, YOUR HONOR.

Q: Mr. Naomi, on Exhibit Number 9 it states that you
are to be paid upon closing, is that correct?

A: That's how it reads, yes.

Q: And the closing never occurred in this case, did
it?

A: No.

Q: You testified for Mr. Thompson that you believed
you earned your commission once all the parties
signed the contract and all the contingencies
were fulfilled, is that correct?

A: That's correct.

Q: And then you stated that it was due and payable
upon closing, is that correct?

A: It's due to be paid at the time of closing, at
the closing, simultaneously with the closing.

Q: Yes, sir

A: That's the scheduled time that I'm to be paid

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1 They can pay me before. Certainly wouldn't want
2 to be paid after.
3 Q: But if the closing never occurs then ---
4 A: That's inconsequential to me, my compensation.
5 Q: So that doesn't matter to you at all?
6 A: I, I mean. I would've liked to had seen that
7 happen for everybody involved, but I, I, you
8 know, that doesn't -- that has no -- that's no
9 relative to me being paid for my work.
10 Q: Exactly how many properties did you sell in '06?
11 A: I would have to go back and look.
12 Q: You don't know?
13 A: I don't know off the top of my head. A lot of
14 what I do is commercial and sometimes these
15 things take a year. Sometimes a year and a half,
16 sometimes they don't happen, but basically what I
17 do now are things that take a great deal of time.
18 I currently have a thousand hours in a project in
19 a years worth of time.
20 Q: But you don't know: you certainly didn't sell
21 anything of this magnitude in '06, did you?
22 A: No, that's a nice transaction, which is why I
23 worked as I did on it.
24 Q Exhibit Number 1 that Mr. Thompson went over with
25 you You prepared that document?

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- 1 A: I, I didn't prepare it. I, I, I took the
2 document and I sent it to Scott to have Scott
3 fill in and send back to me and sign.
- 4 Q: Was this a standard form that Re/Max the Coast
5 used in regard to the agreement?
- 6 A: It's one of the -- in this particular case with
7 Scott being a realtor; he wouldn't give me what
8 we'd call an exclusive right to sell listing on
9 the property. We would work in a showing by
10 showing basis.
- 11 Q: Read the first line of that contract, please.
- 12 A: In the event Re/Max at the Coast procures a party
13 ready, willing, and able to purchase the
14 following described property.
- 15 Q: Did you ever require proof of funds from Mr.
16 Hyatt?
- 17 A: No, I did not.
- 18 Q: Did you ever inquire to the ability Mr. Hyatt had
19 to purchase this property?
- 20 A: I never had any reason to inquire into those
21 things.
- 22 Q: Well, your own contract states that you have to
23 procure a party that is ready, willing and able.
24 is that correct?
- 25 A: Yes.

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1 Q: Is it your testimony in this courtroom today that
2 Mr. Hyatt had the ability to close on that?

3 A: I believe that Mr. Hyatt quite well had the
4 ability to close on the piece of property. I
5 think in just looking, just in a cursory
6 inspection of the Horry County tax rolls they
7 have about 25 properties that they own. One of
8 those pieces being a five acre commercial tract
9 that they're working to sell at two and a half
10 million dollars. They own homes on the waterway.
11 I think the total in looking just at the tax
12 rolls they have a little over four million
13 dollars, like four point something one of
14 property that they own between them and two or
15 three LLCs.

16 Q: Well, you didn't look at those property rolls
17 back in '06 did you?

18 A: Didn't have to I was aware, I was aware of the
19 commercial piece on the prime piece in Little
20 River which is just pass the Little River Flea
21 Market that they had that, and I was aware that
22 they also owned a lot in Briarcliff.

23 Q: Well, you would agree with me just owning
24 property doesn't mean you can go to the bank and
25 come up with ---

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1 A: No, as I ---

2 Q: --- 2.9 million dollars?

3 A: As I said, that's just a cursory assessment of
4 the tax rolls.

5 Q: You never got a letter or prequal from the bank
6 or anything like that?

7 A: It was a cash transaction, which was another
8 reason why I didn't see a need for a concern. I
9 mean if, if, in my opinion if someone were
10 wanting to have an out in a contract they would
11 certainly put in contingency based on any number
12 of things, and also even financing and appraisal.
13 So I thought here's a guy paying cash, I mean,
14 what, you know. it appeared to me that everything
15 was as it should be, and I knew they had lived on
16 the waterway. which, you know, waterway property
17 is an excess a million dollars for the most part.

18 Q: But you don't know if they were upside down on
19 those properties or ---

20 A: I, I did not do anything other than just, you
21 know, my. my own personal thoughts.

22 Q: Exhibit Number 2.

23 A: Yes, sir.

24 Q: That's the second rendition of the contract?

25 A That's correct

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1 Q: Commission contract I should say.
2 A: That's correct.
3 Q: You went in and typed tax map number?
4 A: Correct I. I just thought that, you know,
5 property along the waterway was a bit ambiguous,
6 and I felt it should be property specific.
7 Q: And that once again repeats that you had to bring
8 a ready, willing and able buyer?
9 A: That's what it says. yes.
10 Q: You didn't put in there I'm to be paid at the
11 time the contract is signed. did you?
12 A: It reads, if you want me to read it to you.
13 Q: Sure.
14 A: "In the event Re/Max at the Coast procures party
15 ready, willing and able to purchase the following
16 described property." identifying the property
17 here. "Upon terms and conditions," "Upon terms
18 and conditions acceptable to the owner or owners,
19 the owner(s) agree to pay the RE/MAX AT THE COAST
20 agent at the time of closing a commission of 10
21 percent of the Gross Selling Price" as agreed.
22 price "agreed upon or as described below " And
23 it would be my position that when Scott Lemons
24 executed and signed off on the contract the terms
25 and conditions were acceptable to him or he would

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1 not have signed the contract.
2 Q: Right. Contingent upon you producing a buyer
3 that was willing to purchase, correct?
4 A: If that -- That's what it says.
5 Q: That's what it says, doesn't it? All right.
6 Exhibit Number 4.
7 A: Yes, sir.
8 Q: That is the contract with Kenny Hyatt, is that
9 correct?
10 A: Yes, it is.
11 Q: Who was the seller of the property?
12 A: Gold Coast Resorts.
13 Q: You know that's one of Mr. Lemons' companies?
14 A: I do.
15 Q: So Gold Coast Resort was going to be the seller,
16 was going to sell to Kenny Hyatt. Didn't Kenny
17 have an LLC listed on there that he wanted to
18 deed it in?
19 A: He wanted to put it in the name of Palms and
20 Moarts Cove LLC or Assigns.
21 Q: And that's pretty common in this area.
22 A: It is. Most people do that. It prevents them
23 from having to do another closing.
24 Q: I'm going to hand you Exhibit Number 6
25 A: Yes.

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1 Q: It's been marked. What is that document?
2 A: This is the Duel Agency Agreement.
3 Q: And who are the parties that you are the duel
4 agent for, that are listed on that agency
5 agreement?
6 A: Kenny Hyatt.
7 Q: Who else?
8 A: Scott Lemons or Gold Coast Resort.
9 Q: Okay. Gold Coast Resort and Kenny Hyatt are
10 listed on that. is that correct?
11 A: Uh-huh (affirmative response).
12 Q: And that's the duel agency agreement, so that
13 means I'm serving as real estate agent, Gold
14 Coast Resorts and Kenny Hyatt?
15 A: That's correct.
16 Q: Now, was it your understanding that Mr. Lemons
17 was in position to flip this property to Kenny
18 Hyatt?
19 A: This later came out. It didn't concern me As I
20 understood it why would you sell something you
21 didn't have the ability to sell?
22 Q: Sure.
23 A: I mean, I mean, I, I -- What his -- whether he
24 owned it for ten years. whether he had just
25 purchased it. whatever. That was not of my

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1 concern at the time. He told me that he had a
2 piece of property to sell, ---
3 Q: Right.
4 A: --- and asked me to move it for him.
5 Q: You've been involved with what we call
6 simultaneous closings where ---
7 A: I've never been involved with one. I am aware
8 that they do exist, and they have been done a
9 great, great deal down here.
10 Q: Yes, sir. But ultimately this transaction did
11 not conclude did it?
12 A: No, that's why we're here.
13 Q: So Mr. Lemons didn't make any money from this
14 transaction. did he?
15 A: I don't know what Mr. Lemons made. He -- It
16 appears based on his contract that he didn't make
17 any money.
18 Q: Well, Mr. Hyatt didn't make any money or he
19 didn't have to give up any money either, did he?
20 A: Excuse me?
21 Q: Mr. Hyatt didn't make any money to your knowledge
22 off of this transaction, did he?
23 A: No.
24 Q: So you're here in this Court with nobody making
25 any money, but requesting that you get paid?

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1 A: That's correct.

2 Q: Okay.

3 A: That's what I -- that's my job.

4 MR. MCADAMS: THAT'S ALL THE QUESTIONS I
5 HAVE, YOUR HONOR. THANK
6 VERY SO MUCH.

7 THE COURT: ANYTHING FURTHER?

8 MR. THOMPSON: YES, SIR, YOUR HONOR.

9 RE-EXAMINATION

10 BY MR. THOMPSON:

11 Q: Mr. Naomi, ---

12 A: Yes.

13 Q: --- did you perform all your duties and do all
14 the work that you would normally have done if
15 this transaction gone all the way through and
16 closed?

17 A: Exactly. Everything, and I -- most realtors
18 don't follow through all of these things Once
19 they get the contract they're done I bent over
20 backwards. I, I did what I was supposed to do
21 and. and above that.

22 Q: Okay Thank you, sir.

23 THE COURT. YOU MAY STEP DOWN THANK
24 YOU, SIR.

25 MR. THOMPSON: YOUR HONOR. THE ONLY OTHER

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1 THING THAT THE PLAINTIFF
2 WOULD DO WOULD BE OFFER MR
3 KENNY HYATT'S DEPOSITION
4 INTO THE RECORD FOR THE
5 PURPOSES OF THE RECORD. I
6 THINK MR. MCADAMS WOULD ---
7 MR. MCADAMS: WITHOUT OBJECTION, YOUR
8 HONOR.
9 THE COURT: IT'S ADMITTED. JUST GO
10 AHEAD AND LET HER MARK IT
11 AS AN EXHIBIT.
12 MR. THOMPSON: YOUR HONOR, FORMALLY. WE THE
13 PLAINTIFF OFFERS
14 PLAINTIFF'S EXHIBIT NUMBER
15 10, WHICH IS THE DEPOSITION
16 OF KENNY HYATT INTO
17 EVIDENCE.
18 THE COURT: IT'S ADMITTED. IS THAT THE
19 PLAINTIFF'S CASE?
20 PLAINTIFF'S EXHIBIT NUMBER 10
21 MARKED AND ADMITTED INTO EVIDENCE
22 MR. THOMPSON: THAT IS THE PLAINTIFF'S
23 CASE, YOUR HONOR.
24 THE COURT: ALL RIGHT. MR. MCADAMS.
25 MR. MCADAMS: YOUR HONOR. AT THIS TIME I

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MOVE FOR AN INVOLUNTARY
NONSUIT BASED UPON
PLAINTIFF'S FAILURE TO
PRODUCE ANY EVIDENCE FIRST
AND FOREMOST THAT MR. SCOTT
LEMONS SHOULD BE PERSONALLY
LIABLE. YOUR HONOR, MR.
NAOMI JUST TESTIFIED ON THE
STAND THAT THE CONTRACT OF
WHO HE WAS REPRESENTING,
THE AGENCY WAS FOR GOLD
COAST RESORTS. NOW, I'M NO
CORPORATE SCHOLAR, BUT THE
REASON YOU HAVE A
CORPORATION OR A LIMITED
LIABILITY COMPANY IS TO
INSULATE YOURSELF FROM
LIABILITY. IN THIS
PARTICULAR CASE. GOLD COAST
WAS MR. NAOMI'S CLIENT. SO
I WOULD ASK THAT MR LEMONS
BE PERSONALLY DISMISSED
FROM THIS LAWSUIT BECAUSE
THERE IS NO LEGAL THEORY
THAT HAS BEEN ALLEGEDLY

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1 AGAINST HIM INDIVIDUALLY.
2 THE COURT: WHAT DO YOU SAY TO EXHIBIT
3 NUMBER 9?
4 MR. MCADAMS: ABOUT THE ---
5 THE COURT: IT'S THAT HANDWRITTEN
6 CONTRACT.
7 MR. MCADAMS: RIGHT. AS AN AGENT FOR
8 GOLD COAST HE CAN CERTAINLY
9 SIGN THAT. THE CORPORATION
10 OR A COMPANY CAN'T ACT BUT
11 THROUGH SOMEBODY.
12 THE COURT: FOR THE RECORD I DENY YOUR
13 MOTION.
14 MR. MCADAMS: I HAVE ONE MORE ---
15 THE COURT: DO YOU WANT TO RESPOND, MR.
16 THOMPSON OR ARE YOU ---
17 MR. THOMPSON: YOUR HONOR, I BELIEVE YOU
18 ADDRESSED THE ---
19 THE COURT: OKAY. VERY GOOD.
20 SOMETIMES IT'S VERY
21 CONFIRMING.
22 MR. THOMPSON: THANK YOU, YOUR HONOR.
23 THE COURT: GO AHEAD, MR. MCADAMS.
24 MR. MCADAMS: THANK YOU, YOUR HONOR.
25 YOUR HONOR, SINCE MR.

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1 THOMPSON HAS PUT IN MR.
2 HYATT'S DEPOSITION, WHICH I
3 WAS GOING TO DO, IT'S NOW
4 INTO EVIDENCE.
5 THE COURT: CORRECT.
6 MR. MCADAMS: I WILL TELL YOU, YOUR
7 HONOR, THAT MR. HYATT
8 HIMSELF ADMITS IN HIS
9 DEPOSITION THAT HE DID NOT
10 HAVE THE ABILITY TO CLOSE
11 ON THIS PROPERTY. HE
12 COULDN'T AFFORD IT BACK IN
13 2006. THE CONTRACT ITSELF
14 THAT MR. NAOMI PREPARED FOR
15 HIS COMPANY THAT MY CLIENT
16 SIGNED REQUIRE THE ABILITY.
17 HE MUST PROCURE A BUYER
18 WITH THE ABILITY TO CLOSE.
19 MR. HYATT SAYS IN HIS
20 DEPOSITION, WHICH IS NOW
21 INTO EVIDENCE THAT HE
22 COULDN'T AFFORD THE
23 PROPERTY; HE COULDN'T
24 CLOSE.
25 THE COURT: ANOTHER BARREL OF YOUR

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1 INVOLUNTARY NONSUIT.
2 THAT'S ALSO DENIED.
3 MR. MCADAMS: THANK YOU, YOUR HONOR.
4 THE COURT: I'M READY TO HEAR YOUR
5 CASE.
6 MR. MCADAMS: WE CALL SCOTT LEMONS.
7 THE COURT: COME AROUND, PLEASE.
8 SCOTT LEMONS, HAVING BEEN DULY SWORN, WAS DEPOSED AS
9 FOLLOWS:
10 EXAMINATION
11 BY MR. MCADAMS:
12 Q: Would you state your name for the record, please?
13 A: Scott Lemons.
14 Q: Scott, what is your business?
15 A: My business is real estate.
16 Q: What license do you hold in that regard?
17 A: I hold a South Carolina Real Estate License.
18 Q: Do you have a company or companies that you work
19 for?
20 A: That is correct.
21 Q: What are the names of those companies?
22 A: I own Gold Coast Resorts.
23 Q: And what is Gold Coast Resorts business?
24 A: It's a real estate company.
25 Q: How long have you been doing that?

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1 A: For Gold Coast specifically?
2 Q: No, realtor in general, sorry.
3 A: Approximately five years.
4 Q: Have you worked at other places besides Gold
5 Coast?
6 A: I have.
7 Q: And Gold Coast is your other company?
8 A: That is correct.
9 Q: Have you ever had any complaints or suspensions
10 of your real estate license?
11 A: No.
12 Q: How did you become aware of the property that is
13 at issue in this case?
14 A: I became aware of the property -- I was contacted
15 directly by the property owner. Upon learning
16 about the property I immediately purchased with
17 hard money out of my pocket an option to purchase
18 on that contract.
19 Q: What did you pay?
20 A: 1.4.
21 Q: Okay.
22 A: Oh, you mean the monies that I put -- \$20,000.
23 10,000 cash, 10,000 on a check.
24 Q: And who was the saeller that you got the option
25 from?

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- 1 A: John Delduco (phonetically spelled).
- 2 Q: When did Mr. Naomi come into the picture?
- 3 A: Shortly after me and Mr. Naomi had talked on
- 4 numerous occasions prior to this property ever
- 5 being brought up, and he came into the picture I
- 6 would say a week or two prior to the contract for
- 7 Mr. Hyatt.
- 8 Q: And what discussions did y'all have when he first
- 9 got involved a week or two before the contract?
- 10 A: Discussions we had if there was any -- to sell
- 11 the property. If -- that was one specific
- 12 property I was having to sell as well as many
- 13 others at that time.
- 14 Q: What if anything or did Mr. Naomi indicate that
- 15 he had a potential buyer?
- 16 A: Not at that time.
- 17 Q: When did he notify you about it?
- 18 A: The day the contract was signed to the best of my
- 19 recollection.
- 20 Q: Where did you sign this contract physically?
- 21 A: At the Cracker Barrel restaurant.
- 22 Q: And when was Exhibit Number 9 executed?
- 23 A: At the Cracker Barrel restaurant. I drew that up
- 24 upon a review of that contract prior to me
- 25 signing that.

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1 Q: So you executed Exhibit Number 9 simultaneously
2 with the contract?

3 A: That is correct.

4 Q: But the property didn't close though?

5 A: No, it did not.

6 Q: What is your understanding of why the property
7 didn't close?

8 A: My understanding was that I heard many different
9 scenarios, but I just, I heard he didn't have the
10 money.

11 Q: All right. Well, you sat through his deposition,
12 did you?

13 A: Yes, I sure did.

14 Q: Okay. Was it ever brought to your attention
15 about your failure to hold legal title?

16 A: It was brought to my attention.

17 Q: Who brought that to your attention?

18 A: I believe Mr. Thompson did in -- are you talking
19 about the deposition?

20 Q: No, I'm talking about in general.

21 A: Oh, no that was never brought up.

22 Q: So you never heard that?

23 A: Never heard that.

24 Q: When the transaction did close, when's the next
25 time you heard from Mr. Naomi?

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1 A: I believe it was several days or a week or so
2 after.
3 Q: And what did he say?
4 A: He was pretty upset with Mr. Hyatt. Don't want
5 to go into specifics of the wording in this
6 courtroom, but he was very upset with Mr. Hyatt.
7 Did not understand why he didn't close and did
8 make reference to Thanksgiving night around nine
9 o'clock p.m., but yet did not answer the phone
10 call, nor did he call him back.
11 Q: In Exhibit Number 9 did you specify when Mr.
12 Naomi was going to get paid his portion?
13 A: I, I did.
14 Q: And what did you specify?
15 A: Upon the successful closing of the contract with
16 Kenny Hyatt.
17 Q: And was there a closing that ever took place?
18 A: No, there was not.
19 Q: Please look at Exhibits Number 1 and 2. Have you
20 seen those documents before?
21 A: I sure have.
22 Q: Did you execute those documents?
23 A: Yes, I did.
24 Q: To your knowledge who prepared those documents?
25 A: Tommy and me.

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1 Q: That's all the questions I have. Thank you.

2 Please answer any Mr. Thompson has.

3 THE COURT: MR. THOMPSON.

4 MR. THOMPSON: THANK YOU, YOUR HONOR.

5 EXAMINATION

6 BY MR. THOMPSON:

7 Q: Mr. Lemons, you've taken formal real estate
8 classes, have you not?

9 A: Yes, I have.

10 Q: And you are a licensed real estate agent?

11 A: Yes, I am.

12 Q: And you've been licensed in the State of South
13 Carolina for the last five years as a realtor,
14 correct?

15 A: Approximately.

16 Q: And Gold Coast Resorts is a commercial and
17 residential real estate company that you own,
18 correct?

19 A: That is correct.

20 Q: And you also own a private lending company called
21 S & L Capital Funding, do you not?

22 A: That's correct.

23 Q: And in that company you lend your own personal
24 money, do you not?

25 A: That is correct.

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1 Q: And you lend it at high interest rates?
2 A: That is correct.
3 Q: And at the time of your deposition you testified
4 that you had approximately somewhere around a
5 million dollars worth of unsecured loans out
6 there, is that correct?
7 A: A million dollars of unsecured loans?
8 Q: Yes, sir.
9 A: Give or take, probably.
10 Q: And you also owned, involved and owned interest
11 in other real estate holding or development
12 company and a building company, do you not?
13 A: That is correct.
14 Q: And you're a member of the Realtors Association,
15 correct?
16 A: I am.
17 Q: All right. And you hired Tom Naomi to sell this
18 property for you because you knew he was a good
19 realtor and that he could get it done, did you?
20 A: I believe Tom Naomi is a good realtor. I don't
21 recall the term hiring as a -- I don't believe
22 that would be a word I would use.
23 Q: Did he employ him to sell this property for you?
24 A: No, I did not. Employment I believe would be a,
25 that would be a formal listing agreement.

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1 Q: You contracted with him to sell it, how about
2 that?

3 A: Contracted with him to sell.

4 Q: And you did that because you knew he was a good
5 realtor and he could get these types of
6 transactions done, right?

7 A: Never done a deal with him before. Never had one
8 to close before, but he has brought -- he brought
9 a very clean contract on this deal.

10 Q: And you testified in your deposition that he was
11 a good realtor.

12 A: I just -- yeah, I believe he is a good realtor.

13 Q: And you believe that Tom Naomi conducted himself
14 properly in this transaction also, don't you?

15 A: On the side that he dealt with him I believe he
16 did.

17 Q: By signing the contract Exhibit Number 4 you
18 agreed to sell the property per the terms of that
19 agreement. didn't you?

20 A: For the terms of ---

21 Q: Of Exhibit Number 4, the total contract itself.

22 A: Yes, I did.

23 Q: Which was 2.9 million dollars to Mr. Hyatt,
24 correct?

25 A: That's correct.

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1 Q: And by signing the commission agreement in
2 Exhibit Number 9 you agreed to pay Mr. Naomi a
3 \$290,000 commission, did you?

4 A: That is correct upon the close of the reference
5 property on the waterway.

6 Q: And as a realtor you believe that the commission
7 is earned at the time the contract is executed,
8 don't you?

9 A: If there's in fact a buyer that is prepared ready
10 and financially stable enough to close on a
11 property, yes.

12 Q: So you believe that when the contract's signed
13 that the commission is earned?

14 A: No, I do not.

15 Q: Okay.

16 A: As well as in my deposition I feel like upon the
17 sell and the close of a property by a real estate
18 agent -- buyer is brought by a real estate agent
19 then the property. then the commission is earned
20 upon close.

21 MR. THOMPSON: YOUR HONOR, I'D LIKE TO
22 SHOW THE DEPONENT'S
23 DEPOSITION.

24 THE COURT: (YOUR HONOR IS OPENING THE
25 ORIGINAL OF MR. SCOTT

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1 LEMONS' DEPOSITION).

2 MR. THOMPSON: THANK YOU, YOUR HONOR.

3 Q: Mr. Lemons, let me show you the deposition. Do
4 you remember having your deposition when I took
5 it on Tuesday, March 11, 2008?

6 A: I sure do.

7 Q: Do you remember that time that you were under
8 oath to give truthful testimony?

9 A: Yes.

10 Q: Would you turn with me please, sir to page 22?

11 A: Yes.

12 Q: And line number three. I ask you the question,
13 "Do you believe that the commission is earned at
14 the time the contract is executed," and what was
15 your answer on line five?

16 A: "I do believe it is earned."

17 Q: And then I ask you on line six. It says, "And
18 then it's due payable upon closing," and what was
19 your response?

20 A: I said, "It's due and payable upon closing and
21 recording "

22 Q: Thank you, sir

23 MR. THOMPSON: YOUR HONOR, THAT'S ALL I
24 HAVE FOR THIS WITNESS.

25 THE COURT: MR MCADAMS.

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1 MR. MCADAMS: NOTHING FURTHER, YOUR
2 HONOR.
3 THE COURT: YOU MAY STEP DOWN. THANK
4 YOU.
5 MR. MCADAMS: YOUR HONOR, THAT WOULD BE
6 THE DEFENDANT'S CASE.
7 THE COURT: I'M NOT REQUIRING IT, BUT
8 DO YOU GENTLEMEN WANT TO
9 MAKE CLOSING ARGUMENTS?
10 MR. THOMPSON: YOUR HONOR, JUST REAL
11 SHORT?
12 THE COURT: YOU MAY, GO AHEAD.
13 MR. THOMPSON: THANK YOU, YOUR HONOR.
14 YOUR HONOR, THE COMMISSION
15 AGREEMENT AS YOU'VE SEEN
16 BETWEEN THE PARTIES IS THAT
17 MY CLIENT WOULD GET A
18 \$290,000 COMMISSION UPON
19 CLOSING THE TRANSACTION,
20 AND AS YOUR HONOR KNOWS
21 IT'S WELL SAID IN SOUTH
22 CAROLINA THAT A BROKER
23 EARNS HIS COMMISSION WHEN
24 HE PROCURES A PURCHASER WHO
25 IS EXCEPTED BY THE SELLER

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AND WITH WHOM THE SELLER
ENTERS INTO A VALID AND
FORCIBLE CONTRACT, AND OF
COURSE THE RIGHT TO
COMMISSION IS NOT DEFEATED
BY THE FAILURE OR REFUSAL
FOR THE BUYER TO CONSUMMATE
THE CONTRACT. BOTH MR.
NAOMI AND MR. LEMONS BOTH
AGREED THAT THERE IS A
VALID CONTRACT. MR. HYATT
IN HIS DEPOSITION YOU
RECEIVED THAT HE AGREED
THAT THERE WAS AN
ENFORCEABLE CONTRACT. MR.
LEMONS AGREED THAT THE
COMMISSION WAS EARNED WHEN
THE CONTRACT WAS EXECUTED
AND THAT IT WAS DUE AND
PAYABLE UPON CLOSING.
REGARDING THE INABILITY TO
CLOSE THAT MR. MCADAMS HAS
BROUGHT UP IN QUESTIONING
THESE WITNESSES ON.
THERE'S TWO CASES. YOUR

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HONOR, I'D LIKE TO BRING TO
YOUR ATTENTION. THE FIRST
ONE IS EAGLE AGENCY VERSUS
HUCKS WHICH IS A SOUTH
CAROLINA COURT OF APPEALS
CASE. IT'S ACTUALLY, YOUR
HONOR THAT WAS BROUGHT AND
TAKEN TO THE COURT OF
APPEALS BY MY LAW PARTNER,
PAT HENRY AND EMMA RUTH
BRITTAN. BASICALLY THAT
CASE HOLDS THAT THE BROKER
MAY NOT SHOW THAT THE BUYER
IS READY WILLING AND ABLE
TO PERFORM. IT'S A SIMILAR
CASE TO THIS ONE IN THAT
EXHIBIT NUMBER 9, WHICH IS
THE LAST REVISED SELLS
COMMISSION DID NOT HAVE A
PROVISION IN THERE STATING
THAT THERE HAD TO BE A
BUYER READY WILLING AND
ABLE TO CLOSE. IT JUST
SAID THAT THE COMMISSION
WOULD BE PAID UPON CLOSING.

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THE CLOSING WITH MR. HYATT.
SECONDLY, YOUR HONOR,
PROBABLY MORE IMPORTANTLY,
ALTHOUGH I'VE ONLY BEEN
ABLE TO FIND ONE CASE IN
THE UNITED STATES, BUT IT'S
AN EQUITABLE ARGUMENT.
IT'S CALLED MEISELS, I
THINK IT'S MEISELS, M-E-I-
S-E-L-S VERSUS 1295
EQUITIES CORP. IT'S A 2003
NEW YORK APPEALS COURT
DECISION HELD THAT
VOLITIONAL AND
UNWILLINGNESS AS
DISTINGUISHED FROM GOOD
FAITH AND INABILITY TO
CLOSE IS NOT A GROUND FOR
CANCELATION OF REAL ESTATE
CONTRACT. IN OUR CASE AS
WE WILL SEE IN THE
DEPOSITION OF MR. HYATT HE
TESTIFIED THAT TIME HE
ENTERED INTO THE CONTRACT
HE DIDN'T HAVE THE MONEY TO

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CLOSE, AND HE DIDN'T HAVE
ANYONE TO FLIP IT TO. HE
ALSO TESTIFIED THAT HE
NEVER TRIED TO GET
FINANCING TO BUY. ALL HE
WAS TRYING TO DO WAS TO GET
A PROFIT ON HIS PROPERTY.
YOUR HONOR, I BELIEVE THAT
THAT IS AT THE VERY LEAST
VOLITIONAL UNWILLINGNESS TO
CLOSE. AS A MATTER OF FACT
I BELIEVE IT BOARDER LINES
ON FRAUD, BUT I'M NOT
TELLING ANYBODY THAT I'M
NOT GOING TO SELL THIS
PROPERTY UNLESS IT FLIPS
BECAUSE I DON'T HAVE THE
MONEY TO BUY IT. AGAIN, A
THIRD ARGUMENT THAT I COULD
GO TO WITH THE INABILITY
WAS WHAT MR. HYATT
TESTIFIED TO THAT HIS
REVIEW OF THE TAX ROLES
WITH HORRY COUNTY IS THAT
THEY OWN OVER FOUR MILLION

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1 DOLLARS WORTH OF PROPERTIES
2 AND OVER APPROXIMATELY 25
3 OR SO DIFFERENT PROPERTIES,
4 SO THEY HAVE THE ABILITY TO
5 CLOSE AND YOU'LL SEE IN HIS
6 DEPOSITION, MR. HYATT'S
7 DEPOSITION AGAIN THAT HE
8 WAS A DEVELOPER, A REALTOR
9 WHO WAS INVOLVED WITH
10 TRANSACTIONS, DIFFERENT
11 HOLDING COMPANIES FOR
12 PROPERTIES, AND THAT THIS
13 IS THE TYPE THING TO DO.
14 YOUR HONOR, FOR THOSE
15 REASONS IT'S OUR POSITION
16 THAT MY CLIENT, MR. NAOMI
17 IS ENTITLED TO THE JUDGMENT
18 AGAINST MR. LEMONS FOR THE
19 AMOUNT OF COMMISSION
20 \$290,000.
21 THE COURT: OKAY. MR. MCADAMS.
22 MR. MCADAMS: YOUR HONOR, I DISAGREE WITH
23 MR. THOMPSON IN REGARDS TO
24 THE LAW. THE LAW IS CLEAR
25 THAT IF MR. NAOMI SETS

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1 FORTH THE CONTRACT, HE
2 DRAFTED IT, HE CAN SET THE
3 TERMS OF THE CONTRACT. HE
4 SET THE TERMS OF THE
5 CONTRACT ON THIS COMMISSION
6 BY SAYING, "I WILL PRODUCE
7 A READY, WILLING AND ABLE
8 BUYER." MR. THOMPSON AND I
9 AGREE ABSOLUTELY THAT I
10 THINK IT'S BOARDER LINE
11 FRAUD WHAT MR. HYATT WAS
12 DOING WITHOUT GIVING
13 SOMEONE THE HEADS UP THAT,
14 A, HE COULDN'T AFFORD IT,
15 B, HE WAS JUST TRYING TO
16 FLIP IT TO GET A PROFIT.
17 EVERYBODY'S A VICTIM IN
18 THIS ROOM YOUR HONOR. MR.
19 LEMONS WAS A VICTIM OF THAT
20 FRAUD. MR. NAOMI IS A
21 VICTIM OF THAT FRAUD.
22 HOWEVER THE EQUITY SUGGESTS
23 THAT MR. NAOMI IS NO MORE
24 ENTITLED TO A COMMISSION
25 THAN MY CLIENT WOULD HAVE

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BEEN ENTITLED TO RECEIVE
THE PURCHASE PRICE FROM MR.
HYATT. IT JUST DIDN'T FLAT
OUT WORK. THAT'S THE WAY
IT IS. WHEN MR. NAOMI
SAID, "I WILL PRODUCE A
READY, WILLING AND ABLE
BUYER." HE DIDN'T PRODUCE
AN ABLE BUYER. I DON'T
CARE IF THEY OWN THE EMPIRE
STATE BUILDING. THEY COULD
OWE 50 MILLION DOLLARS ON
THAT. ALL MR. NAOMI IS
DOING IS SPECULATING. WHAT
IS IN EVIDENCE IS THE WORD
OF MR. HYATT, WHICH IS, "I
COULDN'T AFFORD IT."
THERE'S NOTHING TO SUGGEST
OTHERWISE. THANK YOU.
GENTLEMEN. USUALLY I HAVE A
LITTLE SENTENCE THAT I END
THE CASE WITH. AND I'M
GOING TO AGREE WITH YOU ON
ONE POINT. MR. MCADAMS WHEN
YOU SAID "EVERYBODY IN

THE COURT:

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THIS COURTROOM IS A
VICTIM," AND I'M GOING TO
TELL YOU WHAT I THINK WE'RE
A VICTIM OF. I WISH I
COULD TURN THE CLOCK BACK
TO THOSE HALCYON DAYS OF
1966. I MEAN, EXCUSE ME,
2006, AND MY LIFE WOULD BE
A LOT SIMPLER. I WOULDN'T
HAVE TO FACE THE FORTY SOME
FORECLOSURES I HAVE TO FACE
THIS AFTERNOON, AND IF I
COULD TURN THE CLOCK BACK
TO 2006, I'D BE GLAD TO DO
SO. I THINK THAT COMES
INTO PLAY, WE'RE ALL
VICTIMS OR AS SHAKESPEARE
SAID, "ALL ARE PUNISHED."
I'M NOT IN THE POSITION TO
RULE ON THE CASE RIGHT NOW
AND AS MUCH AS I HAVE TO
REVIEW THE DEPOSITION
THAT'S IN EVIDENCE. I'LL
GIVE YOU THIS GUIDANCE.
I'M GOING TO TRY TO SET UP

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A PHONE CONFERENCE WITH THE
TWO LAWYERS ONE DAY THIS
WEEK. I'LL MAKE IT AT YOUR
CONVENIENCE. I APPRECIATE
VERY MUCH THE EXCELLENT JOB
THAT BOTH OF Y'ALL HAVE
DONE. I COULDN'T ASK FOR
ANY MORE OF THE
PRESENTATION AND THE FACTS
AND THE ARGUMENTS THAT YOUR
GENTLEMEN HAVE SHOWN ME
TODAY, AND YOU BOTH ARE A
CREDIT TO YOUR PROFESSION,
AND I LOOK FORWARD TO
WORKING WITH YOU AGAIN IN
THE FUTURE, AND THAT WOULD
CONCLUDE THE MATTER.

MR. MCADAMS: THANK YOU, YOUR HONOR.

MR. THOMPSON: THANK YOU, YOUR HONOR.

***** OFF THE RECORD *****

PLAINTIFF'S EXHIBIT NUMBER 11
MARKED AND ADMITTED INTO EVIDENCE
(THE HEARING CONCLUDED AT 11:07 A.M.)

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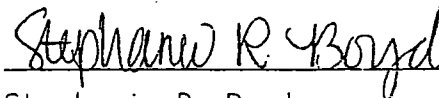
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CERTIFICATE

This is to certify that the foregoing transcript of the hearing held before the Honorable J. Stanton Cross, as Master-in-Equity for Horry County in the Master's Courtroom consisting of SIXTY-FIVE (65) pages is a true and correct transcript of the testimony given at said hearing. The hearing was reported by method of stenomask with backup.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 27TH day of MAY, 2009.



Stephanie R. Boyd
Verbatim Court Reporter
Notary in and for the State of
South Carolina
My Commission Expires: 10-02-17

COPY

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STATE OF SOUTH CAROLINA , IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY , THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 06-CP-26-6300

C.S.E. Enterprises, Inc.
d/b/a Re/Max At The Coast
and Tom Naomi

Plaintiffs,

vs.

Scott L. Lemons and Gold
Coast Resorts, LLC.

Defendants.

**THE HEARING HELD BEFORE
HONORABLE J. STANTON CROSS, JR., MASTER-IN-
EQUITY FOR HORRY COUNTY, SOUTH CAROLINA**

Tuesday, June 10, 2008
10:04 a.m. --- 11:07 a.m.

The following is a transcript of the hearing held
before Honorable J. Stanton Cross, Jr. Master-in-Equity
for Horry County at the Horry County Courthouse in
Conway South Carolina, on Tuesday June 10, 2008.

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SCOTT LEMONS

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EXHIBITS

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Original agreement 31
Plaintiff's Exhibit Number 2
Modification of the commission agreement 31
Plaintiff's Exhibit Number 3
Marketing Package 31

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APPEARANCES:

FOR THE PLAINTIFF:

Philip C. Thompson Esquire
THOMPSON & HENRY P.A.
1300 Second Avenue, Third Floor
Conway South Carolina 29528

FOR THE DEFENDANT:

Michael M. McAdams, Esquire
MCNAIR LAW FIRM
2411 Oak Street, Suite 206
Myrtle Beach, South Carolina 29577

COURT REPORTER:

Stephanie R. Boyd
Verbatim Court Reporter

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Plaintiff's Exhibit Number 4
Agreement to Buy & Sell Real Estate 31
Plaintiff's Exhibit Number 5
Exclusive Agency Buyer Agency Contract 31
Plaintiff's Exhibit Number 6
Dual Agency Agreement 31
Plaintiff's Exhibit Number 7
Agency Disclosure Brochure 31
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Check from Hyatt Construction 31
Plaintiff's Exhibit Number 9
Agreement between Mr. Lemon s & Mr. Naomi 31
Plaintiff's Exhibit Number 10
Deposition of Kenny Hyatt 41
Plaintiff's Exhibit Number 11
Deposition of Scott Lemons 64

(Plaintiff's Exhibits Numbers 1-9 were premarked.)

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LEMONS. THE DEFENDANT HERE
TO SELL A PIECE OF PROPERTY
THAT WAS LOCATED ON THE
INTRACOASTAL WATERWAY ABOUT
A QUARTER OF A MILE NORTH
OF THE HIGHWAY 544 SWING
BRIDGE ON THE WEST SIDE.
THE CONWAY SIDE OF THE
WATERWAY BASICALLY YOUR
HONOR. MR. LEMONS DID NOT
HOLD LEGAL TITLE. HE HELD
EQUITABLE TITLE THROUGH A
CONTRACT THAT HE HAD WITH
THE OWNER. IT WAS
BASICALLY A FLIP WAS WHAT
IT WAS. MY CLIENT BROUGHT
A BUYER TO THE TABLE. A MR.
KENNY HYATT. WHO SIGNED THE
CONTRACT WITH NO
CONTINGENCIES WHATSOEVER.
IT WAS A CASH TRANSACTION.
NO FINANCING CONTINGENCIES.
NO WETLAND CONTINGENCIES.
NO CONTINGENCIES. MR.
LEMONS ALSO SIGNED THAT

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THE COURT
MR. MCADAMS.

CAROLINA THAT MY CLIENT IS
ENTITLED TO THE JUDGMENT
AGAINST MR. LEMONS FOR THE
COMMISSION SINCE HE BROUGHT
A BUYER TO THE CONTRACT
WITH MR. LEMONS. THANK
YOU, YOUR HONOR.
MR. MCADAMS.
THANK YOU, YOUR HONOR. MAY
I PLEASE THE COURT? I
REPRESENT SCOTT LEMONS AND
GOLD COAST RESORTS. MR.
LEMONS IS ALSO A REALTOR.
THE FACTS OUTLINED BY MR
THOMPSON ARE CORRECT
CHRONOLOGICALLY IN WHAT
OCCURRED IN THIS CASE. AND
TO MOVE THIS ALONG A LITTLE
QUICKER, YOUR HONOR. WE'RE
GOING TO INTRODUCE EVIDENCE
THAT THE PURCHASER THAT MR.
NAOMI BROUGHT TO THE TABLE
IN THIS CASE HAD NO ABILITY
TO CLOSE ON THIS PIECE OF
PROPERTY. HE IN FACT WAS

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CONTRACT MR. LEMONS ALSO
SIGNED A COMMISSION
AGREEMENT YOUR HONOR. HE
SIGNED TWO TO START WITH
WHEN THEY STARTED MARKETING
THE PROPERTY AND THEN
LATER ON THE DATE THAT THE
CONTRACT WAS SIGNED HE
SIGNED A COMMISSION
AGREEMENT THAT HE WROTE IN
HIS OWN HAND AND THAT
COMMISSION AGREEMENT HE
PROMISED TO PAY MY CLIENT
"A TEN PERCENT COMMISSION
UPON CLOSE" TRANSACTION.
THE CONTRACT WAS 2.9
MILLION DOLLARS. TEN
PERCENT WOULD BE 290,000.
THE CLOSING NEVER TOOK
PLACE. YOUR HONOR. AND MY
CLIENT HAS NEVER BEEN PAID
IN FULL WITH THE
COMMISSION. IT'S OUR
POSITION THAT UNDER THE
WELL SETTLED LAW OF SOUTH

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THE COURT
MR. THOMPSON:

GOING TO FLIP IT HIMSELF
AND WE TOOK HIS DEPOSITION.
MR. THOMPSON AND I AND MR
HYATT TESTIFIED THAT HE
COULDN'T AT ANY TIME.
SPECIFICALLY IN '06. THE
FALL OF '06 CLOSE ON THIS
PROPERTY SO I WOULD
UNDERSTAND MR. THOMPSON'S
POSITION ON THE LAW. BUT I
BELIEVE THAT THE LAW
REQUIRES HIM TO BE READY
WILLING AND ABLE TO CLOSE.
IN THIS CASE MR. NAOMI DID
NOT PRODUCE SOMEONE WHO WAS
ABLE TO CLOSE. WE BELIEVE
THE EVIDENCE IS GOING TO
SHOW. CERTAINLY IF THIS
TRANSACTION WOULD'VE
CLOSED. THEN EVERYBODY
WOULD BE HAPPY BUT THAT'S
CERTAINLY NOT THE CASE.
THANK YOU YOUR HONOR
MR. THOMPSON.
THANK YOU YOUR HONOR AT

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Q: Was Plaintiff's Exhibit Number 1 ever modified?
A: Yes, it was.
Q: Let me show you what's marked now as Plaintiff's Exhibit Number 2 and ask you is that the modification of the commission agreement?
A: Yes, it is.
Q: And what's the date on that agreement?
A: The following day 9/28/06.
Q: Why was it revised?
A: Because I felt that it was not property specific, so I went in and entered the tax map sequence numbers and also his original asking price of three million four hundred thousand dollars, so there would not be confusion as to where we all were in this transaction.
Q: And who made the decision to put the purchase price of 3.4 million dollars on it?
A: Scott Lemons.
Q: After you entered into the commission agreement with Mr. Lemons what steps did you take to market from?
A: What I do is I put together preliminary package for all properties as it relates to that property and then I go out and I contact potential clients that I know. Research more

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water and sewer lines and manhole covers adjacent to it. The fourth page is a soil description of the property which again could identify potential wetlands. Although many of the soil types down here are, in my opinion very similar. The last or the next page identifies the different flood zones, and the final page identifies the zoning, which in this particular piece is commercial farm agricultural. And this I give, again to a potential client just as an introductory package to open a dialogue with them to see what questions they have, et cetera, and to move or not move forward.
Q: And did you market this property or give this package to a Mr. Kenny Hyatt?
A: Yes, I did.
Q: How did you come to meet Mr. Hyatt?
A: I have a client that I dealt with for several years and he referred Mr. Hyatt to me.
Q: And Mr. Hyatt contacted you with regards to this property?
A: Yes. There were lots of conversations, but I believe, yes, he did.
Q: Okay. Did you ever visit the property with Mr. Hyatt?

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clients and give them the package, which it introduces the property, you know, there's a number of different components to each property and it's property specific. It'll vary from piece to piece.
Q: Let me show you now what's been marked as Plaintiff's Exhibit Number 3, and tell the Court what that is, please, sir.
A: That is what I call my package.
Q: And generally if you would briefly explain to the Court what each page is on that.
A: Okay. The first page is just a disclaimer to a potential buyer. Second page is an aerial of the property. Most developers are concerned with the frontage, which is the prime part of the property which is marked here. The next page is an infrared photo of the property. The infrared photos will show water or asphalt. It's black, so it's a way to potentially identify wetlands and on this piece there were a couple. That's why this is in here. The third page is a demography map, which again identifies potential wetlands on a piece of property. The third page, any developer's going to want to know if there's water to the property so this page shows the

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A: Yes, I did.
Q: Did Mr. Hyatt agree to purchase the property from Mr. Lemons?
A: Yes, he did.
Q: Did Mr. Lemons agree to sell the property to Mr. Hyatt?
A: Yes, he did.
Q: Let me show you what's marked as Plaintiff's Exhibit Number 4. I want to ask you, is that the contract that Mr. Hyatt and Mr. Lemons entered into with regards to this particular property?
A: Yes, it is.
Q: Were you present when that was signed by Mr. Hyatt?
A: Yes, I was.
Q: And Mr. Hyatt is the purchaser in this transaction, correct?
A: Yes, sir.
Q: If you would, tell the Court about the day leading up to the signing of this contract by Mr. Hyatt and Mr. Lemons.
A: We met at the property. We walked the property with Mr. Hyatt. Mr. Hyatt and I met at the property and his brother David. We walked the property. We talked about wetlands. He showed

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I want to ask you, is that a copy of the escrow deposit that Mr. Hyatt paid?

A: Yes, it is.

Q: And was that check negotiated and deposited into your real estate trust account?

A: I gave it to the broker in charge, and yes, it was deposited into the trust account.

Q: Did Mr. Lemons agree to sell the property per terms of the contract in Exhibit Number 4?

A: Yes, he did.

Q: And did you witness Mr. Lemons initial and sign the contract in Exhibit Number 4?

A: Yes, I did.

Q: And you said earlier I think before I stopped you, that you met him at the Cracker Barrel in Myrtle Beach?

A: That's correct.

Q: Who else was there with him?

A: There was a girl there having dinner with him.

Q: Did you also go over the dual agency agreement and the agency disclosure with Mr. Hyatt at that time?

A: Yes.

Q: Did Mr. Lemons sign another agreement with you concerning your commission?

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ten percent of the gross sells price as from the contract with Kenny Hyatt. The original when we began this we had, you know a number there. I believe it was a 3.4 million. I wanted to make sure we were all going to be on the same page, and that I would be paid as the contract was executed.

Q: Is there any mention of you having to bring a buyer, ready, willing, and able to the contract in that sells commission?

A: No.

Q: What is your understanding of when your commission was earned in this transaction?

A: My commission is earned when I put together a contract for a buyer and a seller. It is fully executed. All contingencies are met. There are no contingencies whatsoever in this particular contract and all parties have signed off and agreed, you know it's fully executed, signed by all parties. At that point my job is done.

Q: And what is your understanding of when you're to be paid your commission, when it's due and payable?

A: My commission is due and is scheduled simultaneously with the closing.

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A: Yes, he did.

Q: Let me show you Plaintiff's Exhibit Number 9 and ask you, is that the commission agreement that Mr. Lemons signed?

A: Yes, it is.

Q: And was that signed at the same time that the contract and the other two disclosures were signed at the Cracker Barrel?

A: Yes, sir.

Q: And did you witness Mr. Lemons signing that document?

A: I visually witnessed it.

Q: Who wrote that document?

A: Scott Lemons.

Q: There's another name on the bottom of that document. I believe it's Amy Love Oglesbee?

A: Yes, sir.

Q: Who is that?

A: That was the signature witness. That was the lady that was having dinner with Scott.

Q: Why did you feel there was a need or why that document whenever you already had two sells commission documents?

A: I wanted to make sure there was absolutely no confusion as to the fact that I was to be paid

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Q: Did the closing ever occur?

A: No, it did not.

Q: Why didn't it occur or do you know?

A: It didn't occur in my opinion because Kenny Hyatt originally started to discuss wetland issues. I don't know how much depth that you want me to get into, but I -- again we're dealing with a contract that has no conditions. I mean no contingencies. The other issue when that so to speak was not going to stand up to be a valid issue, since he had written a clean contract he began to question Lemons' ownership of the property and told me that he was prepared to close prior to Thanksgiving yet Lemons didn't own the property so how could he sell something he didn't own.

Q: The closing date was what?

A: November 23rd.

Q: Which what day of the year is that?

A: That's Thanksgiving Day prior to 9 p.m. or before 9 p.m.

Q: Did you get a call on that day that Mr. Hyatt was not going to close?

A: Yes, I did. I did not -- I was left a voicemail. The call came in at 8 p.m. that he was ready to

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1 A: I I didn't prepare it. I I I took the
2 document and I sent it to Scott to have Scott
3 fill in and send back to me and sign.
4 Q: Was this a standard form that Re/Max the Coast
5 used in regard to the agreement?
6 A: It's one of the -- in this particular case with
7 Scott being a realtor he wouldn't give me what
8 we'd call an exclusive right to sell listing on
9 the property. We would work in a showing by
10 showing basis.
11 Q: Read the first line of that contract, please.
12 A: In the event Re/Max at the Coast procures a party
13 ready, willing, and able to purchase the
14 following described property
15 Q: Did you ever require proof of funds from Mr
16 Hyatt?
17 A: No, I did not.
18 Q: Did you ever inquire to the ability Mr. Hyatt had
19 to purchase this property?
20 A: I never had any reason to inquire into those
21 things.
22 Q: Well, your own contract states that you have to
23 procure a party that is ready, willing and able.
24 Is that correct?
25 A: Yes.

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1 A: No, as I ---
2 Q: --- 2.9 million dollars?
3 A: As I said, that's just a cursory assessment of
4 the tax rolls.
5 Q: You never got a letter or prequal from the bank
6 or anything like that?
7 A: It was a cash transaction, which was another
8 reason why I didn't see a need for a concern. I
9 mean if, if in my opinion if someone were
10 wanting to have an out in a contract they would
11 certainly put in contingency based on any number
12 of things, and also even financing and appraisal.
13 So I thought here's a guy paying cash. I mean,
14 what, you know, it appeared to me that everything
15 was as it should be, and I knew they had lived on
16 the waterway which, you know, waterway property
17 is an excess a million dollars for the most part.
18 Q: But you don't know if they were upside down on
19 those properties or ---
20 A: I, I did not do anything other than just, you
21 know, my own personal thoughts.
22 Q: Exhibit Number 2.
23 A: Yes, sir.
24 Q: That's the second rendition of the contract?
25 A: That's correct.

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1 Q: Is it your testimony in this courtroom today that
2 Mr. Hyatt had the ability to close on that?
3 A: I believe that Mr. Hyatt quite well had the
4 ability to close on the piece of property. I
5 think in just looking, just in a cursory
6 inspection of the Horry County tax rolls they
7 have about 25 properties that they own. One of
8 those pieces being a five acre commercial tract
9 that they're working to sell at two and a half
10 million dollars. They own homes on the waterway.
11 I think the total in looking just at the tax
12 rolls they have a little over four million
13 dollars, like four point something one of
14 property that they own between them and two or
15 three LLCs.
16 Q: Well, you didn't look at those property rolls
17 back in '06 did you?
18 A: Didn't have to. I was aware. I was aware of the
19 commercial piece on, the prime piece in Little
20 River which is just past the Little River Flea
21 Market that they had that, and I was aware that
22 they also owned a lot in Briarcliff.
23 Q: Well, you would agree with me just owning
24 property doesn't mean you can go to the bank and
25 come up with ---

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1 Q: Commission contract I should say.
2 A: That's correct.
3 Q: You went in and typed tax map number?
4 A: Correct. I, I just thought that, you know,
5 property along the waterway was a bit ambiguous,
6 and I felt it should be property specific.
7 Q: And that once again repeats that you had to bring
8 a ready, willing and able buyer?
9 A: That's what it says, yes.
10 Q: You didn't put in there I'm to be paid at the
11 time the contract is signed, did you?
12 A: It reads, if you want me to read it to you.
13 Q: Sure.
14 A: "In the event Re/Max at the Coast procures party
15 ready, willing and able to purchase the following
16 described property, identifying the property
17 here, "Upon terms and conditions," "Upon terms
18 and conditions acceptable to the owner or owners,
19 the owner(s) agree to pay the RE/MAX AT THE COAST
20 agent at the time of closing a commission of 10
21 percent of the Gross Selling Price" as agreed,
22 price "agreed upon or as described below." And
23 it would be my position that when Scott Lemons
24 executed and signed off on the contract the terms
25 and conditions were acceptable to him or he would

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1 THING THAT THE PLAINTIFF
2 WOULD DO WOULD BE OFFER MR
3 KENNY HYATT'S DEPOSITION
4 INTO THE RECORD FOR THE
5 PURPOSES OF THE RECORD. I
6 THINK MR. MCADAMS WOULD ---
7 WITHOUT OBJECTION YOUR
8 HONOR.
9 IT'S ADMITTED. JUST GO
10 AHEAD AND LET HER MARK IT
11 AS AN EXHIBIT
12 YOUR HONOR. FORMALLY WE THE
13 PLAINTIFF OFFERS
14 PLAINTIFF'S EXHIBIT NUMBER
15 10. WHICH IS THE DEPOSITION
16 OF KENNY HYATT INTO
17 EVIDENCE.
18 IT'S ADMITTED. IS THAT THE
19 PLAINTIFF'S CASE?
20 PLAINTIFF'S EXHIBIT NUMBER 10
21 MARKED AND ADMITTED INTO EVIDENCE
22 THAT IS THE PLAINTIFF'S
23 CASE. YOUR HONOR.
24 ALL RIGHT MR. MCADAMS.
25 YOUR HONOR. AT THIS TIME I

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1 AGAINST HIM INDIVIDUALLY
2 WHAT DO YOU SAY TO EXHIBIT
3 NUMBER 9?
4 ABOUT THE ---
5 IT'S THAT HANDWRITTEN
6 CONTRACT
7 RIGHT AS AN AGENT FOR
8 GOLD COAST HE CAN CERTAINLY
9 SIGN THAT THE CORPORATION
10 OR A COMPANY CAN'T ACT BUT
11 THROUGH SOMEBODY
12 FOR THE RECORD I DENY YOUR
13 MOTION.
14 I HAVE ONE MORE ---
15 DO YOU WANT TO RESPOND. MR.
16 THOMPSON OR ARE YOU ---
17 YOUR HONOR. I BELIEVE YOU
18 ADDRESSED THE ---
19 OKAY VERY GOOD.
20 SOMETIMES IT'S VERY
21 CONFIRMING.
22 THANK YOU. YOUR HONOR.
23 GO AHEAD. MR. MCADAMS.
24 THANK YOU YOUR HONOR.
25 YOUR HONOR. SINCE MR.

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1 MOVE FOR AN INVOLUNTARY
2 NONSUIT BASED UPON
3 PLAINTIFF'S FAILURE TO
4 PRODUCE ANY EVIDENCE FIRST
5 AND FOREMOST THAT MR. SCOTT
6 LEMONS SHOULD BE PERSONALLY
7 LIABLE. YOUR HONOR. MR.
8 NAOMI JUST TESTIFIED ON THE
9 STAND THAT THE CONTRACT OF
10 WHO HE WAS REPRESENTING.
11 THE AGENCY WAS FOR GOLD
12 COAST RESORTS. NOW, I'M NO
13 CORPORATE SCHOLAR. BUT THE
14 REASON YOU HAVE A
15 CORPORATION OR A LIMITED
16 LIABILITY COMPANY IS TO
17 INSULATE YOURSELF FROM
18 LIABILITY IN THIS
19 PARTICULAR CASE. GOLD COAST
20 WAS MR. NAOMI'S CLIENT SO
21 I WOULD ASK THAT MR. LEMONS
22 BE PERSONALLY DISMISSED
23 FROM THIS LAWSUIT BECAUSE
24 THERE IS NO LEGAL THEORY
25 THAT HAS BEEN ALLEGEDLY

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1 THOMPSON HAS PUT IN MR.
2 HYATT'S DEPOSITION. WHICH I
3 WAS GOING TO DO. IT'S NOW
4 INTO EVIDENCE.
5 CORRECT
6 I WILL TELL YOU. YOUR
7 HONOR. THAT MR. HYATT
8 HIMSELF ADMITS IN HIS
9 DEPOSITION THAT HE DID NOT
10 HAVE THE ABILITY TO CLOSE
11 ON THIS PROPERTY HE
12 COULDN'T AFFORD IT BACK IN
13 2006. THE CONTRACT ITSELF
14 THAT MR. NAOMI PREPARED FOR
15 HIS COMPANY THAT MY CLIENT
16 SIGNED REQUIRE THE ABILITY
17 HE MUST PROCURE A BUYER
18 WITH THE ABILITY TO CLOSE.
19 MR. HYATT SAYS IN HIS
20 DEPOSITION WHICH IS NOW
21 INTO EVIDENCE THAT HE
22 COULDN'T AFFORD THE
23 PROPERTY HE COULDN'T
24 CLOSE.
25 ANOTHER BARREL OF YOUR

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1 A: I believe it was several days or a week or so
2 after
3 Q: And what did he say?
4 A: He was pretty upset with Mr. Hyatt. "Don't want
5 to go into specifics of the wording in this
6 courtroom, but he was very upset with Mr. Hyatt.
7 Did not understand why he didn't close and did
8 make reference to Thanksgiving night around nine
9 o'clock p.m. but yet did not answer the phone
10 call nor did he call him back.
11 Q: In Exhibit Number 9 did you specify when Mr.
12 Naomi was going to get paid his portion?
13 A: I, I did.
14 Q: And what did you specify?
15 A: Upon the successful closing of the contract with
16 Kenny Hyatt.
17 Q: And was there a closing that ever took place?
18 A: No, there was not.
19 Q: Please look at Exhibits Number 1 and 2. Have you
20 seen those documents before?
21 A: I sure have.
22 Q: Did you execute those documents?
23 A: Yes, I did.
24 Q: To your knowledge who prepared those documents?
25 A: Tommy and me.

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1 Q: And you lend it at high interest rates?
2 A: That is correct.
3 Q: And at the time of your deposition you testified
4 that you had approximately somewhere around a
5 million dollars worth of unsecured loans out
6 there. Is that correct?
7 A: A million dollars of unsecured loans?
8 Q: Yes, sir.
9 A: Give or take, probably.
10 Q: And you also owned, involved and owned interest
11 in other real estate holding or development
12 company and a building company do you not?
13 A: That is correct.
14 Q: And you're a member of the Realtors Association,
15 correct?
16 A: I am.
17 Q: All right. And you hired Tom Naomi to sell this
18 property for you because you knew he was a good
19 realtor and that he could get it done, did you?
20 A: I believe Tom Naomi is a good realtor. I don't
21 recall the term hiring as a -- I don't believe
22 that would be a word I would use.
23 Q: Did he employ him to sell this property for you?
24 A: No, I did not. Employment I believe would be a
25 that would be a formal listing agreement.

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1 Q: That's all the questions I have. Thank you.
2 Please answer any Mr. Thompson has.
3 THE COURT MR. THOMPSON,
4 MR. THOMPSON: THANK YOU, YOUR HONOR
5 EXAMINATION
6 BY MR. THOMPSON:
7 Q: Mr. Lemons, you've taken formal real estate
8 classes, have you not?
9 A: Yes, I have.
10 Q: And you are a licensed real estate agent?
11 A: Yes, I am.
12 Q: And you've been licensed in the State of South
13 Carolina for the last five years as a realtor
14 correct?
15 A: Approximately.
16 Q: And Gold Coast Resorts is a commercial and
17 residential real estate company that you own,
18 correct?
19 A: That is correct.
20 Q: And you also own a private lending company called
21 S & L Capital Funding, do you not?
22 A: That is correct.
23 Q: And in that company you lend your own personal
24 money, do you not?
25 A: That is correct.

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1 Q: You contracted with him to sell it, how about
2 that?
3 A: Contracted with him to sell.
4 Q: And you did that because you knew he was a good
5 realtor and he could get these types of
6 transactions done, right?
7 A: Never done a deal with him before. Never had one
8 to close before, but he has brought -- he brought
9 a very clean contract on this deal.
10 Q: And you testified in your deposition that he was
11 a good realtor.
12 A: I just -- yeah, I believe he is a good realtor.
13 Q: And you believe that Tom Naomi conducted himself
14 properly in this transaction also, don't you?
15 A: On the side that he dealt with him I believe he
16 did.
17 Q: By signing the contract Exhibit Number 4 you
18 agreed to sell the property per the terms of that
19 agreement, didn't you?
20 A: For the terms of --
21 Q: Of Exhibit Number 4, the total contract itself.
22 A: Yes, I did.
23 Q: Which was 2.9 million dollars to Mr. Hyatt,
24 correct?
25 A: That is correct.

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1 HONOR. I'D LIKE TO BRING TO
2 YOUR ATTENTION. THE FIRST
3 ONE IS EAGLE AGENCY VERSUS
4 HUCKS WHICH IS A SOUTH
5 CAROLINA COURT OF APPEALS
6 CASE. IT'S ACTUALLY YOUR
7 HONOR THAT WAS BROUGHT AND
8 TAKEN TO THE COURT OF
9 APPEALS BY MY LAW PARTNER.
10 PAT HENRY AND EMMA RUTH
11 BRITTAN. BASICALLY THAT
12 CASE HOLDS THAT THE BROKER
13 MAY NOT SHOW THAT THE BUYER
14 IS READY WILLING AND ABLE
15 TO PERFORM. IT'S A SIMILAR
16 CASE TO THIS ONE IN THAT
17 EXHIBIT NUMBER 9 WHICH IS
18 THE LAST REVISED SELLS
19 COMMISSION DID NOT HAVE A
20 PREVISION IN THERE STATING
21 THAT THERE HAD TO BE A
22 BUYER READY WILLING AND
23 ABLE TO CLOSE. IT JUST
24 SAID THAT THE COMMISSION
25 WOULD BE PAID UPON CLOSING.

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1 CLOSE AND HE DIDN'T HAVE
2 ANYONE TO FLIP IT TO. HE
3 ALSO TESTIFIED THAT HE
4 NEVER TRIED TO GET
5 FINANCING TO BUY ALL HE
6 WAS TRYING TO DO WAS TO GET
7 A PROFIT ON HIS PROPERTY
8 YOUR HONOR. I BELIEVE THAT
9 THAT IS AT THE VERY LEAST
10 VOLITIONAL UNWILLINGNESS TO
11 CLOSE. AS A MATTER OF FACT
12 I BELIEVE IT BOARDER LINES
13 ON FRAUD BUT I'M NOT
14 TELLING ANYBODY THAT I'M
15 NOT GOING TO SELL THIS
16 PROPERTY UNLESS IT FLIPS
17 BECAUSE I DON'T HAVE THE
18 MONEY TO BUY IT AGAIN A
19 THIRD ARGUMENT THAT I COULD
20 GO TO WITH THE INABILITY
21 WAS WHAT MR. HYATT
22 TESTIFIED TO THAT HIS
23 REVIEW OF THE TAX ROLLS
24 WITH HORRY COUNTY IS THAT
25 THEY OWN OVER FOUR MILLION

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1 THE CLOSING WITH MR. HYATT
2 SECONDLY YOUR HONOR.
3 PROBABLY MORE IMPORTANTLY
4 ALTHOUGH I'VE ONLY BEEN
5 ABLE TO FIND ONE CASE IN
6 THE UNITED STATES. BUT IT'S
7 AN EQUITABLE ARGUMENT
8 IT'S CALLED MEISELS. I
9 THINK IT'S MEISELS. M-E-I-
10 S-E-L-S VERSUS 1295
11 EQUITIES CORP IT'S A 2003
12 NEW YORK APPEALS COURT
13 DECISION HELD THAT
14 VOLITIONAL AND
15 UNWILLINGNESS AS
16 DISTINGUISHED FROM GOOD
17 FAITH AND INABILITY TO
18 CLOSE IS NOT A GROUND FOR
19 CANCELATION OF REAL ESTATE
20 CONTRACT. IN OUR CASE AS
21 WE WILL SEE IN THE
22 DEPOSITION OF MR. HYATT HE
23 TESTIFIED THAT TIME HE
24 ENTERED INTO THE CONTRACT
25 HE DIDN'T HAVE THE MONEY TO

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1 DOLLARS WORTH OF PROPERTIES
2 AND OVER APPROXIMATELY 25
3 OR SO DIFFERENT PROPERTIES.
4 SO THEY HAVE THE ABILITY TO
5 CLOSE AND YOU'LL SEE IN HIS
6 DEPOSITION MR. HYATT'S
7 DEPOSITION AGAIN THAT HE
8 WAS A DEVELOPER. A REALTOR
9 WHO WAS INVOLVED WITH
10 TRANSACTIONS DIFFERENT
11 HOLDING COMPANIES FOR
12 PROPERTIES. AND THAT THIS
13 IS THE TYPE THING TO DO.
14 YOUR HONOR FOR THOSE
15 REASONS IT'S OUR POSITION
16 THAT MY CLIENT MR. NAQHI
17 IS ENTITLED TO THE JUDGMENT
18 AGAINST MR. LEMONS FOR THE
19 AMOUNT OF COMMISSION
20 \$290,000
21 THE COURT OKAY MR. MCADAMS
22 MR. MCADAMS. YOUR HONOR I DISAGREE WITH
23 MR. THOMPSON IN REGARDS TO
24 THE LAW. THE LAW IS CLEAR
25 THAT IF MR. NAQHI SETS

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CERTIFICATE

This is to certify that the foregoing transcript of the hearing held before the Honorable J. Stanton Cross, as Master-in-Equity for Horry County in the Master's Courtroom consisting of SIXTY-FIVE (65) pages is a true and correct transcript of the testimony given at said hearing. The hearing was reported by method of stenomask with backup.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel nor do I have any interest, financial or otherwise, in the outcome of the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 27TH day of MAY, 2009.

Stephanie R. Boyd
Verbatim Court Reporter
Notary in and for the State of
South Carolina
My Commission Expires: 10-02-17

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\$	4	2,4,12 42:11 57:3 agent [7] 36:20 38:4,13 43: 7 50:10 53:18,18 ago [1] 8:5 agree [8] 20:2,5 21:14 25:8 34:23 36:19 61:9 62:23 agreed [10] 6:6 24:8 27:19 36:21,22 52:18 53:2 56:10, 13,16 agreement [35] 3:13,15 4: 2,6,12 10:3,10,12 16:5,10, 13,14,16,18,20 17:5,7,19 21:15,17,19 23:18,20 24:5 25:20,24 26:3 33:5 38:2,5, 12 51:25 52:19 53:1 55:15 agricultural [1] 19:9 ahead [4] 31:6 41:10 43:23 55:12 al [1] 5:5 allegedly [1] 42:25 already [1] 26:22 although [2] 19:4 58:4 ambiguous [1] 36:5 amended [1] 24:14 amount [4] 23:5,8 30:7 60: 19 amy [1] 26:16 another [5] 25:24 26:15 35: 7 37:23 44:25 answer [5] 6:18 30:9 49:9 50:2 54:15 anybody [1] 59:14 apologize [3] 5:23 29:15 31:6 appeals [3] 57:5,9 58:12 appearances [1] 2:1 appeared [1] 35:14 appears [1] 39:16 appraisal [2] 23:1 35:12 appreciate [1] 64:4 approach [1] 7:7 appropriate [1] 8:11 approximately [7] 8:5 15: 22,25 46:3 50:15 51:4 60: 2 april [1] 5:10 area [2] 22:9 37:21 argued [1] 8:13 argument [2] 58:7 59:19 arguments [2] 55:9 64:10 around [3] 45:7 49:8 51:4 arts [1] 14:6 asphalt [1] 18:18 assessment [1] 35:3 assigns [1] 37:20 association [1] 51:14 attend [1] 13:21 attention [4] 48:14,16,17 57:2 avenue [1] 2:5	aware [6] 34:18,18,21 39:7 46:12,14 B bachelor [1] 14:6 back [1] 6:15 16:15 21:9 22:12 32:11 33:3 34:17 44: 12 49:10 63:5,13 backup [1] 65:8 backwards [1] 40:20 bank [3] 15:23 34:24 35:5 barrel [6] 22:10 25:15 26:8 44:25 47:21,23 based [3] 35:11 39:16 42:2 basically [5] 9:9,15 24:7 32:16 57:11 basis [2] 29:24 33:10 beach [4] 2:11 13:11 22:8 25:16 beam [1] 21:6 became [1] 46:14 become [1] 46:12 began [4] 21:17,18 27:3 28: 12 believe [2] 12:11,16 19:23 26:16 27:4 34:3 43:17 48: 18 49:1 51:20,21,24 52:12, 13,15 53:6,12 54:13,16 59: 8,12 believed [1] 31:15 below [1] 36:22 bent [1] 40:19 besides [1] 46:4 best [1] 47:18 between [5] 4:12 16:10 29: 10 34:14 55:16 bit [1] 36:5 black [2] 6:2 18:18 boarder [2] 59:12 61:10 both [7] 24:3,12 29:23 56:8, 9 64:6,12 bottom [1] 26:15 boyd [2] 2:13 65:15 breach [2] 7:25 8:17 briarcliff [1] 34:22 bridge [2] 9:7 15:23 briefly [1] 18:10 bring [3] 27:8 36:7 57:1 brittan [1] 57:11 brochure [1] 4:8 broker [3] 25:6 55:22 57: 12 brother [3] 20:24 21:10 22: 6 brought [13] 9:16 11:4,22 47:5 48:14,16,17,21 52:8,8 53:18 56:23 57:7 building [2] 51:12 62:11 buildings [1] 16:3 business [3] 45:14,15,23	buy [3] 4:2 59:5,18 buyer [19] 4:4 9:17 11:5 18: 13 24:12 27:9,15 36:8 37: 2 44:17 47:15 53:9,18 56: 7 57:13,22 61:8 62:8,9 buyer's [5] 21:14,15,19 23: 18,20 C c.s.e [2] 1:4 5:3 call [13] 13:1 15:8 18:9 28: 22,25 29:4,7,8 33:8 39:5 45:6 49:10,10 called [3] 22:7 50:20 58:8 came [3] 28:25 38:19 47:5 cancellation [1] 58:19 capital [1] 50:21 care [1] 62:10 carolina [14] 1:1,18,24 2:6, 11 11:1 13:12,24 14:15 45: 17 50:13 55:22 57:5 65:18 carter [1] 14:10 case [23] 6:19 7:24 8:1 11: 17,23 12:14,22 21:16 31: 12 33:6 41:19,23 42:19 45: 5 46:13 55:6 57:6,12,16 58:5,20 62:22 63:20 cases [1] 56:25 cash [5] 9:21 22:25 35:7,13 46:23 cavalier [1] 30:17 certainly [7] 7:21 12:18,22 32:1,20 35:11 43:8 certificate [2] 3:10 65:1 certify [2] 65:2,9 cetera [1] 19:12 charge [1] 25:6 check [3] 4:10 25:4 46:23 children [2] 13:15,19 chronologically [1] 11:16 classes [1] 50:8 clean [3] 23:4 28:11 52:9 clear [1] 60:24 cleared [1] 16:1 client [13] 8:20 9:16 10:13, 21 11:1 19:10,18 24:13 42: 20 44:15 55:17 60:16 61: 25 clients [2] 17:25 18:1 clock [2] 63:5,13 close [29] 10:15 11:24 12:7, 13,16 28:14,23 29:1,1 34:2, 4 44:10,18,24 48:4,7,24 49: 7 52:8 53:4,10,17,20 56:22 57:23 58:18 59:1,11 60:5 closed [2] 12:20 40:16 closing [22] 10:19 27:25 28:1,17 31:10,12,21,22,23, 23 32:3 36:20 37:23 49:15, 17 54:18,20 55:9,19 56:20
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RE/MAX AT THE COAST
2120 SEA MOUNTAIN HWY., SUITE 2102
NORTH MYRTLE BEACH, SC 29582
843-663-5663 OFFICE

In the event RE/MAX AT THE COAST procures a party ready, willing and able to purchase the following described property:

property Along waterway/waterway as discussed
_____, and

upon terms and conditions acceptable to Owner(s), the Owner(s) agree to pay the RE/MAX AT THE COAST agent at the time of closing a commission of 10 % of the Gross Selling Price agreed upon or as described below:

Given written notice to the Owner(s) from the RE/MAX AT THE COAST agent, including name and address of the party procured, shall suffice for "registration" of procuring party to Owner(s) and shall be binding on Owner(s) unless Owner(s) advise the RE/MAX AT THE COAST agent in writing to the contrary within ten (10) days of the date of the RE/MAX AT THE COAST agent's "registration".

Date: 9/27/06

[Signature]
Owner

Owner

Owner

RE/MAX AT THE COAST
[Signature]
Agent





RE/MAX AT THE COAST
2120 SEA MOUNTAIN HWY., SUITE 2102
NORTH MYRTLE BEACH, SC 29582
843-663-5663 OFFICE

In the event RE/MAX AT THE COAST procures a party ready, willing and able to purchase the following described property:

Tax Map Numbers 179-00-03-063, 179-10-01-006/-005/-002

approx. 15a. + or -

and

upon terms and conditions acceptable to Owner(s), the Owner(s) agree to pay the RE/MAX AT THE COAST agent at the time of closing a commission of 10 % of the Gross Selling Price agreed upon or as described below:

Three million four hundred thousand dollars

Given written notice to the Owner(s) from the RE/MAX AT THE COAST agent, including name and address of the party procured, shall suffice for "registration" of procuring party to Owner(s) and shall be binding on Owner(s) unless Owner(s) advise the RE/MAX AT THE COAST agent in writing to the contrary within ten (10) days of the date of the RE/MAX AT THE COAST agent's "registration".

Date: 9/28/2006

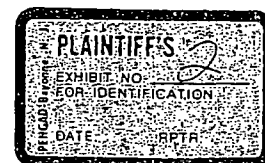
Owner *Assigned*

Owner

Owner

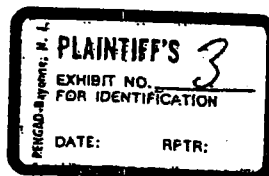
RE/MAX AT THE COAST

Agent

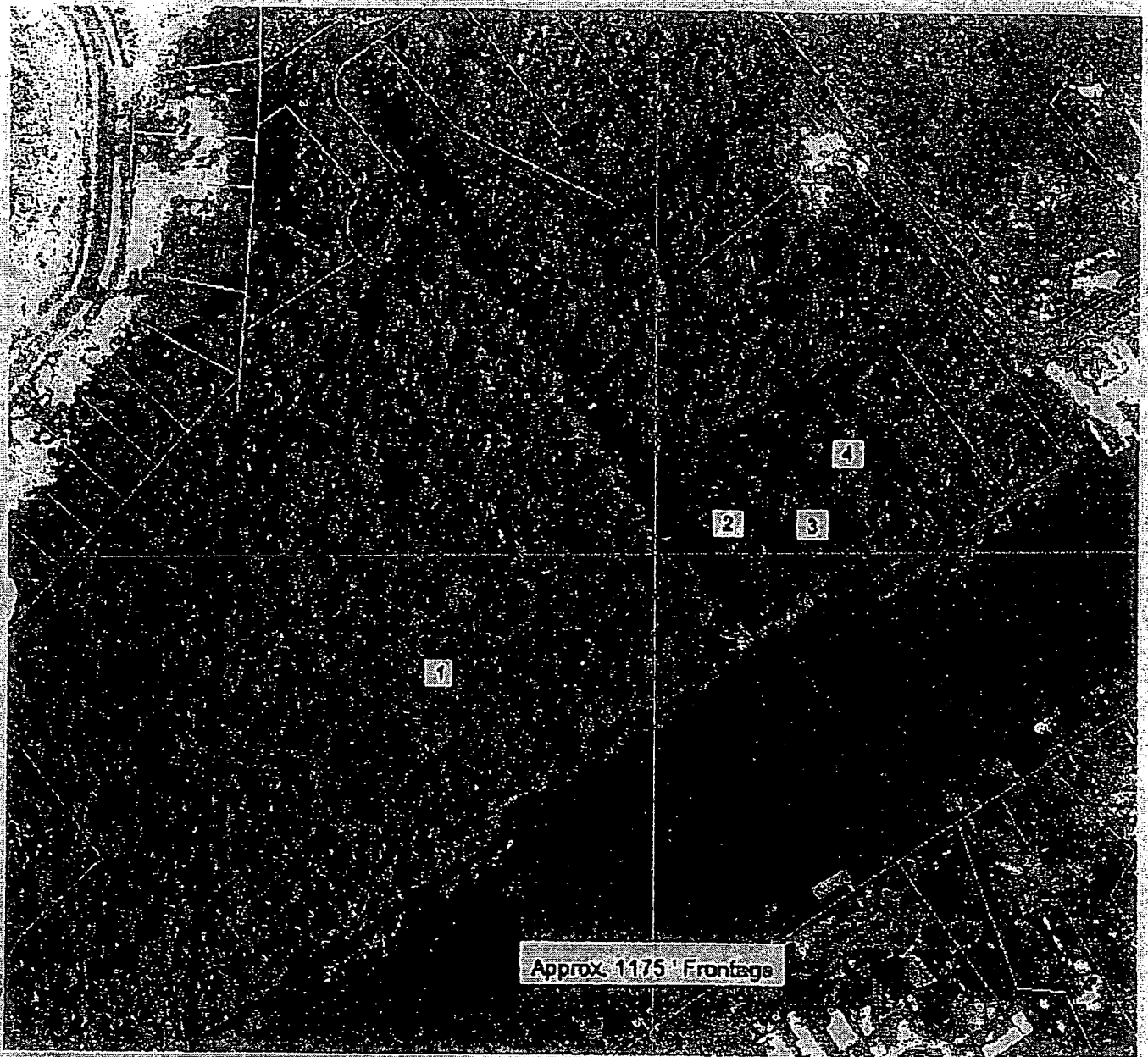


The material presented in this marketing package is based on information available at the time of publication. Neither Re/Max at the Coast, Tom Naomi III, nor the owner are making representations or warranties concerning its accuracy, and all investors should rely on their own projections as to possible financial goals. The information provided is subject to errors, omissions and changes which are or may be unknown to Re/Max at the Coast, Tom Naomi III and the owner. All information is subject to prior sale.

*** Using an Adobe magnification percentage of 125% allows for optimal viewing. This setting is located in the center of the toolbar.

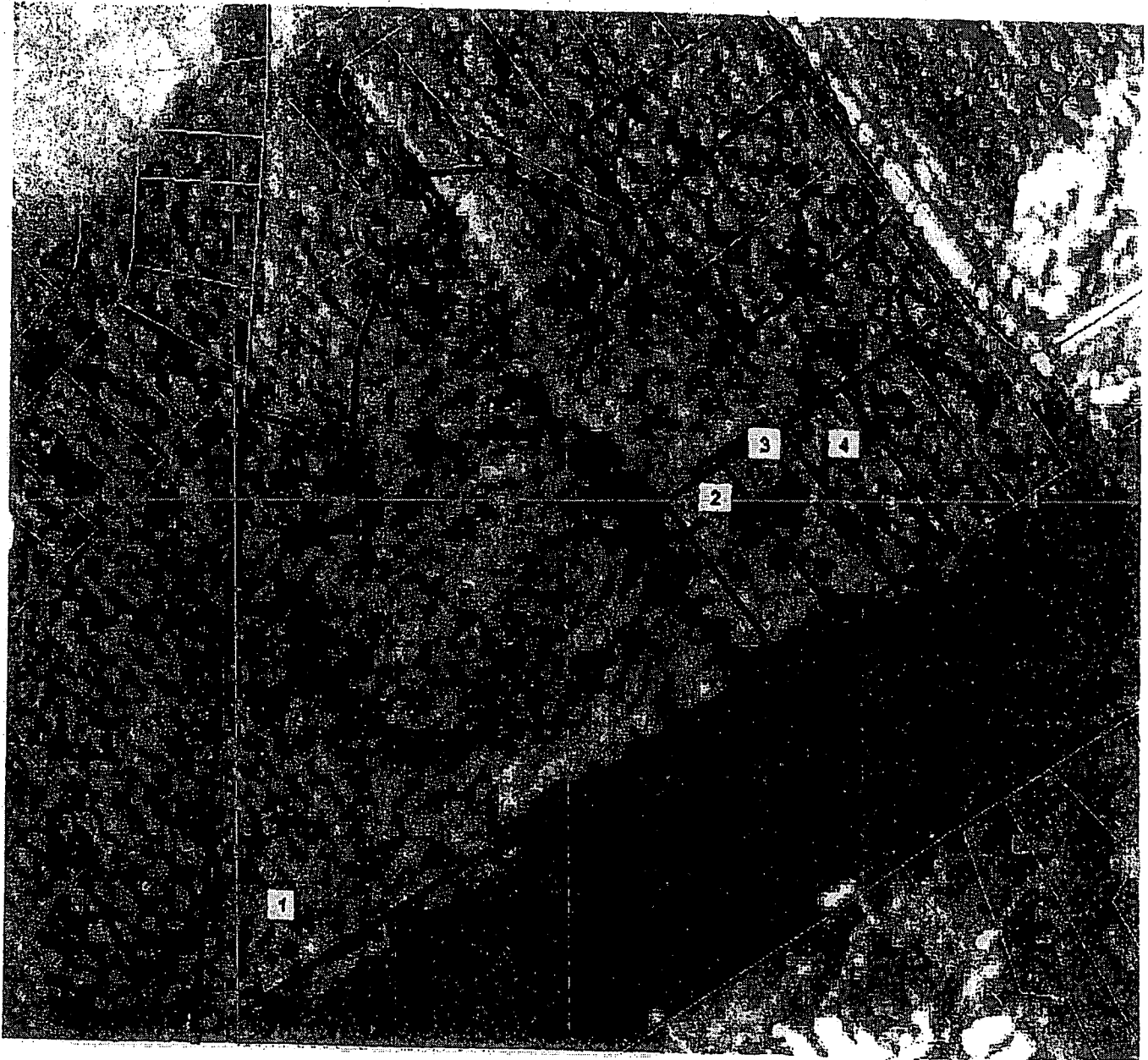


Waterway Property

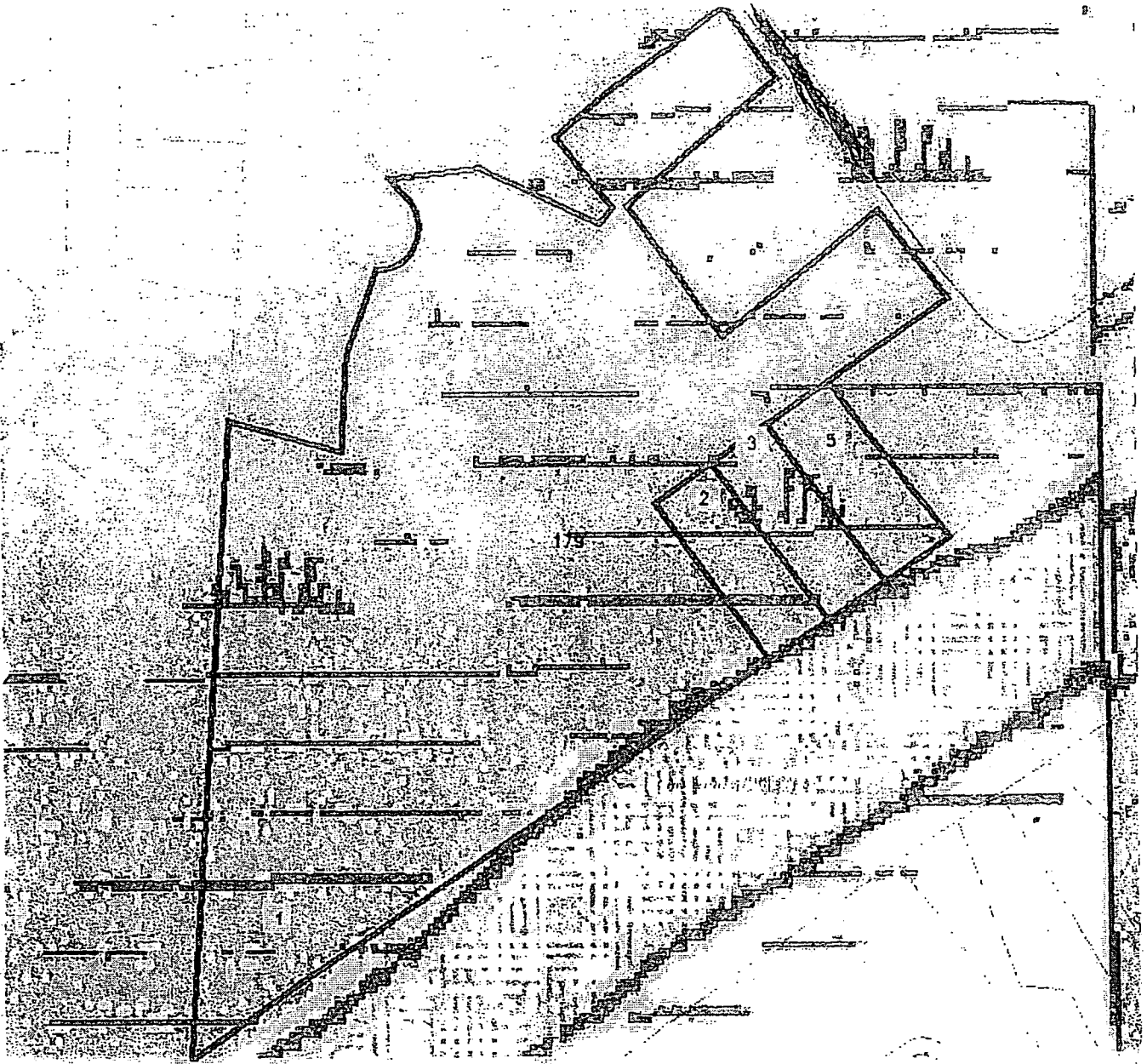


Approximately 19.5 acres

Infrared

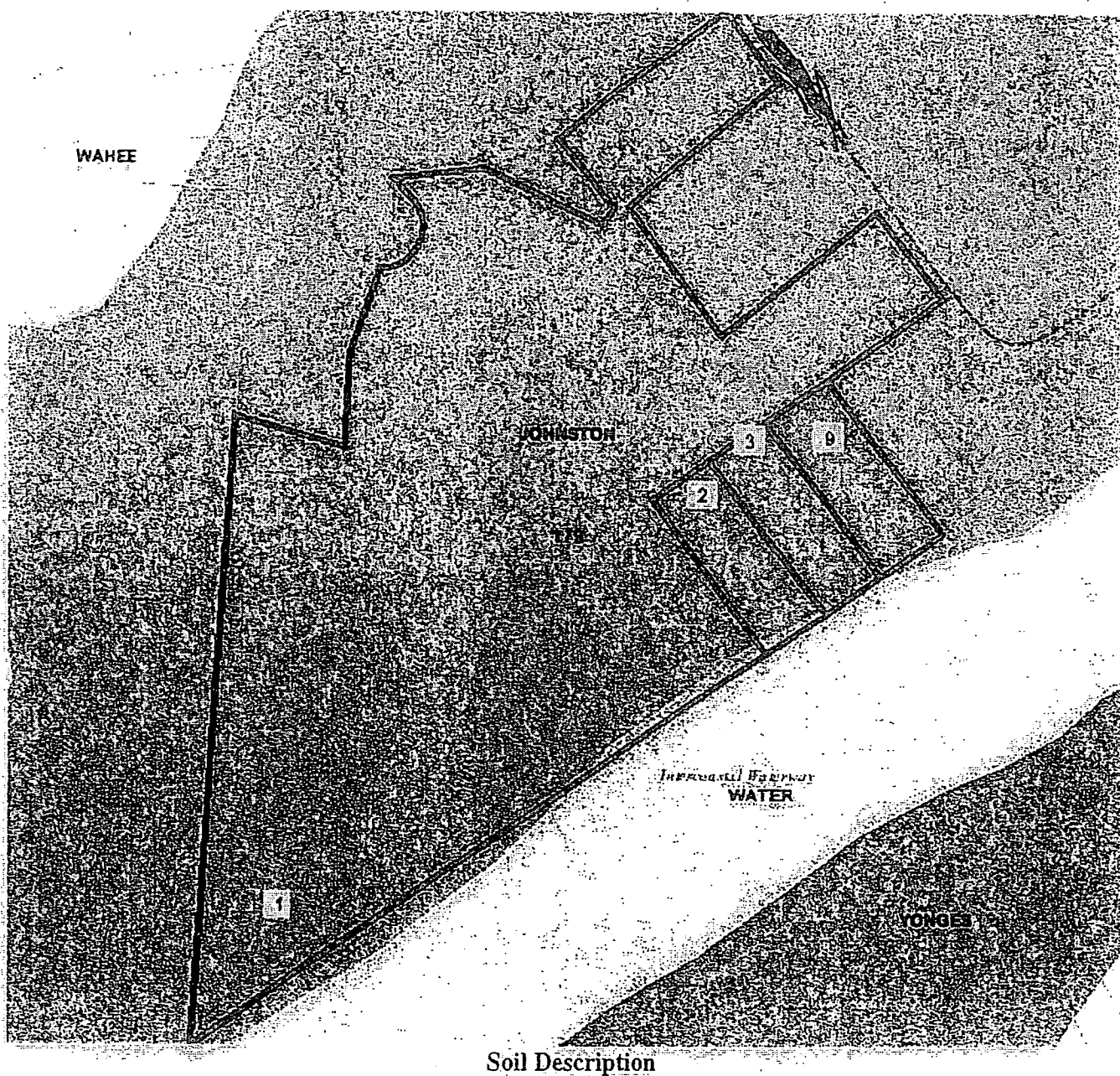


Topography



Water and Sewer Lines and Man Hole Covers

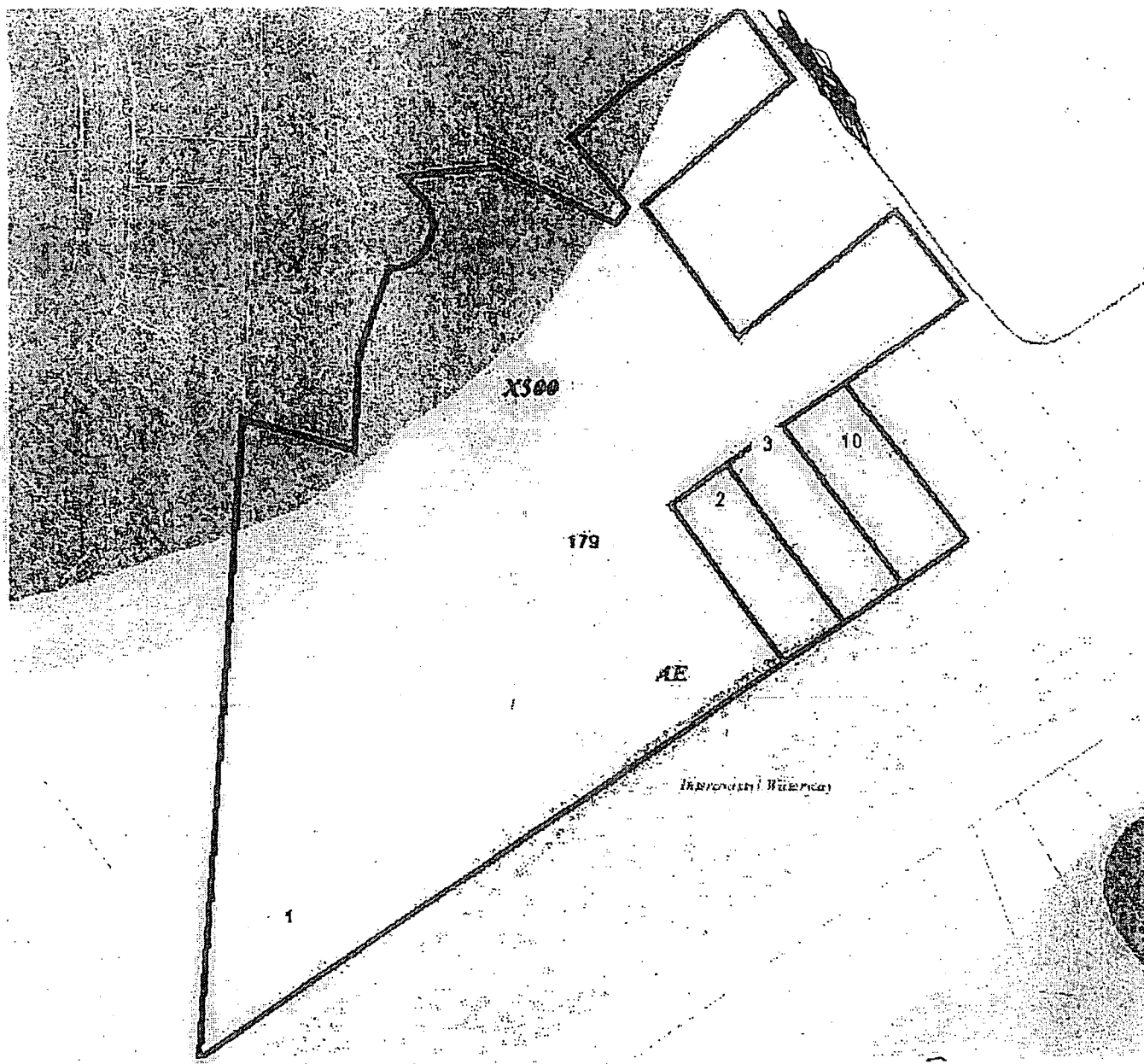




Soil Description

Johnston Series

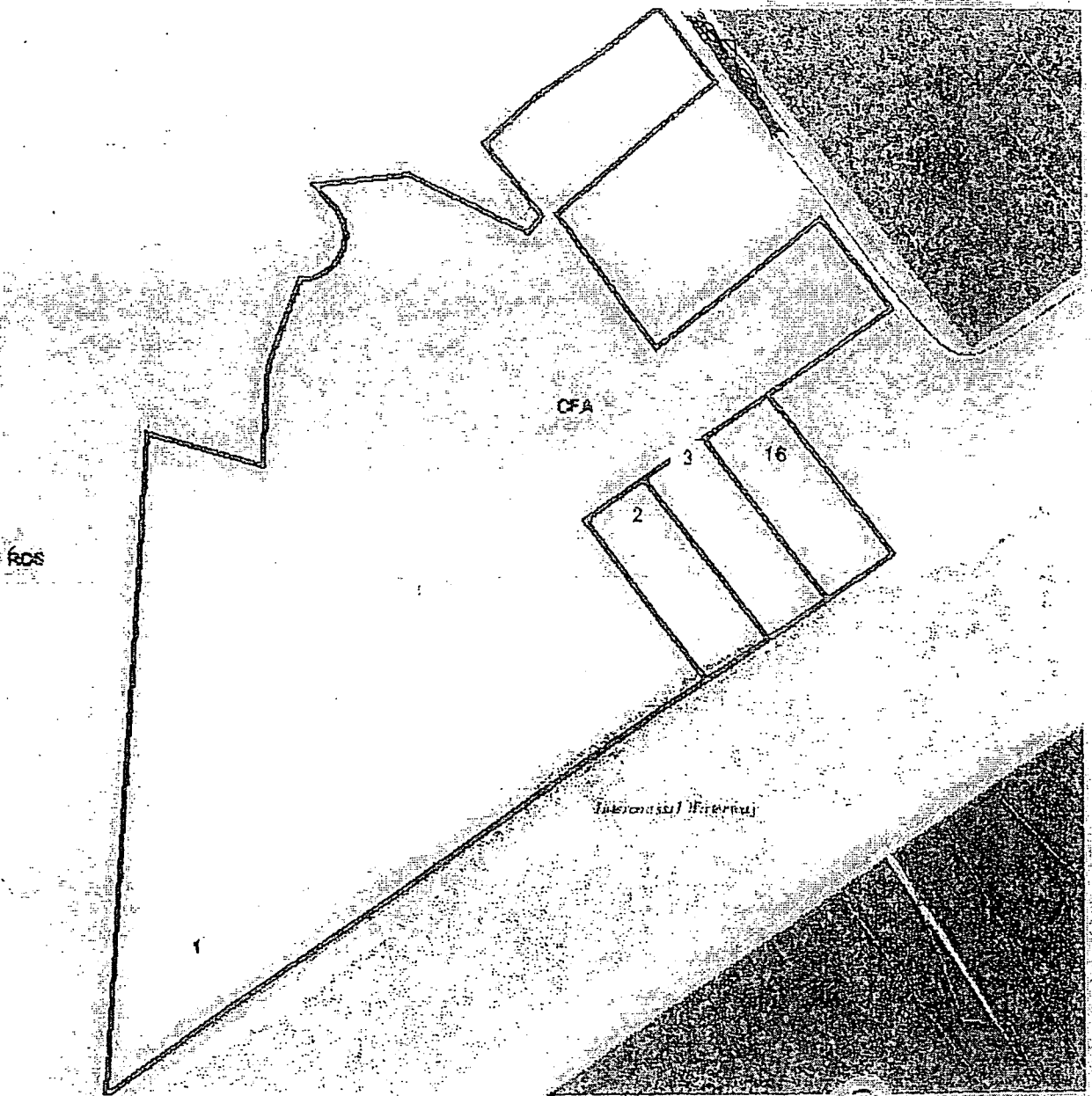
The Johnston series consists of very poorly drained rapidly permeable soils that formed in loamy and sandy stratified Coastal Plain sediments in shallow depressions and on nearly level flood plains along streams throughout the county. Slope is dominantly less than 1 percent. These soils are coarse-loamy, siliceous, acid, thermic Cumulic Humaquepts.



Flood Zones

Zone	Description
A	An area inundated by 100 year flooding, for which no BFEs have been established.
AE	An area inundated by 100-year flooding, for which BFEs have been determined.
VE	An area inundated by 100-year flooding with velocity hazard (wave action); BFEs have been determined.
X	An area that is determined to be outside the 100- and 500-year floodplains.
X500	An area inundated by 500-year flooding; an area inundated by 100-year flooding with average depths of less than 1 foot or with drainage areas less than 1 square mile; or an area protected by levees from 100-year flooding

Zoning - CFA



*Zoning File Attached to email



AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL



1 PARTIES: This legally binding Agreement entered into on OCT. 28, 2006,
between, Buyer(s), KENNY HYATT, (hereinafter called "BUYER"), and
Seller(s), GOLD COAST RESORTS, (hereinafter called "SELLER"). The
property shall be deeded in the name(s) of Palms & Marsh Cove LLC OR ASSIGNS
THE BUYER SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the
following described property with improvements and fixtures thereon:

Lot 1m5 Block N/A Section N/A Subdivision N/A
Address AS PER TMS #5 - EARLS PLANK RD.
Tax Map # 179-00-03-063 179-10-01-006/008-002 City SOCKETT Zip _____
County of Horry, State of South Carolina.

Seller represents that the property is connected to ☐ public sewer system or to ☐ septic tank or to ☐ public water or
to ☐ well system or to ☐ other N/A

No personal property will convey as a part of this sale, except as described: N/A

3. CONVEYANCE SHALL BE MADE: Conveyance shall be made subject to all easements as well as covenants of record
(provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller
agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except
as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place
of closing, and transaction closed on or before 10/23, 2006, not later than 9:00 p.m. Time is of the
essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and
Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. POSSESSION: Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property
free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained
in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear
excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a
separate agreement to be executed prior to closing or occupancy.

5. PURCHASE PRICE shall be \$ 2.9 million
Two million Nine hundred Thousand dollars.

6. METHOD OF PAYMENT Purchase price shall be paid as follows: ☒ Cash; or ☐ Subject to Financing. Financing to
be obtained by ☐ Conventional ☐ Seller ☐ VA ☐ FHA ☐ Other terms: _____

7 EARNEST MONEY: This offer is accompanied by an earnest money deposit of \$ 10,000
Buyer and Seller authorize REMI @ THE COAST, as Escrow Agent, to hold and
disburse earnest money according to the terms of this agreement. Earnest money paid by ☐ Cash, ☐ Check, or ☐ Other.
Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be
deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the
consummation of this sale, the earnest money deposit shall be credited to the Buyer.

[Signature] BUYER ☐ BUYER [Signature] SELLER ☐ SELLER HAVE READ THIS PAGE

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. LOAN PROCESSING AND APPLICATION: Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 11.4 % loan (loan-to-value ratio) within 14 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 14 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance [] will [☒] will not be added to the mortgage. VA funding fee [] will [☒] will not be added to the mortgage.

9. CLOSING COSTS: Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: 11.4

10. HOME PROTECTION PLAN COVERAGE: Both parties understand that a third party home warranty Plan [] will [] will not be issued at closing. If applicable, the warranty premium will be paid at closing by the [] Buyer or [] Seller not to exceed \$ 11.4.

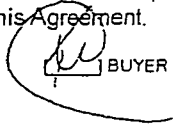
11. EXPIRATION OF OFFER: The offer from Buyer shall be withdrawn at 2:00 o'clock P M. on 10-28-06 unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. EXTENSION AGREEMENT: If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 14 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

13. ADJUSTMENTS: Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorrations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS. The [☒] Buyer or the [] Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorrations at closing shall be final.

14. NON-RESIDENT TAX: Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-2-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. RISK OF LOSS OR DAMAGE: In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

 BUYER [] BUYER [] SELLER [] SELLER HAVE READ THIS PAGE

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16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☐ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents has fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by LJA, 20 . In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☐ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before 12/22, 20 . Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer

☒ BUYER ☐ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.

If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator

(E) Repairs: The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) Residential Dwellings Built before 1978: (check one of the following)

☒ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on July 20, 2004. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within 14 days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have 14 days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

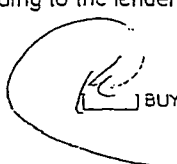
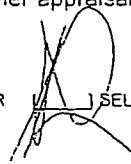
☐ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) Megan's Law: The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) Disclaimer: The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller. Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. APPRAISED VALUE: (check one)

☒ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price.

 ☒ BUYER ☐ BUYER  ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

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11A
This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

21. **DISCLAIMER BY BROKERS AND AGENTS.** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☒ Buyer's ☐ Seller's expense.

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. **TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION:** According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest ☒ BUYER ☐ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker [] may [] may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.

28. NON-RELIANCE CLAUSE: Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. CONTINGENCIES. These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) NONE

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER:

Date 10-28-06

Time 6:35

WITNESS:

Date 10-28-06

Time 6:35 pm

BUYER:

Date _____

Time _____

WITNESS:

Date _____

Time _____

SELLER:

Date 10/28/06

Time 7:30 pm

WITNESS:

Date _____

Time _____

SELLER:

Date _____

Time _____

WITNESS:

Date _____

Time _____

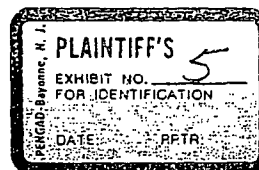
LISTING AGENT AND COMPANY _____

SELLING AGENT AND COMPANY _____

SELLING AGENT IS PRESENTING THIS OFFER AS A [] BUYER'S AGENT OR [] SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT _____

[] BUYER [] BUYER [] SELLER [] SELLER HAVE READ THIS PAGE



EXCLUSIVE AGENCY
BUYER AGENCY CONTRACT

1. **APPOINTMENT OF BROKER:** By this contract KENNY HYATT ("Buyer") appoints Broker in Charge of REHAB AT THE COMPTON Company ("Broker") as Buyer's agent, subject to the terms and conditions stated in this Contract. By appointing Broker as Buyer's agent, Buyer agrees to conduct all negotiations for the types of property described in Section 2 below through Broker, and refer to Broker all inquiries made to Buyer about such properties from other brokers, salespersons, sellers and others during the term of this contract. "Negotiation" as used in this agreement shall mean property shown, negotiated, or information requested by Buyer through Broker.

2. **PURPOSE OF AGENCY:** Buyer desires to purchase or lease real property (which may include items of personal property) described as follows:

Type: ☐ Residential ☐ Commercial ☐ Industrial ☒ Vacant Land ☐ Other

General Description/Address: 179-00-03-063 179-10-01-006/005/002

Approximate Price Range: \$ 2.9M - 3.4M

General Location/Address: SOCASSEE SC

Preferred Terms: CASH

Other: NO

3. **BROKER'S DUTIES:** (a) The Broker shall provide to Buyer a meaningful explanation of agency and shall use Broker's professional real estate knowledge and skills to represent the Buyer in a diligent and effective manner and to locate property which is available for purchase or lease and suitable to the Buyer; (b) if the Broker is not representing the seller the Broker shall represent solely the interest of the Buyer in all negotiations and transactions regarding the acquisition of real property, and repudiate any agency or subagency relationship with the seller or the company representing the seller and shall not claim the subagency compensation offered to the selling broker in the Multiple Listing Service; (c) if the Broker represents the seller as well as the Buyer (i.e., disclosed dual agency), the Broker shall not disclose to the Buyer information obtained within the confidentiality and trust of the fiduciary relationship with the seller, nor disclose to the seller information similarly obtained from the Buyer, without the consent of the party adversely affected by the disclosure. (d) the Broker may represent other buyers who may be interested in the same property as the Buyer. Upon the termination or completion of this agreement, Broker shall keep confidential all information received during the course of this agreement which was made confidential by written request or instructions from the client, except as provided for under South Carolina law.

Broker represents that Broker is duly licensed under the laws of the State of South Carolina as a real estate broker. Broker will use his best efforts as Buyer's agent to locate property of the type described in Section 2 of this contract and to negotiate acceptance of any offer by Buyer to purchase or lease such property. During the term of this Contract, Broker will give Buyer information describing and identifying properties which appear to Broker to substantially meet the conditions set forth in Section 2.

4. **BUYER'S DUTIES. BUYER AGREES TO:**

(A) **Work with Broker and its Affiliated licensees during the term of this agreement by:** (1) allowing Broker or Salesperson to identify property, negotiate for Buyer and otherwise to represent Buyer; and (2) holding Broker harmless from liability as a result of incomplete/inaccurate information provided to Broker by Buyer or Seller; (3) holding Broker harmless from liability as a result of Seller's failure to provide a complete Seller's Property Condition Disclosure statement and (4) indemnifying Broker against all claims, damages, losses, expenses, or liability arising from the handling of earnest money by anyone other than Broker.

(B) **Assist Broker and its Affiliated Licensees in the process of identifying, negotiating and contracting to purchase, lease or otherwise acquire by:** (1) providing Broker with reliable information (including financial information and written authorization to obtain verification of funds) that Broker deems necessary for the performance of this Agreement; and (2) making himself available to meet with Broker and to see properties, in order that the Broker will be able to perform the promises of the Brokerage Engagement.

(C) **Provide Broker and its Affiliated Licensees the following information:** (1) general nature, location, and requirements of desired property; and (2) price range, and other terms and conditions relating to desired property.

(D) **To authorize Buyer's attorneys and the settlement agent to furnish to Broker copies of the final HUD-1 settlement statement for the transaction prior to the closing date.**

[Signature] BUYER [Signature] BUYER [Signature] BROKER HAVE READ THIS PAGE

5. **COMPENSATION OF BROKER:** Brokers fees will be deemed earned when Buyer is under contract to purchase any property presented by Broker. This fee will be due and payable at closing or upon Buyer's default. If Buyer defaults, the total compensation that would have been due Broker will be due and payable immediately in cash from the Buyer. In consideration of the services performed by Broker under the terms of this Contract, Buyer agrees to pay Broker the following fee(s): Buyer shall pay Broker a Brokerage Fee which is the greater of \$ W/A or 1/1% of the purchase or total lease price (renewal, if applicable) of property purchased or leased by Buyer provided that the purchase or lease shall be made to a person with whom Broker shall have negotiated during the term hereof, and provided that Broker, prior to any such purchase, has become entitled to compensation in accordance with the terms hereof.

If within 90 days after the expiration of this Contract Buyer purchases or leases any property that Broker has shown him during the term of this Contract, Buyer will pay Broker the Brokerage Fee stated above. **BROKER SHALL OBTAIN PAYMENT OF THE BROKERAGE FEE OUT OF THE TRANSACTION, BUT BUYER SHALL HAVE THE OBLIGATION TO PAY BROKER THE BROKERAGE FEE SET FORTH IN THIS CONTRACT IF BROKER CANNOT OBTAIN PAYMENT OF SUCH FEE OUT OF THE TRANSACTION. ANY FEES PAID BY THE SELLER OR SELLER'S AGENT SHALL BE CREDITED AGAINST THE BROKERAGE FEE.**

6. **TERM OF AGENCY:**

Broker's authority to act as Buyer's agent under this Contract shall begin on 10/28, 2016 and shall end at 11:59p.m. on 11/23, 2016. Buyer reserves the right to purchase any property (including "For sale by owners"—FSBOs) during the term hereof, without incurring liability for any compensation to Broker, provided that the purchase shall not be made to a person with whom Broker shall have negotiated during the term hereof, and provided that Broker, prior to any such purchase, has not become entitled to compensation in accordance with the terms hereof. In the event that Buyer shall purchase the property, Buyer shall immediately notify Broker in writing, specifying the name of the Seller and the purchase price to be paid. In the event that Buyer does not advise Broker, in writing, within ten (10) days that Buyer has negotiated with said Seller, it shall be conclusively presumed that Buyer has not notified Broker, which shall result in Brokerage fee becoming due and payable in full. Upon the receipt by Broker of such notice, the agency granted hereby shall terminate. However, in the event the purchase or lease is made through a person with whom Broker has negotiated, the rights of Broker hereunder shall continue for the balance of the term hereof.

7. **CONSENT TO DISCLOSED DUAL AGENCY/DESIGNATED AGENCY: (INITIAL APPLICABLE CHOICES)**

☒ Buyer acknowledges receiving an explanation of the types of agency relationships that are offered by brokerage and an Agency Disclosure Form at the first practical opportunity at which substantive contact occurred between the Broker and Buyer.

Buyer acknowledges that after entering into this written agency contract, agent might request a modification in order to act as a dual agent or a designated agent in a specific transaction. If asked:

☐ Permission to act as a dual agent will not be considered.

☒ Permission to act as a dual agent may be considered at the time I am provided with information about the other party to a transaction. If Buyer agrees, Buyer will execute a separate written Dual Agency Agreement.

☒ Permission to act as a designated agent will not be considered.

☐ Permission to act as a designated agent may be considered at the time I am provided with information about the other party to a transaction. If Buyer agrees, Buyer will execute a separate written Designated Agency Agreement.

8. **OTHER POTENTIAL BUYERS:** Buyer understands that other potential buyers have entered into similar agency contracts with Broker which may involve the purchase or lease, through Broker of the same or similar property or properties as Buyer is attempting to purchase or lease. Buyer consents to Broker's representation of such other buyers.

9. **INDEMNIFICATION OF BROKER:** Buyer promises to disclose to Broker whether Buyer has signed any agency agreement with any other Broker, or has been given prior information about any property that is the subject of this Contract by any other Broker or salesperson, or has previously been shown any such property by any other broker or salesperson. If Buyer fails to tell Broker about such other broker's or salesperson's involvement, and Broker incurs any loss or damage as a result of any claim being brought against him on account of such involvement, due to no fault of Broker, then Buyer shall pay Broker all such losses and damages incurred by Broker because of such claim.

10. **DISCLOSURE OF BUYER'S IDENTITY/CONFIDENTIALITY:** The Broker [] does or [] does not have the Buyer's permission to disclose Buyer's identity to all property owners and other third parties. The Buyer is advised of the possibility that seller or seller's agent may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by confidentiality agreement of the parties.

☒ BUYER ☐ BUYER ☒ BROKER HAVE READ THIS PAGE

Form 135 Page 2 of 3

11. **NONDISCRIMINATION:** Broker and Buyer agree that all actions carried out under this contract shall be in full compliance with local, state, and federal fair housing laws against discrimination.

12. **PROFESSIONAL COUNSEL:** Buyer acknowledges that Broker is being retained solely as a real estate agent and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, home inspector or other professional service provider. Buyer agrees to seek professional advice concerning the condition of the property, legal, tax and other professional service matters.

13. **MEDIATION CLAUSE:** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Buyer or Broker in connection with the services to which this Agreement pertains including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

14. **SEX OFFENDER REGISTRY INFORMATION:** The Buyer and Broker agree that during the course of the agency relationship, referred to in the above mentioned agreement, the Broker and all affiliated agents shall not be responsible for obtaining or disclosing any information contained in the official South Carolina Sex Offender Registry. The Buyer understands that no course of action may be brought against the Broker or his affiliates for failing to obtain and disclose information contained in the official South Carolina Sex Offender Registry. The Buyer understands and agrees that the Buyer shall be responsible for obtaining any such information. The Buyer understands that Sex Offender Registry information may be obtained from the local Sheriff's Department or other appropriate law enforcement officials.

15. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on the reverse, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Broker. It can be changed only by a subsequently written instrument signed by both parties.

16. **CONTINGENCIES:** _____

17. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that this Agreement may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

THIS IS A LEGALLY BINDING AGREEMENT. BUYER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BUYER AND BROKER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. BUYER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

BUYER _____ Date _____ Time _____
Email: _____
Phone: _____
Fax: _____

BUYER _____ Date _____ Time _____
Email: _____
Phone: _____
Fax: _____

Buyer Address: _____

BROKER/BUYER'S AGENT COMPANY

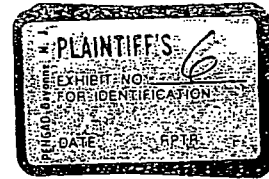
BY: _____
Broker/Licensee Date _____ Time _____

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

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Form 135 Page 3 of 3



DUAL AGENCY AGREEMENT

THIS DOCUMENT IS A MODIFICATION TO THE SELLER'S LISTING AGREEMENT AND THE BUYER'S AGENCY REPRESENTATION AGREEMENT

This Dual Agency Agreement is entered into between KENNY HYATT, Buyer, and
RE/MAX AT THE COAST, Real Estate Company,
GOLD COAST RESORT, Seller, and
RE/MAX AT THE COAST, Real Estate Company,
for Property located at 179-00-03-063, 179-01-006/005/002
The term "Broker" includes the real estate firm, broker-in-charge and associated licensees.

1. **DUAL AGENCY:** Seller and Buyer agree that Broker shall serve as both Seller's agent and Buyer's agent in the sale of Seller's property to Buyer in accordance with Section 40-57-137(M)(1) of the South Carolina Code of Laws, which provides in part that "...in acting as a dual agent, a licensee represents clients whose interest may be adverse and that agency duties are limited." The parties agree that without permission from the party about whom the information pertains, Broker shall not disclose to the other party the following information:

- That a party may agree to a price, terms, or any conditions of sale other than those offered;
- The motivation of a party for engaging in the transaction, unless disclosure is otherwise provided by state law or regulation; and
- Any information about a party which that party has identified as confidential unless disclosure is otherwise required by state law or regulation.

2. **BROKER'S DUAL AGENCY ROLE:** Because Broker is serving as Agent for both Seller and Buyer in this transaction, Broker shall make every reasonable effort to represent Seller and Buyer in a balanced and fair manner. Broker shall also make every reasonable effort to encourage and effect communication and negotiation between Seller and Buyer. Seller and Buyer understand and acknowledge that:

- Prior to the time this agreement was entered into, Broker acted as the exclusive Agent of Seller and acted as exclusive Agent of Buyer.
- In those separate roles Broker may have obtained information which, if disclosed, could harm the bargaining position of the party providing such information to Broker.
- Broker is required by law to disclose to Seller and Buyer any known material facts concerning the property or the transaction. Seller and Buyer agree that Broker shall not be liable to either party for (1) disclosing known material facts concerning the property required by law to be disclosed and (2) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party.

3. **SELLER'S AND BUYER'S ROLES:** Because of Broker's Dual Agency relationship, Seller and Buyer understand and acknowledge that:

- Seller and Buyer have determined that the advantages of entering into this Dual Agency Agreement, with Broker acting as Agent for both, outweigh the disadvantages.
- Seller and Buyer each have the responsibility of making their own decisions as to what terms are to be included in any agreement to buy and sell between the Seller and Buyer.
- Seller and Buyer are fully aware of, and understand, the implications and consequences of Broker's Dual Agency role as expressed herein to provide balanced and fair representation of Seller and Buyer and to encourage communication between Seller and Buyer rather than acting as an advocate or exclusive agent.
- Seller and Buyer agree to indemnify and hold Broker harmless against all claims, damages, losses, expenses, or liabilities, other than violations of the South Carolina Real Estate License Law and intentional wrongful acts, arising from Broker's role as a Dual Agent.
- Seller and Buyer may seek independent legal counsel to assist them with the negotiation and preparation of a buy and sell agreement or with any matter relating to the transaction which is the subject matter of a buy and sell agreement.

4. **PREVIOUS AGENCY AGREEMENTS:** The parties agree that this Agreement shall modify any agency agreements previously entered into by Seller and Broker or between Buyer and Broker. If those previous agency agreements contain expiration or termination dates prior to the termination date for this Agreement as set forth below, the expiration or termination dates of the previous agency agreements are hereby extended until the termination of this Agreement. If this Agreement terminates prior to the termination date of any previous agency agreement, the previous agency agreement shall remain in force and effect in accordance with its terms. In any areas where this Agreement contradicts or conflicts with those agency agreements, this Dual Agency Agreement shall control.

5. **DURATION OF DUAL AGENCY:** The term of this Agreement shall commence when this document is executed by Seller, Buyer and Broker, and unless extended by written agreement of all parties, shall terminate upon the closing of the sale of the property.

(Rev. 10/04)

Produced with ZipForm™ by RE FormsNet LLC 18055 Fifteen Mile Road, Clarks Summit, PA 18041

Phone:

Fax:

www.zipform.com

6. **FAIR HOUSING:** The Broker shall conduct all brokerage activities in regard to this Agreement without regard to race, color, religion, sex, handicap, familial status, or national origin and shall conduct business in full compliance with local, state, and federal fair housing laws.

7. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the execution of this dual agency agreement or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

8. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed original but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement shall not be necessary to produce more than one such counterpart.

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A SIGNED COPY OF THIS DUAL AGENCY AGREEMENT.

Seller

Date

Time

10/28/06

Seller

Date

Time

Buyer

Date

Time

10-28-06

6:35

Buyer

Date

Time

RE/MAX AT THE COAST
Real Estate Brokerage (Name of Real Estate Co.)

By: Broker/Assoc. Licensee

Date

10/28/06

Company As a disclosed dual agent, the Company and its associated licensees cannot advocate on behalf of one client over the other, and cannot disclose confidential client information concerning the price negotiations, terms, or factors motivating the buyer/client to buy or the seller/client to sell. Each Dual Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

Designated Agency

In designated agency, a broker-in-charge may designate individual associated licensees to act solely on behalf of each client. Designated agents are not limited by the Company's agency relationship with the other client, but instead have a duty to promote the best interest of their clients, including negotiating a price. The broker-in-charge remains a disclosed dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients.

At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the Company to designate a representative for you and one for the other client in a designated agency.

Each Designated Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

What to Look For in Any Agreement

When you choose client-level service, your written Agency Agreement or your agent should answer these questions:

- Can I work with other Companies during the time of the Agreement?
- What will happen if I buy or sell on my own without the agent?
- When will this agreement expire?
- How will the Company be paid for its services?

- Does this Company represent both buyers and sellers as clients?
- If so, what are the choices if two clients become involved in one transaction?
- What duties will the Company continue to provide me after the transaction is completed?

If you plan to become a client of a Company, the licensee will explain the agreement to you fully and will answer questions you may have about the agreement. Remember, however, that until you enter into a representation agreement with the Company, you are considered a customer and the Company cannot be your advocate, cannot advise you on price or terms, and cannot keep your confidences.

It's Your Choice

As a real estate consumer in South Carolina, it is your choice as to the type and nature of services you receive.

- You can choose to remain a customer and represent yourself while the Company represents the other party.
- You can choose to hire the Company for representation through a written agreement.
- If represented by the Company, you can decide whether to go forward under the shared services of dual agency or designated agency or to remain in single agency.

The choice of services belongs to you—the South Carolina real estate consumer.

This brochure has been approved by the S.C. Real Estate Commission for use in explaining representation issues in real estate transactions and consumers' rights as a buyer or seller. Reprinting without permission is permitted provided no changes or modifications are made.

[Handwritten signature] *[Handwritten signature]* 10/28/06

Agency Disclosure Brochure

Agency Relationships in Real Estate



South Carolina Department of
Labor, Licensing and
Regulation

South Carolina Real Estate
Commission
PO Box 11847
Synergy Business Park, Kingtree Building
110 Centerview Dr., Suite 201
Columbia, SC 29210

Telephone: (803) 896-4400
Fax: (803) 896-4404

www.llr.state.sc.us/Pol/RealEstateCommission/



HYATT CONSTRUCTION L. L. C.
PO BOX 840
LATTA, SC 29565

3338

67-674/532

10-28-06

DATE

PAY TO THE
ORDER OF

REMAINDER OF THE LAST

\$ 10,000.00

James H. Anderson

DOLLARS

1

Signature
Required
Date

**ANDERSON
BROTHERS
BANK**

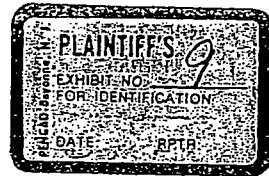
Mullins, S.C. 29574

FOR

DOWN ON SOCIETY

⑆05320674⑆ 670015031 3338





I Scott Lyons agree to
Pay RE/MAX @ The Coast (Ref. Tom Nelson)
a 10% commission upon close of the
Reference Prop. on the way approx 15ac.
w/ contract for w/ Kenny Hyatt.

x [Signature] 10/28/06

x Amy Love Oglesby 10/28/06

Shirley Goyton
839 - 2100

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

C.S E Enterprises, Inc.)
d/b/a RE/MAX At the Coast)
and Tom Naomi.)

Plaintiffs.)

-versus-)

Scott L. Lemons and Gold)
Coast Resorts LLC)

Defendants.)

Scott L. Lemons and Gold)
Coast Resorts, LLC.)

Third Party Plaintiffs.)

-versus-)

Kenny Hyatt.)

Third Party Defendants)

COURT OF COMMON PLEAS

ORIGINAL

CASE NO. 2006-CP-26-6300

THE DEPOSITION OF
KENNY HYATT

Tuesday, March 11, 2008
4:30 p.m. - 6:01 p.m.



STATE OF SOUTH CAROLINA)

) COURT OF COMMON PLEAS

COUNTY OF HORRY)

C.S.E Enterprises, Inc.)

d/b/a RE/MAX At the Coast)

and Tom Naomi.)

) Plaintiffs,)

) -versus-)

CASE NO. 2006-CP-26-6300

) Scott L. Lemons and Gold)

) Coast Resorts, LLC.)

) Defendants.)

) Scott L. Lemons and Gold)

) Coast Resorts, LLC.)

) Third Party Plaintiffs.)

) -versus-)

) Kenny Hyatt.)

) Third Party Defendants.)

ORIGINAL



THE DEPOSITION OF
SCOTT LEMONS

Tuesday, March 11, 2008
9:18 a.m. - 10:46 a.m.

STATE OF SOUTH CAROLINA)

) COURT OF COMMON PLEAS

COUNTY OF HORRY)

C.S.E. Enterprises, Inc.,)
d/b/a RE/MAX At the Coast)
and Tom Naomi,)

) Plaintiffs,)

-versus-)

CASE NO. 2006-CP-26-6300

) Scott L. Lemons and Gold)
) Coast Resorts, LLC,)

) Defendants.)

) Scott L. Lemons and Gold)
) Coast Resorts, LLC,)

) Third Party Plaintiffs,)

-versus-)

) Kenny Hyatt,)

) Third Party Defendants.)

COPY

**THE DEPOSITION OF
KENNY HYATT**

Tuesday, March 11, 2008
4:30 p.m. - 6:01 p.m.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 wetlands?
2 A: David was still showing some concern of it.
3 So I, if I'm not mistaken, without a shadow of
4 doubt, and I know David called Wayne, and this
5 was probably two, three, second, third day
6 into the, into the contract.
7 Q: So we're looking at ---
8 A: Then he makes the call, probably the fourth
9 day, maybe, he's out there. I mean, we're
10 looking at ---
11 Q: November 1st? October 28th is the contract.
12 A: 28th, I would say somewhere along that Tuesday
13 or so that we contacted him, if I, and I'm
14 taking just a jab at that. I'm not sure. It
15 was very shortly after we signed, which we
16 signed on Saturday.
17 Q: Why did you go ahead and sign this contract
18 even though your brother was expressing
19 concern?
20 A: Well, to tell you the honest to God truth, I
21 wasn't so much concerned, and I know
22 differently now because of the situation I'm
23 in, but I really thought that after Tom
24 explained it, that it was high and dry and it
25 was good property and it was going to flip

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Conway, South Carolina 29527
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1 very easily, thought we could flip it very
2 easily, I thought that the most that we had to
3 lose was earnest money. If I had walked away
4 from the deal, I felt like I was going to lose
5 \$10,000, and I expressed that to David. I
6 said, "David," I said, "you know, maybe I did
7 do the wrong thing, and it may end up costing
8 me \$10,000." I never thought that it would
9 come to this.

10 Q: Let me ask you to go to page four of six, and
11 there's a paragraph H right above paragraph
12 20. Do you see that?

13 A: Page four?

14 Q: H, right above the 20, at the very bottom.

15 A: Okay.

16 Q: "Disclaimer", and is that your initial down
17 there as the buyer?

18 A: Yes, sir.

19 Q Do you understand that that disclaimer says
20 that the broker hasn't expressed, made no
21 guarantee or warranty as to what the condition
22 of the property is?

23 A: Well, I probably should have read it a lot
24 finer, but according to what you're saying,
25 and I haven't read it all here. (Pauses while

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Conway, South Carolina 29527
(843) 248-5252

1 A: No, I do not.
2 Q: Okay. Why not?
3 A: Because it was my understanding that Mr. Scott
4 Lemons was to close on his property prior to
5 the close of our property.
6 Q: Okay. And did you ever attempt to close on
7 your property before November 23rd, 2006?
8 A: I had not. We were still, at that time, still
9 trying to flip it. Naomi and I were still
10 continuously on the phone trying to get
11 somebody to the table.
12 Q: On November the 23rd, 2006, at 9:00 p.m., did
13 you have anybody under contract to flip this
14 property to?
15 A: I did not.
16 Q: Did you have the money to close on this
17 property on November 23rd, 2006, at 9:00 ---
18 A: No, I did not.
19 Q: When you signed this contract on October 28th,
20 2006, did you have the wherewithal financially
21 or did you have someone under contract to flip
22 this property to?
23 A: I didn't have the financial means to, to
24 purchase it, and I had no one to flip it to.
25 We were just, like I said, I guess it's like,

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Conway, South Carolina 29527
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1 I was relying between Tom and myself to try to
2 get somebody to flip it to. That was the, the
3 whole object of the entire contract.

4 Q: So you had a contract that you signed and
5 entered into that you had no intentions of
6 closing on; is that right?

7 A: It wasn't I didn't have the intentions of not
8 closing. I would hope that we could have
9 flipped it, and it would have been closed.

10 Q But you weren't able to flip it?

11 A: And we were not able to flip it.

12 Q: And so ---

13 A: And as I told you earlier, I thought that the,
14 the most we would lose at that time would have
15 been earnest money, and that's what I've seen
16 in the past. Of course, I've learned a lot
17 since then. I thought that we would've lost
18 the \$10,000 deposit, and then when Mr. Naomi,
19 I mean, when Mr. Lemons didn't close, I
20 thought, that's the reason we made the
21 telephone call to see about getting our money
22 back, because even if we had had the money to
23 close, we couldn't have closed because he
24 didn't close. That's just the way I took it.

25 Q: Had Mr. Lemons closed before November the

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1 23rd, 2006, at 9:00 p.m., could you have
2 closed by November 23rd, 2006, ---

3 A: I could not have closed the property, that I
4 would have felt that I would have lost my
5 \$10,000 security deposit.

6 Q: And your inability to close because you didn't
7 have someone to flip it to, you don't consider
8 that a default in this contract with Mr.
9 Lemons?

10 A: Under the -- I feel like I was defaulting. I
11 thought I was forfeiting \$10,000 if it, if it
12 didn't go through there at the end.

13 DEPOSITION EXHIBIT NUMBER 18

14 MARKED FOR IDENTIFICATION.

15 Q: And Deposition Exhibit 18, I don't think
16 anybody's seen yet, but this is the \$10,000
17 check that you wrote for the earnest money
18 deposit?

19 A: Correct.

20 Q: Okay. And you understand, under the contract,
21 that the only way the realtor can release, up
22 here at the very top, that the only way that
23 the realtor can release that earnest money
24 deposit is if both the buyer and the seller
25 execute a release of the money or a court

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1 thing done, take possession." What is it that
2 you were planning to do when you got that
3 call?

4 A: At that point, as I told you, as I learned
5 later, like I said, ignorance is no excuse,
6 but I thought that the most risk I had was
7 losing \$10,000.

8 Q: Okay. And why in the world would you think
9 that?

10 A: Because, as most cases, and I've had the
11 happen before where people dropped. I just
12 never had it carried, I didn't know that the
13 contracts were carried through. I mean, I've
14 had people turn down property with me before,
15 and all they did was lose their earnest money

16 Q: Is this some \$100,000 modular home ---

17 A: No.

18 Q: --- contract?

19 A: No.

20 Q: What's the purchase price on this contract?

21 A: 2.9 million.

22 Q: Would it be fair to say that you were out of
23 your league when you signed this contract?

24 MR. PAYNE: OBJECT TO THE FORM.

25 A: Not if it flipped. I mean, I thought it was a

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1 great deal. I thought this thing was going to
2 be wonderful.

3 Q: Have you ever spoken with the original owner
4 of this property who my client contracted
5 with, a Mr. Delduca?

6 A: No, sir.

7 Q: Never spoken with him?

8 A: Never spoke to him, tried to.

9 Q: Never spoke with him on the phone?

10 A: Not to my knowledge

11 Q: You never had a conversation with Mr Delduca
12 where you and David approached him directly
13 and attempted to renegotiate the contract so
14 Mr. Lemons was cut out?

15 A: No, sir.

16 Q: Would it surprise you if Mr. Delduca's going
17 to testify to that?

18 A: It sure would.

19 Q: Okay. Did you ever approach any lending
20 institutions with your brother in regards to
21 obtaining financing to be able to purchase
22 this property?

23 A: No, sir, I didn't. If I'd have went down with
24 the, the losses that were, since 1999 that
25 have been going on in the manufactured housing

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Conway, South Carolina 29527
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1 A: I called Tom, Tom Naomi
2 Q: And that call was made after November 23rd?
3 A: When we finally spoke, I think Tom mentioned
4 that he would call me back because it was
5 Thanksgiving, but yet that was the closing
6 day, and I was actually wanting to know had he
7 closed. I think I left him two or three
8 messages, I think. I've got the phone
9 records, and I think I've got two or three,
10 three or four phone calls, that I left him
11 messages from four to 9:00, something ---
12 Q: But you called him after November 23rd ---
13 A: And then we ---
14 Q: --- to get your deposit back?
15 A: Yes. And we talked to him -- Yes, I talked to
16 him on Sunday on four or five occasions;
17 Sunday night, Sunday afternoon.
18 Q: When you called Mr. Naomi after November 23rd,
19 did you think that the contract had expired on
20 that date, in Exhibit 4 ---
21 A: The contract had expired on November the 23rd.
22 Q: And if it had expired, did you have anymore
23 obligations to Mr. Lemons ---
24 A: I didn't ---
25 Q: --- pursuant to Exhibit 4?

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 A: I didn't feel that I did.

2 Q: One of them gave you a hypothetical about if
3 Mr. Lemons had called you and said he was
4 going to buy the property and then, you know,
5 what were you going to do. You never got such
6 a call from he or Mr. Naomi, did you?

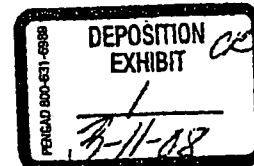
7 A: No, I did not.

8 Q: That's all.

9 (The deposition concluded at 5:58 p.m.)
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Conway, South Carolina 29527
(843) 248-5252



STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) AGREEMENT OF SALE AND PURCHASE

THIS AGREEMENT, made this 29 day of SEPT., 2006,
between JOHN DELDUCA ET AL, (the "Seller"), and SCOTT
LEMONS OR ASSIGNS, (the "Buyer"). Subject to all the terms and conditions
hereof, it is agreed that:

1. PROPERTY. Seller shall sell and Buyer shall purchase the following described
property (the "Property"): 15 +/- AC. & 1100 FT. ON INTRACOASTAL WATERWAY. (179-00-
*APROX. 17.38 AC. AND 1100 FT. ON INTRACOASTAL WATERWAY. (179-00-
03-063 / 179-10-01-006 / 179-10-01-005 / 179-10-01-002. (REF. EXIBIT "A")

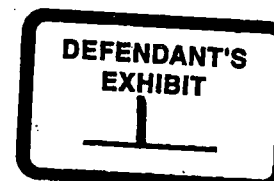
179-06-01-034

2. PURCHASE PRICE. The Purchase Price for the aforesaid Property is * payable as
follows: \$1,400,000.00 (ONE MILLION FOUR HUNDRED THOUSAND DOLLARS AND
00/100)

- a. Escrow deposit in the amount of \$10,000.00 upon
execution of this Agreement to be held by
SELLER and paid to the Seller at closing
or applied as otherwise specified hereunder.
- b. Proceeds of Financing as described in paragraph 3 below
- c. Balance of Purchase price to be paid by Purchaser to Seller at closing (as
hereinafter described) by cash or cashier's check.

3. CONTINGENCIES. This contract is subject to the contingencies listed below. In the
event that any one or more of the contingencies shall fail to occur (unless such contingency shall
be waived by the Buyer) the earnest money shall be returned to the Buyer and this contract shall
terminate, neither party having any further rights against the other.

a. Buyer shall acquire prior to closing, at Buyer's sole cost and expense, a title
insurance binder on the Property. If the Buyer shall determine that the exceptions on the binder
materially affect the Buyer's intended use of the Property, this contract shall be terminated at the
option of the Buyer. If the Buyer has not notified Seller of its termination of this Agreement
prior to closing, this contingency shall be deemed satisfied or waived by Buyer. The Buyer shall
endeavor in good faith during such period to satisfy itself as to these matters.



b. The Buyer shall, at its sole cost and expense, and prior to closing undertake such studies and tests (i.e. soil borings, hazardous waste survey, endangered species habitat delineation, pre-leases, and/or wetlands delineation) as it may deem appropriate to determine that the Property is suitable for its intended use. If the inspection shall fail to indicate, to the Buyer in its sole discretion, that Property is suitable for Buyer's intended use, this contract shall be terminated at the option of the Buyer. If the Buyer has not notified Seller of its termination of this Agreement prior to closing, this contingency shall be deemed satisfied or waived by Buyer. The Buyer shall endeavor promptly, and in good faith during such period to satisfy itself as to these matters. Seller will provide to Buyer within ten (10) days after the date of execution hereof, documentation of any previous testing as to these matters currently in its possession.

d. Buyer shall obtain and/or assume financing in an amount not less than \$ ____ TBD ____, supplying prospective mortgagee with such information as the latter shall require, paying the usual charges therefore and executing and delivering the necessary instruments required by such institution. If the Buyer has not notified Seller of its termination of this Agreement due to failure to obtain said financing on or before the date that is ninety (90) days after the date of execution hereof, this contingency shall be deemed satisfied or waived by Buyer. The Buyer shall endeavor promptly, and in good faith during such period to obtain said financing.

4. CONDITIONS AND RESTRICTIONS. The Seller shall convey the Property to the Buyer, their heirs, successors and assigns in fee simple by proper deed with covenant of general warranty, free from all liens and encumbrances, except such as are herein agreed. The Buyer agrees to accept the Property subject to:

a. Any zoning ordinances and regulations, building restrictions and conditions, restrictions and easements of record, including any shown on a recorded plat, provided that such matters do not affect Buyer=s intended use of the property.

b. Any state of facts an accurate survey would show.

5. REPRESENTATIONS AND WARRANTIES OF Seller

Seller hereby warrants and represents that as of the of closing, and subject to the exceptions specified in Exhibit B hereto:

a. That the Seller owns a marketable and insurable fee simple title to the Property, free and clear of all encumbrances and title defects.

b. That the use of the Property by the Buyer for commercial purposes will not subject the Property to Rollback Taxes.

- c. That access to the public streets adjoining the Property is not limited or restricted.
- d. That the Property is free from use or occupancy restrictions that would impair utilization of the Property for its present use.
- e. That electric service, natural gas service, telephone service, water service and sewer service are available to the Property and that all utility connections serving the Property have been completed, installed and fully paid for and are currently operating and in use and all usage charges have been paid in full to date and will be paid through the date of closing.
- f. That Seller is validly existing and in good standing under the laws of the State of South Carolina, and that Seller has full power and authority to execute and deliver this Agreement and to consummate the transaction contemplated herein. This Agreement is a valid and binding agreement and obligation of Seller in accordance with its terms. Execution and delivery of this Agreement and consummation of the transaction contemplated by this Agreement will not result in any violation of or default under any term or provision of Seller's articles of incorporation, by-laws, or any agreement to which Seller is a party or by which it is bound.
- g. That there is no litigation, investigation or proceeding pending, or to the knowledge of Seller threatened, against Seller, which would materially adversely affect the Property or which would materially impair or otherwise materially affect Seller's ability to perform its obligations hereunder.
- h. That there are no commitments to governmental authorities or agencies or utilities or quasigovernmental entities which materially or adversely affect the Property.
- i. That Seller has not received any notice, or has any knowledge, of any material pending or threatened condemnation, requisition or similar proceeding affecting the Property or any portion thereof.
- j. That all of the Improvements are structurally sound.
- k. That all mechanical systems, plumbing, electrical, wiring, appliances, fixtures, and equipment (including air conditioning units and heaters), roofs, structural members, furnaces and utilities therein and all Personal Property are free of any encumbrances, and all such items are in good operating condition and repair, normal wear and tear excepted, and have been properly and adequately maintained since the acquisition of same by the Seller, and are presently in serviceable and safe operating condition not requiring special maintenance or repair.
- l. That Seller has not received notice from any public body that any of the Property is in violation of any federal, state or municipal orders, codes, rules, regulations, requirements, laws or ordinances (including without limitation those relating to zoning, building, fire, health, safety, environmental protection, occupational protection, age or disability protection, or waste or sewage disposal), or that any licenses, certificates of occupancy or permits

required for the operation of the Property have not been obtained. This warranty specifically excepts notices of any violations or requirements currently complied with or waived.

m. That Seller has received no notice or request from any insurance company, Board of Fire Underwriters (or organizations exercising functions similar thereto) or public body requesting, requiring or recommending any work or alteration to the Property.

n. That there are no outstanding contracts, written or verbal, for the management or operation of the Property or which affect the Property.

o. That no work has been performed or is in progress at, and no materials have been furnished to, the Property or any portion thereof, which might give rise to mechanics', materialman's or other liens against the Property, except for routine painting and maintenance work being performed in the regular course of business.

p. That Seller is not involved in any disputes concerning any bills respecting the Property, including without limitation, water, gas, electric, sewer and trash removal.

q. That no tax assessment has been proposed and the assessed value of the Property for the current year has not been increased over the assessed value for the prior year.

r. That to the best knowledge of Seller after reasonable inquiry:

i. That the Land has not previously been used as a landfill or as a dump for garbage or refuse, and that hazardous wastes or hazardous substances have not been stored, handled, installed or disposed of, in, on or about the Property or any other location within the vicinity of the Property. The Property does not contain asbestos or asbestos product or material. As used in this Agreement, the term "Hazardous Substances" means such materials, waste, contaminants or other substances defined as toxic, dangerous to health or otherwise hazardous by reference to the following sources as amended from time to time: (i) the Resource Conservation and Recovery Act of 1976, (ii) the Hazardous Materials Transportation Act, (iii) the Comprehensive Environmental Response Compensation and Liability Act of 1980, (iv) applicable laws of the State of South Carolina, and (v) any federal, state or local statutes, regulations, ordinances, rules or orders issued or promulgated under or pursuant to any of those laws or otherwise by any department, agency or other administrative, regulatory or judicial body;

ii. That the Property is not so located that it could have a substantial adverse effect on air navigation within the meaning of the Regulations of the Federal Aviation Authority;

iii. That there are no wetlands within the boundaries of the Land and there is no discharge of dredge or fill materials occurring from the Property into any "waters of the United States,";

iv. No part of the Property is occupied by, nor constitutes critical habitat for, any species which is listed as an endangered species or threatened species;

v. That the Land does not lie within a flood plain or in an area that has been identified as an area having special flood hazards;

vi. That the Property is not located within the boundaries of any historical or archeological district or similar district or area, and none of the Improvements is designated as landmarks or as having historical or archaeological significance and none of the Improvements is qualified or eligible for any such designation. There exists no impediment to or restrictions on the demolition or use of the Improvements based on any historical or archaeological significance of the Project.

Seller shall be deemed to have reconfirmed said representations and warranties as of closing hereunder, with such new exceptions as may then be necessary. If any exceptions arising after the date hereof materially adversely affect the Property, then Buyer may terminate this Agreement unless Seller, at its expense, corrects the same or provides Buyer with reasonably adequate indemnity or insurance against the potential effect thereof on Buyer with respect to interests to be conveyed hereunder.

Seller agrees that if any of the representations or warranties made by it in this Agreement shall be false or incorrect, then Seller shall indemnify and hold harmless Buyer against any and all loss, cost and expense (including attorney's fees) which Buyer shall suffer or incur as a result of such false or incorrect warranty.

6. Covenants of Seller. Seller covenants to Buyer as follows:

a. Seller will not transfer, grant, assign, lease, encumber or create any easement, restriction, reservation, contractual or other right, license or interest involving all or any portion of the Property prior to the Closing without the consent of Buyer.

b. Seller will take all necessary corporate action to carry out its obligations pursuant to this Agreement.

c. Seller will not assign (except to Seller) any rents, tenant leases or other leases, concessions or licenses affecting the Property.

d. At all times prior to the Closing, Seller will cause the Seller to maintain the Property in first class condition and repair, according to the normal maintenance schedule.

e. Seller will, at its sole cost and expense provide to Buyer at closing an Official South Carolina Wood Infestation Report indicating that the Property as of the date of closing shall be free of infestation or damage from fungus, termites and other wood boring organisms or any other damage normally disclosed on such a report.

f. Seller will provide the title insurance company with such affidavits and other evidence as it may reasonably require to enable it to furnish a title insurance policy without uninsured exceptions for mechanic's, materialmen's or any other such liens not permitted hereunder.

7. Coastal Management Act Disclosures. The Premises are subject to regulation of use by the Coastal Council Management Act Section 48-30-10, et. seq., Code of Laws of South Carolina, 1976. Part of this Premises is seaward of the setback lines, base line and jurisdictional lines, and has an erosion rate of .68 feet per year, all as adopted by the South Carolina Coastal Council. The Seller shall, at its sole cost and expense, provide prior to closing, an updated survey of the Premises which shall indicate the portion of the Premises seaward of the lines above mentioned. If the survey indicates that any portion of the buildings on the Premises are located such that they could not be repaired or replaced in their current location in the event they are damaged or destroyed, the Buyer may, within five (5) days of its receipt of the survey, at its option declare this contract null and void. If the Buyer elects to declare this contract null and void any earnest money paid hereunder shall be returned to him and nether party shall have any further rights against the other.

8. RISK OF LOSS. The risk of loss or damage to the Property by fire or other casualty until the delivery of the deed is assumed by the Seller. In case of loss or damage the Buyer shall have the option for ten (10) days thereafter of proceeding hereunder with an agreed adjustment in the purchase price or of terminating this Agreement and being repaid all amounts paid hereunder.

9. CLOSING AND COSTS. The closing shall take place on or before NOV. 21 2006 at the offices of the ~~Davis Law Firm, P.A., 1341 44th Avenue North, Suite 104,~~ Myrtle Beach, South Carolina, at which time Seller shall deliver deed as is herein provided and Buyer shall comply with the terms and conditions herein. It is understood and agreed that no funds shall be disbursed until the closing attorney has received notice that all documents related to the transaction have been recorded, where appropriate, and that a final title update has been completed. The expenses of this transaction shall be paid as follows:

a. Interest, rents, taxes, water, sewer, electric, gas, telephone charges, and homeowner's dues when applicable shall be apportioned as of the day the deed is delivered. Insurance premiums shall be prorated, or the insurance shall be canceled at the Buyer's option.

b. The Seller shall pay for costs of preparation of the deed, any associated transfer tax, any associated revenue stamps, the termite inspection, and for any additional professional representation on its behalf.

c. The Buyer shall pay for costs of preparation and recording, if applicable, of (i) any documents related to the financing including the note, mortgage, survey, and appraisal, (ii) this contract, the closing statement and opinion of title and (iii) for any additional professional representation on its behalf.

10. POSSESSION. Possession shall be given at closing.

11. DEFAULT. In the event of default by:

a. Buyer: The Seller may elect (i) to terminate this contract, in which case the Seller shall retain the earnest money as liquidated damages, or (ii) to pursue any other remedy available at equity or law, including specific performance.

b. Seller: The Buyer may elect (i) to rescind this Agreement and be repaid all sums paid hereunder including expenses of title examination, document preparation, survey, appraisal, and any additional out of pocket costs, or (ii) to pursue any other remedy available at equity or law, including specific performance.

12. Attorneys' Fees. In the event of any litigation hereunder, the successful party in the litigation, whether the successful party is the plaintiff or the defendant, shall have the right to collect from the unsuccessful party the attorneys' fees incurred by the successful party related to the litigation.

13. Miscellaneous. The parties hereto agree that:

a. Entire Agreement. This Agreement constitutes the entire Agreement between the parties hereto with respect to the transaction contemplated herein, and supersedes all prior representations by and understandings or agreements between Seller and Buyer and their respective officers, agents, employees and affiliates, made in connection with the transaction.

b. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, devisees, personal representatives, successors and assigns.

c. Expiration of Warranties. It is the express intention of the parties to this Agreement that all covenants, agreements, statements, representations and warranties made by Seller pursuant to this Agreement shall survive closing.

d. Waiver, Modifications. Failure by either party to insist upon or enforce any of its rights shall not constitute a waiver thereof. No oral modification hereof shall be binding upon the parties, and any modification shall be in writing and signed by the parties.

e. Time of Essence. TIME IS OF THE ESSENCE IN THIS AGREEMENT. /
- there is a built in extension period of 45 days after the closing date at no additional charge to buyer.

f. Construction. Each party hereto hereby acknowledges that all parties hereto participated equally in the drafting of this Agreement and that, accordingly, no court construing this agreement shall construe it more stringently against one party than the other.

g. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of South Carolina.

h. Headings. The Article and Section headings as herein used are for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties herein set forth or limit the provisions or scope of any Article or Section.

i. Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or entity may require.

j. Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required. All counterparts shall collectively constitute a single agreement.

k. Assignability. Neither party shall assign its rights or interests in this Agreement without the prior written consent of the other.

l. Brokerage. Each party hereby warrants and represents to the other that it has not employed any broker or agent with respect to this transaction and each agrees to indemnify and hold harmless the other from any commission, expense, loss, or damage, including attorney's fees, the other may incur as a result of a breach of this warranty.

m. Withholding Tax. Seller hereby represents that it is not a foreign person; and is an entity residing in the state of South Carolina, and Buyer is not required to withhold any portion of the Purchase Price payable to Seller under the Internal Revenue Code of 1954, or the Code of Laws of the state of South Carolina as amended.

n. Notices. All notices, requests, consents and other communications hereunder (collectively "Notices") shall be in writing and shall be delivered to the address provided below, or mailed by first class registered or certified United States mail, return receipt requested, postage prepaid, at the following addresses (or such other address as the party receiving Notice may specify for itself by Notice to the other party):

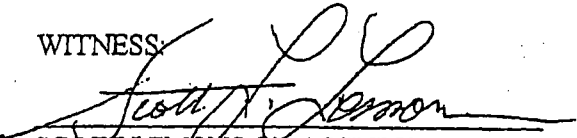
Seller:
John Delduca et al

Buyer:
Scott Lemons or assigns

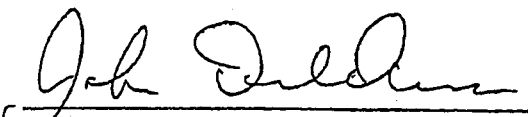
Any Notice so mailed or delivered shall be effective upon delivery. Refusal to accept delivery of any communication shall be deemed to be receipt thereof. All Notices shall be in the English language.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date first above written

WITNESS:


SCOTT LEMONS OR ASSIGNS

Buyer


JOHN DELDUCA ET AL

Seller

I acknowledge receipt of * Dollars (cash/check subject to collection) paid as earnest money hereunder and to disburse earnest money as provided herein.

EXHIBIT A



RE/MAX AT THE COAST
2120 SEA MOUNTAIN HWY., SUITE 2102
NORTH MYRTLE BEACH, SC 29582
843-663-5663 OFFICE



In the event RE/MAX AT THE COAST procures a party ready, willing and able to purchase the following described property:

property Along waterway/waterway as discussed
_____ and

upon terms and conditions acceptable to Owner(s), the Owner(s) agree to pay the RE/MAX AT THE COAST agent at the time of closing a commission of 10 % of the Gross Selling Price agreed upon or as described below:

Given written notice to the Owner(s) from the RE/MAX AT THE COAST agent, including name and address of the party procured, shall suffice for "registration" of procuring party to Owner(s) and shall be binding on Owner(s) unless Owner(s) advise the RE/MAX AT THE COAST agent in writing to the contrary within ten (10) days of the date of the RE/MAX AT THE COAST agent's "registration".

Date: 9/27/06

[Signature]
Owner

Owner

Owner

RE/MAX AT THE COAST
[Signature]
Agent



AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL

1. PARTIES: This legally binding Agreement entered into on OCT. 28 2006
between, Buyer(s), KENNY HYATT, (hereinafter called "BUYER"), and
Seller(s), GOLD COAST RESORTS, (hereinafter called "SELLER"). The
property shall be deeded in the name(s) of Palms @ Marist Cove LLC OR ASSIGNEE

THE BUYER SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the
following described property with improvements and fixtures thereon:

Lot 1ms Block HA Section HA Subdivision HA

Address AS PER TMS #5 - EARLS PLANK RD.

Tax Map # 179-00-03-063 179-10-01-006/005-002 City SOCKETT Zip

County of Horry State of South Carolina.

Seller represents that the property is connected to ☐ public sewer system or to ☐ septic tank or to ☐ public water or
to ☐ well system or to ☐ other N/A

No personal property will convey as a part of this sale, except as described: N/A

3. CONVEYANCE SHALL BE MADE: Conveyance shall be made subject to all easements as well as covenants of record
(provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller
agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except
as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place
of closing, and transaction closed on or before NOV. 23, 2006, not later than 9:00 p.m. Time is of the
essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and
Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. POSSESSION: Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property
free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained
in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear
excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a
separate agreement to be executed prior to closing or occupancy.

5. PURCHASE PRICE shall be \$ 2.9 million
Two million Nine Hundred Ninety Thousand dollars.

6. METHOD OF PAYMENT: Purchase price shall be paid as follows: ☒ Cash; or ☐ Subject to Financing. Financing to
be obtained by ☐ Conventional ☐ Seller ☐ VA ☐ FHA ☐ Other terms:

7. EARNEST MONEY: This offer is accompanied by an earnest money deposit of \$ 10000
Buyer and Seller authorize RENN @ THE COAST, as Escrow Agent, to hold and
disburse earnest money according to the terms of this agreement. Earnest money paid by ☐ Cash, ☐ Check, or ☐ Other.
Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be
deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the
consummation of this sale, the earnest money deposit shall be credited to the Buyer.

[Signature] BUYER ☐ BUYER [Signature] SELLER ☐ SELLER HAVE READ THIS PAGE

FORM 310 PAGE 1 of 6

EXHIBIT E



MCNAIR_GOLD_COAST_00028

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 11.4 % loan (loan-to-value ratio) within 14 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 14 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 18.
FHA Mortgage Insurance [] will [☒] will not be added to the mortgage. VA funding fee [] will [☒] will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.

(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: N/A

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan [] will [] will not be issued at closing. If applicable, the warranty premium will be paid at closing by the [] Buyer or [] Seller not to exceed \$ 11.4

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 2:00 o'clock P M. on 10-25-06 unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 14 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorrations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The [☒] Buyer or the [] Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorrations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

☒ BUYER ☐ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

FORM 310 PAGE 2 of 6

MCNAIR_GOLD_COAST_00029

16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement** (check one)

- ☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).
- ☐ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents has fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by LLP 20 . In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☐ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before Feb 20 . Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer

☒ BUYER ☐ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

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shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.

If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) Repairs: The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) Residential Dwellings Built before 1978: (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on 10/2, 2004. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within 14 days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have 14 days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

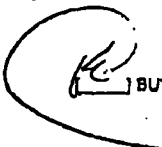
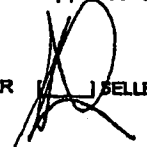
☐ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) Megan's Law: The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) Disclaimer: The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller. Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. APPRAISED VALUE: (check one)

☒ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price.

 ☐ BUYER ☐ BUYER  ☐ SELLER ☐ SELLER HAVE READ THIS PAGE

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18A This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

21. DISCLAIMER BY BROKERS AND AGENTS: The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. COASTAL TIDELANDS & WETLANDS ACT: In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq. South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☒ Buyer's ☐ Seller's expense.

23. MEDIATION CLAUSE. Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. ENTIRE BINDING AGREEMENT: This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. FACSIMILE AND OTHER ELECTRONIC MEANS: The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest ☒ BUYER ☐ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

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earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker [] may [] may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.

28. NON-RELIANCE CLAUSE: Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. CONTINGENCIES: These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) NONE

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER:

Date 10-28-06

Time 6:35

WITNESS:

Date 10-28-06

Time 6:35 pm

BUYER:

Date

Time

WITNESS:

Date

Time

SELLER:

Date 10/28/06

Time 7:30 pm

WITNESS:

Date

Time

SELLER:

Date

Time

WITNESS:

Date

Time

LISTING AGENT AND COMPANY

SELLING AGENT AND COMPANY

SELLING AGENT IS PRESENTING THIS OFFER AS A () BUYER'S AGENT OR () SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT

() BUYER () BUYER () SELLER () SELLER HAVE READ THIS PAGE

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MCNAIR_GOLD_COAST_00033

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A: 2006-CP-26-6300

C.S.E. Enterprises, Inc., d/b/a RE/MAX)
At The Coast and Tom Naomi,)
)

Plaintiffs,)
)

v.)
)

Scott L. Lemons and Gold Coast Resorts,)
LLC,)
)

Defendants.)
)

ANSWER and
THIRD PARTY COMPLAINT

Scott L. Lemons and Gold Coast Resorts,)
LLC,)
)

Third Party Plaintiffs,)
)

v.)
)

Kenny Hyatt,)
)

Third Party Defendant.)
)

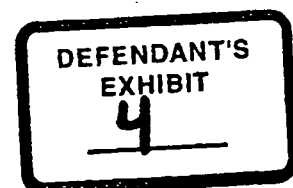
CLERK OF COURT
JAN 17 PM 1:56

The Defendants and Third Party Plaintiffs, Scott L. Lemons and Gold Coast Resorts, LLC, answering the Complaint of the Plaintiff(s), would respectfully show and allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not herein admitted, modified or qualified is denied and strict proof demanded thereof.
2. These answering Defendants admit the allegations contained in paragraph 1, 2, 3 and 4 of the Complaint.

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3. These answering Defendants admit the allegations contained in paragraph 5, 6, 7 and 8 of the Complaint.
4. These answering Defendants admit the allegations contained in paragraph 9 and 10 of the Complaint.
5. These answering Defendants admit all allegations contained in paragraph 11 of the Complaint but for the allegation that these answering Defendants have failed and refused to pay the Plaintiffs their commission as alleged compensation agreement, between the parties, was modified on October 28, 2006, requiring that the transaction be closed prior to the Plaintiffs receiving said commission/ compensation.
6. These answering Defendants admit the allegations contained in paragraph 12 of the Complaint.
7. These answering Defendants deny the allegations contained in paragraphs 13, 14, and 15 of the Complaint and strict proof is demanded thereof.

FOR A SECOND DEFENSE
(Failure To State A Claim)

8. The allegations of the First Defense are incorporated herein and made a part and parcel of this Second Defense.
9. The Plaintiffs' Complaint fails to state a cause of action as a matter of law; therefore, the Plaintiffs' Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Ripeness)

10. The allegations of the above Defenses are incorporated herein and made a part and parcel of this Defense.

11. The Plaintiffs have yet to earn their commission pursuant to the modified terms of the agreement wherein a ten percent (10%) commission would be paid to the Plaintiffs upon closing of the transaction between these answering Defendants and Kenny Hyatt. Given that the transaction has not been closed to date, the Plaintiffs are not entitled to the commission as alleged in the Complaint. Accordingly, the Plaintiff's Complaint is not ripe for adjudication.

FOR A FOURTH DEFENSE and
BY WAY OF THIRD PARTY COMPLAINT
(Breach of Contract)

12. The allegations of the above Defenses are incorporated herein and made a part and parcel of this Defense and Third Party Complaint.
13. The Defendant and Third Party Plaintiff, Scott L. Lemons, is a citizen and resident of Horry County, South Carolina.
14. The Defendant and Third Party Plaintiff, Gold Coast Resorts, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina and doing business in Horry County, South Carolina.
15. The Third Party Defendant, Kenny Hyatt, is a citizen and resident of Horry County, South Carolina.
16. On or about October 28, 2006, the Third Party Plaintiffs and Third Party Defendant entered into that certain Buy and Sell Agreement where the Third Party Plaintiffs agreed to sell and Third Party Defendant agreed to purchase the property described by Horry County Tax Map #179-00-03-063, 179-10-01-006/005/002 for the sum of \$2.9 million dollars with closing to occur on or before October 23, 2006, no later than 9:00 p.m., with time being of the essence. A copy of the said Buy and Sell Agreement entered into

between the Third Party Plaintiff and the Third Party Defendant is attached hereto as Exhibit A and incorporated herein.

17. The Buy and Sell Agreement entered into by the parties maintains no contingencies upon which the closing was preconditioned.
18. On November 24, 2006, Kenny Hyatt informed Tom Naomi, the dual real estate agent for the Third Party Plaintiff and the Third Party Defendant, that he was ready, willing and able to close the transaction. However, Mr. Hyatt has failed and refused to close said transaction with the Third Party Plaintiffs.
19. The October 28, 2006, Buy and Sell Agreement is a binding contract between the parties.
20. The Third Party Defendant has breached the Contract by failing to close upon said transaction in contravention of the express terms of the Contract.
21. As a direct and proximate result of the Third Party Defendant's breach of contract, the Third Party Plaintiffs have been damaged in that they have failed to receive the purchase price for the property which was contracted for between the parties.

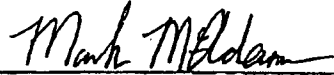
FOR A FIFTH DEFENSE and
BY WAY OF THIRD PARTY COMPLAINT
(Specific Performance)

22. The allegations of the above Defenses are incorporated herein and made a part and parcel of this Defense and Third Party Complaint.
23. On October 28, 2006, the Third Party Plaintiff's and the Third Party Defendant entered into a certain Buy and Sell Agreement wherein the Third Party Defendant agreed to purchase the property described by Horry County Tax Map #179-00-03-063, #179-10-01-006/005/002. (Exhibit A).

24. A valid contract exists between the parties concerning the parties mutual obligations to sell/ purchase the aforementioned properties.
25. The provisions of Exhibit A specifically provide for the manner and time of payment in order to have sufficient definiteness to be enforceable by either the Third Party Plaintiff and/or Third Party Defendant.
26. The Third Party Plaintiff has, in good faith, reasonably and diligently complied with all matters and substance within the requirements of Exhibit A.
27. The Third Party Plaintiff has been ready, willing and able to tender performance and close on the aforementioned property even though the Third Party Defendants have failed to close upon the property pursuant to the express terms of Exhibit A.
28. The Third Party Plaintiff has no adequate remedy in law and specific performance in accordance with Exhibit A is equitable between the parties.
29. The Third Party Plaintiff has fully performed in accordance with Exhibit A and is entitled to specific performance in accordance with the terms and conditions therein.
30. The Third Party Plaintiff, further, seeks to recover specific damages that will actually and consequently flow from the Third Party Defendant's refusal to purchase the aforementioned property in accordance with the Terms and Conditions of Exhibit A.

WHEREFORE, having answered the Complaint of the Plaintiff, the Defendant and Third Party Plaintiffs pray that the same be dismissed, that the Defendant/ Third Party Plaintiffs receive an Order from the Court enforcing the Contract between the Third Party Plaintiffs and the Third Party Defendant or in the alternative, for a judgment against the Third Party Defendants for actual damages, special damages, attorneys fees, the cost of this action, and for such other and further relief as this Court may deem just proper.

McNAIR LAW FIRM, P.A.



Mark McAdams

SC Bar #15785

P.O. Box 336

Myrtle Beach, South Carolina 29578

Phone: 843-444-1107

Fax: 843-443-9137

Attorneys for Defendant and

Third Party Plaintiff

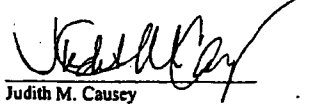
Date: January 17, 2007
Myrtle Beach, South Carolina

I, Judith M. Causey, an employee
of the McNair Law Firm, P.A.,
certify this document was served
via United States Mail with
sufficient postage attached to the
individual as follows:

ADDRESSED TO:

Phillip C. Thompson
PO Box 1533
Conway, SC 29526

Roger Roy
PO Box 4086
N. Myrtle Beach, SC 29597



Judith M. Causey

Date: January 17, 2007
Myrtle Beach, South Carolina

MYRTLEBEACH 93128v1

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EXHIBIT A



**AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL**

1. **PARTIES:** This legally binding Agreement entered into on OCT. 28, 2006,
between, Buyer(s), KENNY HYATT, (hereinafter called "BUYER"), and
Seller(s), GOLD COAST RESORTS, (hereinafter called "SELLER"). The
property shall be deeded in the name(s) of Palms & Marsh Cove LLC OR ASSIGN

THE BUYER/SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE

2. **PROPERTY TO BE SOLD:** Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the
following described property with improvements and fixtures thereon:

Lot 7ms Block N/A Section N/A Subdivision N/A

Address AS PER TMS #3 - EARL PLAZA RD.

Tax Map # 174-00-03-063 174-10-01-006/005-002 City SOCKETT Zip _____

County of Horry, State of South Carolina.

Seller represents that the property is connected to ☐ public sewer system or to ☐ septic tank or to ☐ public water or
to ☐ well system or to ☐ other N/A

No personal property will convey as a part of this sale, except as described: N/A

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record
(provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller
agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except
as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place
of closing, and transaction closed on or before NOV. 23, 2006, not later than 9:00 p.m. Time is of the
essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and
Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. **POSSESSION:** Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property
free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained
in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear
excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a
separate agreement to be executed prior to closing or occupancy.

5. **PURCHASE PRICE** shall be \$ 2.9 million
Two Million Nine Hundred Thousand dollars.

6. **METHOD OF PAYMENT:** Purchase price shall be paid as follows: ☒ Cash; or ☐ Subject to Financing. Financing to
be obtained by ☐ Conventional ☐ Seller ☐ VA ☐ FHA ☐ Other terms: _____

7. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of \$ 10,000
Buyer and Seller authorize REMI @ THE COAST, as Escrow Agent, to hold and
disburse earnest money according to the terms of this agreement. Earnest money paid by ☐ Cash, ☐ Check, or ☐ Other
Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be
deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the
consummation of this sale, the earnest money deposit shall be credited to the Buyer.

[Signature] BUYER ☐ BUYER [Signature] SELLER ☐ SELLER HAVE READ THIS PAGE

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THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 11.4 % loan (loan-to-value ratio) within 14 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 14 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.

[] FHA Mortgage Insurance [] will [] will not be added to the mortgage. VA funding fee [] will [] will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.

(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: 11.4

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan [] will [] will not be issued at closing. If applicable, the warranty premium will be paid at closing by the [] Buyer or [] Seller not to exceed \$ 214

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 2:00 o'clock P. M. on 10-27-06 unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 14 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The [] Buyer or the [] Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-1 580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in that said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder or of terminating this Agreement.

[Signature] BUYER [] BUYER [] SELLER [] SELLER HAVE READ THIS PAGE

FORM 310 PAGE 2 of

MCNAIR_GOLD_COAST_00046

16. DEFAULT: If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. ACTUAL COST INCURRED shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. SURVEY, TITLE EXAMINATION, AND INSURANCE: The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. CONDITION OF PROPERTY:

(A) Seller's Property Condition Disclosure Statement: (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☐ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and a affiliated agents has fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by 11/2, 2006. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☐ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before 11/2, 2006. Time is of the essence. If Buyer responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer

☒ BUYER ☐ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

FORM 310 PAGE 3 of

MCNAIR_GOLD_COAST_00047

earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker [] may [] may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.

28. NON-RELIANCE CLAUSE: Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. CONTINGENCIES: These stipulations shall preempt printed matter herein (attach and reference addendum if necessary) NONE

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: [Signature]
WITNESS: [Signature]

Date 10-28-06 Time 6:35
Date 10-28-06 Time 6:35

BUYER: [Signature]
WITNESS: [Signature]
SELLER: [Signature]
WITNESS: [Signature]

Date _____ Time _____
Date _____ Time _____
Date 10/28/06 Time 7:30pm
Date _____ Time _____

SELLER: _____
WITNESS: _____

Date _____ Time _____
Date _____ Time _____

LISTING AGENT AND COMPANY _____

SELLING AGENT AND COMPANY _____

SELLING AGENT IS PRESENTING THIS OFFER AS A [] BUYER'S AGENT OR [] SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT [Signature]

☒ BUYER ☐ BUYER ☐ SELLER ☐ SELLER HAVE READ THIS PAGE

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE #: 2006-CP-26-6300

C.S.E. ENTERPRISES, INC., d/b/a)
RE/MAX At The Coast and Tom)
Naomi,)

Plaintiff(s),)

Vs.)

SCOTT L. LEMONS and Gold)
Coast Resorts, LLC,)

Defendant(s).)

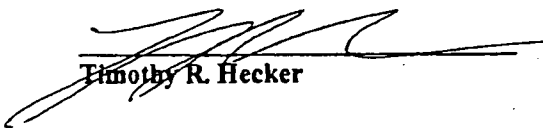
AFFIDAVIT OF SERVICE

Timothy R. Hecker, being duly sworn, says that he served:
THIRD PARTY SUMMONS, ANSWER AND THIRD PARTY COMPLAINT W/EXHIBIT A

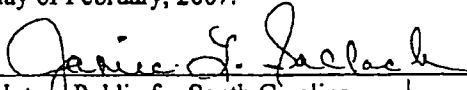
in the above referenced action on:

KENNY HYATT

by delivering copies of same to him personally at 12:20 PM on the 31st day of January, 2007
at 116 Highway 17 North, Little River in Horry County SC 29566; and deponent is not a party to
the action.


Timothy R. Hecker

SWORN to before me this 1st
day of February, 2007.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 9/14/2011

FILED
HORRY COUNTY
07 FEB -6 PM 1:10
MELANIE HUGGINS
CLERK OF COURT

MCNAIR_GOLD_COAST_00051

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

C.S.E. ENTERPRISES, INC., d/b/a RE/MAX
AT THE COAST and TOM NAOMI
Plaintiff(s),

vs

SCOTT L. LEMONS and GOLD COAST RESORTS, LLC,
Defendant(s).

SCOTT L. LEMONS and GOLD COAST RESORTS, LLC,
Third Party Plaintiffs

v.

KENNY HYATT,
Third Party Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2007-CP-26-6300
2006

AFFIDAVIT OF SERVICE

FILED
CLERK OF COURT
2008 FEB - 8 PM 1:30
HORRY COUNTY

The undersigned Catherine McMahon, being sworn says that he/she served the

() Subpoena

() Amended Notice of Deposition

In this action on the Defendant, DAVID HYATT by delivering same to:

() the Defendant, David Hyatt personally;

() _____, a person of discretion residing (note relation of (Defendants)
at the Defendant's residence;

and leaving with him/her one (1) copy of the same at 4659 River Rd, Little River
SC at 6:06 am/pm on the 20 day of Jan, 2008 and that he knows the
person so served to be the Defendant, mentioned and described in the pleading(s) served, and that the Deponent is
not a party to nor interested in this action.

Catherine McMahon

Catherine McMahon - Process Server
American Process Service & Investigations, Inc.

SWORN to before me this 22

day of JANUARY, 2008

[Signature]
Notary Public for the State of North Carolina

My Commission Expires: My Commission Expires May 3, 2012

MCNAIR_GOLD_COAST_00052

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2006-CP-26-6300

C. S. E. Enterprises, Inc.,
d/b/a RE/MAX At The Coast
and Tom Naomi
Plaintiffs,

v.

Scott L. Lemons and Gold
Coast Resorts, LLC

Defendants.

Scott L. Lemons and Gold
Coast Resorts, LLC

Third Party Plaintiffs

v.

Kenny Hyatt,

Third Party Defendant)

AFFIDAVIT OF MAILING

FILED
HORRY COUNTY
2009 FEB 27 PM 2:56
MELANIE HUGGINS
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Maryellen Comtois, who being first duly sworn
deposes and says:

1. That she is a secretary for Thompson & Henry, P.A., the Attorneys
representing the Plaintiff C.S.E. Enterprises, Inc. et. al. in the above captioned action;

2. That regular communication by mail exists throughout the State of South
Carolina and the United States and that this is a proper circumstance for service by mail;

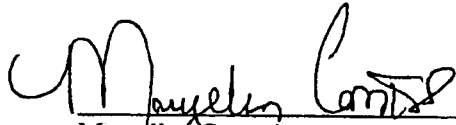
3. That Plaintiff's Answer to Third Party Defendant's Interrogatories, Request
to Produce and Affidavit of Mailing were served upon the hereinafter addressees, as Attorneys for
the Defendant, by depositing same in the United States Post Office, at Conway, South Carolina, on

MCNAIR_GOLD_COAST_00053

the 26th day of February, 2008, with the proper address thereon, prepaid in full.

ADDRESSEES:

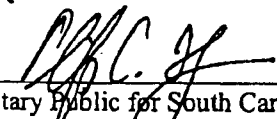
Jeffrey L. Payne
Turner Padgett Graham & Laney
P.O. Box 5478
Florence, SC 29502



Maryellen Comtois

Sworn to before me this

26 day of February, 2008.

 (L. S.)
Notary Public for South Carolina

My Commission Expires: 4/21/10

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A: 2006-CP-26-6300

C.S.E. Enterprises, Inc., d/b/a RE/MAX
At The Coast and Tom Naomi,

Plaintiffs,

v.

Scott L. Lemons and Gold Coast Resorts,
LLC,

Defendants.

SUMMONS

Scott L. Lemons and Gold Coast Resorts,
LLC,

Third Party Plaintiffs,

v.

Kenny Hyatt,

Third Party Defendant.

FILED
JAN 17 PM 1:56
CLERK OF COURT

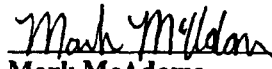
TO: THE THIRD PARTY DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Third Party Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Third Party Complaint on the Third Party Plaintiff's attorneys, McNair Law Firm, P.A., 2411 Oak Street, Suite 206, Myrtle Beach, South Carolina 29577, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Third Party Complaint within the time aforesaid, the Third Party Plaintiff in this action will apply to the Court for the relief demanded in the Third Party Complaint and judgment by default will be rendered against you for the relief demanded in the Third Party Complaint. Your Answer must be in writing and signed by you or by your attorney and you must state your address or address of your attorney, if signed by your attorney.

MYRTLEBEACH 93128v1

MCNAIR_GOLD_COAST_00055

McNAIR LAW FIRM, P.A.



Mark McAdams

SC Bar #15785

P.O. Box 336

Myrtle Beach, South Carolina 29578

Phone: 843-444-1107

Fax: 843-443-9137

Attorneys for Defendant and

Third Party Plaintiff

Date: January 17, 2007
Myrtle Beach, South Carolina

MYRTLEBEACH 93128v1

MCNAIR_GOLD_COAST_00056

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

C.S.E. Enterprises, Inc., d/b/a RE/MAX at The
Coast and Tom Naomi,

Plaintiffs,

v.

Scott L. Lemons and Gold Coast Resorts, LLC,

Defendants.

Scott L. Lemons and Gold Coast Resorts, LLC

Third Party Plaintiffs,

v.

Kenny Hyatt,

Third Party Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
C/A # 2006-CP-26-6300

CERTIFICATE OF SERVICE

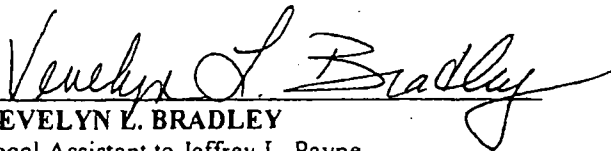
HORRY COUNTY
07 MAR 28 PM 1:48
JENNIFER HUGGINS
CLERK OF COURT

I hereby certify that I have this 27th day of March, 2007, served copies of the foregoing
ANSWER upon counsel of record by mailing copies, postage prepaid, to:

Mark McAdams, Esquire
McNair Law Firm, P.A.
P.O. Box 336
Myrtle Beach, SC 29578

Florence, South Carolina

March 27, 2007


VEVELYN L. BRADLEY
Legal Assistant to Jeffrey L. Payne

FLOR 582327v1

MCNAIR_GOLD_COAST_00057

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2006-CP-26-6300

C.S.E. Enterprises, Inc., d/b/a)
RE/MAX At The Coast and Tom)
Naomi,)
)

Plaintiffs,)
)

vs.)
)

SETTLEMENT AGREEMENT AS TO
CLAIMS INVOLVING KENNY HYATT

Scott L. Lemons and Gold Coast)
Resorts, LLC,)
)

Defendants.)
)

Scott L. Lemons and Gold Coast)
Resorts, LLC,)
)

Third Party Plaintiffs,)
)

vs.)
)

Kenny Hyatt,)
)

Third Party Defendant.)
)



The within case is settled as to the Third Party Defendant Kenny Hyatt only as follows:

1. The Defendant Kenny Hyatt will pay unto the Plaintiffs C.S.E. Enterprises, Inc., d/b/a RE/MAX At the Coast and Tom Naomi the sum of Ten Thousand and NO/100 (\$10,000.00) within one day of the signing of this agreement as a complete settlement of the claims of these Plaintiffs against the Defendant Hyatt and such claim shall be dismissed with prejudice as to Hyatt. The funds shall be delivered to the office of Thompson & Henry Law Firm in Myrtle Beach or Conway.

2 The Defendant Kenny Hyatt will pay unto Scott L. Lemons and Gold Coast Resorts, LLC the sum of Five Thousand and NO/100 (\$5,000.00) within one day of the signing of this agreement as a complete settlement of the claims of Scott L. Lemons and Gold Coast Resorts, LLC and such claims shall be dismissed with prejudice as to

Hyatt. Said funds shall be delivered to Thompson & Henry Law Firm in Myrtle Beach or Conway.

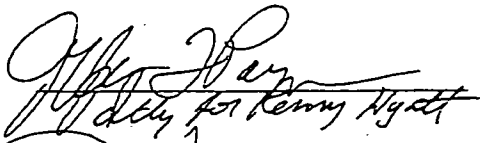
3. The above settled claims will be dismissed with prejudice and each party will pay their own costs. The claims of the above Plaintiff against the Defendant Lemons and Gold Coast shall be referred to the Master in Equity for Horry County for disposition. Each party agrees to execute any additional documents required to dismiss Kenny Hyatt as a party to this action with prejudice, upon compliance with payment.

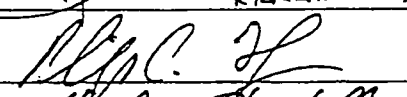
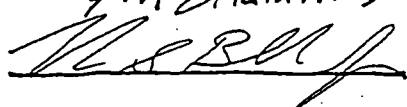
4. The earnest monies of \$10,000.00 shall be immediately paid to the Plaintiffs, by agreement of the parties, and shall not be subject to further claims by any party to this action.

5. Special conditions: Hyatt agrees that he shall have no further claims against any other party to this action.

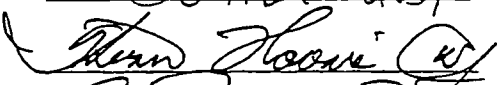
Dated: April 11, 2008

Executed by the respective attorneys for the parties below and intended to reflect a final written settlement pursuant to the South Carolina Rules of Civil Procedure.



Kenny Hyatt

att. for Plaintiffs




Scott Lemons / Gold Coast Resorts

C. Scott [Signature]

MCNAIR LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS AT LAW

M. Mark McAdams
mmcadams@mcnair.net

www.mcnair.net

FOUNDERS CENTRE
2411 OAK STREET, SUITE 206
MYRTLE BEACH, SOUTH CAROLINA 29577

POST OFFICE BOX 336
MYRTLE BEACH, SOUTH CAROLINA 29578
TELEPHONE (843)444-1107
FACSIMILE (843)444-4729

COPY

May 8, 2008

Scott Lemons
Gold Coast Resorts, LLC
2103 Farlow Street, Ste. A
Myrtle Beach, SC 29577

RE: C.S.E. Enterprises, Inc., et.al. v. Scott L. Lemons, et.al.
C/A: 2006-CP-26-6300
Our File No.: 044883.00003

Dear Scott:

Enclosed is the original Mutual Release regarding Third Party Plaintiffs, Gold Coast Resorts, LLC, you and Third Party Defendant, Kenny Hyatt. Please give me a call after you have had an opportunity to review this enclosure.

Thank you for your assistance in this matter.

With kind regards, I remain

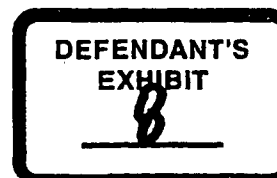
Yours Truly,

McNAIR LAW FIRM, P.A.

M. Mark McAdams

M. Mark McAdams

MMM/jc
encl.



ANDERSON • CHARLESTON • CHARLOTTE • COLUMBIA • GEORGETOWN • GREENVILLE • HILTON HEAD ISLAND • MYRTLE BEACH • RALEIGH

MYRTLEBEACH 110296v1

MCNAIR_GOLD_COAST_00188

MUTUAL RELEASE

KNOW ALL MEN BY THESE PRESENTS that Scott L. Lemons and Gold Coast Resorts, LLC (hereinafter referred to as "Third-Party Plaintiffs") for and in consideration of \$5,000 and the mutual releases contained herein, have released and discharged and by these presents do for ourselves and our successors, heirs, executors, administrators and assigns, release and forever discharge Kenny Hyatt, his insurers, heirs, executors, administrators, assigns, indemnitors and indemnities, masters, agents, servants, successors, and properties (hereinafter referred to as "Third-Party Defendant"), of and from all claims, demands, damages, actions, causes of action or suits at law or in equity, of whatsoever kind or nature, known or unknown, past, present, or future, foreseen or unforeseen, of whatsoever kind or nature, for or because of any matter or thing done, omitted or suffered to be done by said other parties, from the beginning of the world to the date of this agreement, and particularly, but without in any manner limiting the foregoing, including all claims connected with an action pending in the Horry County Court of Common Pleas, entitled, *C.S.E. Enterprises, Inc. d/b/a ReMax at the Coast and Tom Naomi v. Scott L. Lemons and Gold Coast Resorts, LLC v. Kenny Hyatt*, Civil Action No.: 2006-CP-26-6300.

The Third-Party Defendant likewise, does hereby release and forever discharge Third-Party Plaintiffs from any and all claims, counterclaims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever arising out of Third-Party Plaintiffs' actions, or any other matters which have arisen out of said actions from the beginning of time to the execution of this Release.

IT IS FURTHER AGREED that contemporaneous with the execution of this release, all parties will sign an appropriate Stipulation of Dismissal with prejudice in the above-referenced civil case.

IT IS FURTHER AGREED that this Mutual Release is given in settlement of disputed claims for which said parties do not admit liability and this Mutual Release may be pleaded as a complete defense to any action or other proceeding which may be instituted by any party to this action or anyone claiming through them or on their behalf against said other parties.

IT IS FURTHER AGREED, that there are no collateral or outside agreements of any kind between the parties hereto, that said payment is in accord and satisfaction of a disputed claim, and no party admits liability.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2008.

WITNESSES:

Scott L. Lemons

Gold Coast Resorts, LLC

By: _____
Its: _____

Kenny Hyatt

MUTUAL RELEASE

KNOW ALL MEN BY THESE PRESENTS that Scott L. Lemons and Gold Coast Resorts, LLC (hereinafter referred to as "Third-Party Plaintiffs") for and in consideration of \$5,000 and the mutual releases contained herein, have released and discharged and by these presents do for ourselves and our successors, heirs, executors, administrators and assigns, release and forever discharge Kenny Hyatt, his insurers, heirs, executors, administrators, assigns, indemnitors and indemnities, masters, agents, servants, successors, and properties (hereinafter referred to as "Third-Party Defendant"), of and from all claims, demands, damages, actions, causes of action or suits at law or in equity, of whatsoever kind or nature, known or unknown, past, present, or future, foreseen or unforeseen, of whatsoever kind or nature, for or because of any matter or thing done, omitted or suffered to be done by said other parties, from the beginning of the world to the date of this agreement, and particularly, but without in any manner limiting the foregoing, including all claims connected with an action pending in the Horry County Court of Common Pleas, entitled, *C.S.E. Enterprises, Inc. d/b/a ReMax at the Coast and Tom Naomi v. Scott L. Lemons and Gold Coast Resorts, LLC v. Kenny Hyatt*, Civil Action No.: 2006-CP-26-6300.

The Third-Party Defendant likewise, does hereby release and forever discharge Third-Party Plaintiffs from any and all claims, counterclaims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever arising out of Third-Party Plaintiffs' actions, or any other matters which have arisen out of said actions from the beginning of time to the execution of this Release.



IT IS FURTHER AGREED that contemporaneous with the execution of this release, all parties will sign an appropriate Stipulation of Dismissal with prejudice in the above-referenced civil case.

IT IS FURTHER AGREED that this Mutual Release is given in settlement of disputed claims for which said parties do not admit liability and this Mutual Release may be pleaded as a complete defense to any action or other proceeding which may be instituted by any party to this action or anyone claiming through them or on their behalf against said other parties.

IT IS FURTHER AGREED, that there are no collateral or outside agreements of any kind between the parties hereto, that said payment is in accord and satisfaction of a disputed claim, and no party admits liability.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 21 day of May, 2008.

WITNESSES:

Mary Mayson
Debra S. Green

Scott L. Lemons
Scott L. Lemons

Mary Mayson
Debra S. Green

Gold Coast Resorts, LLC

By: Scott L. Lemons
Its: mbs/pwnc

Kenny Hyatt

IT IS FURTHER AGREED that contemporaneous with the execution of this release, all parties will sign an appropriate Stipulation of Dismissal with prejudice in the above-referenced civil case.

IT IS FURTHER AGREED that this Mutual Release is given in settlement of disputed claims for which said parties do not admit liability and this Mutual Release may be pleaded as a complete defense to any action or other proceeding which may be instituted by any party to this action or anyone claiming through them or on their behalf against said other parties.

IT IS FURTHER AGREED, that there are no collateral or outside agreements of any kind between the parties hereto, that said payment is in accord and satisfaction of a disputed claim, and no party admits liability.

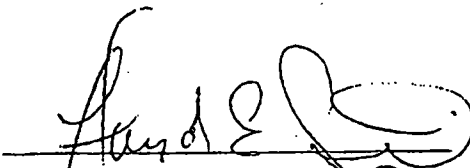
IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2008.

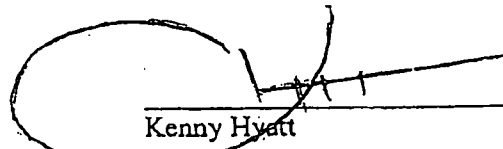
WITNESSES:

Scott L. Lemons

Gold Coast Resorts, LLC

By: _____
Its: _____


Harold E. Ward


Kenny Hyatt

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2006-CP-26-6300

C. S. E. Enterprises, Inc.,)
d/b/a RE/MAX At The Coast)
and Tom Naomi)
Plaintiffs,)

v.)

Scott L. Lemons and Gold Coast)
Resorts, LLC,)
Defendants.)

ORDER

HORRY COUNTY
CLERK OF COURT
08 JUN 18 PM 1:07
MICHELLE HUGGINS

[Handwritten mark]
This action was referred to me, with finality, by Consent Order of Reference dated April 24, 2008, and signed by the Honorable Larry B. Hyman, presiding Judge for the Fifteenth Judicial Circuit, granting me authority to enter a final judgment in the case, with any appeal being directly to the Supreme Court of South Carolina.

The Plaintiffs are represented by Philip C. Thompson, Esquire, of Thompson & Henry, P.A. in Conway, South Carolina, and the Defendants are represented by M. Mark McAdams, Esquire, of The McNair Law Firm, in Myrtle Beach, South Carolina. I find that the court has jurisdiction over the subject matter of this action, as well as the parties, and find that all parties are properly before this court.

This action was commenced by the service of a Summons and Complaint which were filed on December 19, 2006, wherein the Plaintiff alleged that the Defendants breached the terms and conditions of a real estate commission agreement, and sought judgment against the Defendants in the amount of \$290,000.00. The Defendants accepted service of the Summons and Complaint and duly answered, setting forth a general denial and other defenses. The Defendants also initiated a



Third Party Complaint against Kenny Hyatt. The Third Party Defendant, Kenny Hyatt answered the Third Party Complaint and set forth cross claims against the Plaintiffs. After the initial discovery was completed, the Plaintiffs amended their Complaint to allege a direct cause of action against Kenny Hyatt. After the mediation of this matter, on Friday, April 11, 2008, Kenny Hyatt agreed to pay the Plaintiffs the sum of \$20,000.00, and agreed to pay the Defendants the sum of \$5,000.00, in exchange for a Release from the parties and Dismissal from the case.

On March 25, 2008, Plaintiffs filed their Motion for Summary Judgment against Scott L. Lemons and Gold Coast Resorts, LLC. On April 24, 2008, the parties consented to a referral of this matter to me to hear all testimony in this matter and to make a final determination with findings of fact and conclusions of law. I denied Plaintiffs' Motion for Summary Judgment on Tuesday, May 27, 2008. This matter was then tried before me on Tuesday, June 3, 2008.

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The issue presented to the court was whether or not the Defendants, as the Sellers in a real estate transaction, breached their real estate commission agreement with the Plaintiff, as Realtors of the real estate transaction that involved the Real Estate Commission Agreement.

After reviewing the Exhibits, hearing the testimony, and listening to the attorneys' arguments at trial, I find that on or about September 27, 2006, the Plaintiffs and Defendant Scott Lemons did enter into a Listing Agreement wherein and whereby Lemons agreed to pay the Plaintiffs 10% of the gross selling price of approximately 15 acres, more or less on the Intracoastal Waterway in the event the Plaintiffs procured a Buyer (Trial Exhibit 1). The Defendant Lemons held equitable title to the subject property by virtue of a Contract of Sale with John Delduca, et. al. The Listing Agreement was amended on September 28, 2006 to more particularly describe the property and the sales price (Trial Exhibit 2).

Further, I find that Plaintiffs did market the property and procured a Buyer, one Kenny Hyatt,

who entered into an Agreement to Buy and Sell Real Estate dated October 28, 2006, with the Defendant company Gold Coast Resorts, and the Defendants accepted Hyatt as Purchaser of the property (Trial Exhibit 4). On the same date the Defendant Scott Lemons did agree to pay the Plaintiffs a 10% commission upon the close of the subject property with Hyatt (Trial Exhibit 9).

I also find that on the last date scheduled for the closing, November 23, 2006, the Defendants were ready, willing and able to sell the property, but Hyatt failed and refused to close as required pursuant to the terms of the real estate contract.

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Based upon the foregoing, I find and conclude that the Plaintiffs fully performed the requirements of their Real Estate Commission Agreement with the Defendants, and earned their commission when they procured Hyatt, as purchaser, who was accepted by the Defendants, and who entered into a valid and enforceable contract with the Defendants. Both the Plaintiffs and Defendants testified that the commission was earned when the contract was executed. The Plaintiffs, Defendants and Hyatt admitted that the real estate contract was valid and enforceable. The fact that the transaction was not consummated does not defeat the right to compensation. Thomas-McCain, Inc. v. Siter, 268 S.C. 193; 232 S.E.2d 728 (1977). Further, the terms "upon close" included in the Commission Agreement was nothing more than the date when the commission, already earned, should be paid, and did not create a condition precedent to payment. Id.

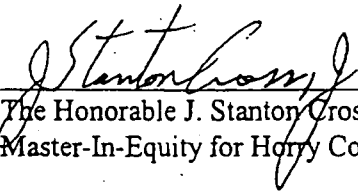
The Defendants argue that the Plaintiffs did not produce a Buyer who was "able" to consummate the transaction. This argument is without merit for several reasons. First of all, there was no requirement in the final Real Estate Commission Agreement, which was handwritten by the Defendants, that the Plaintiffs procure a Buyer who was "ready, willing and able". In such a situation, the Plaintiff is not required to establish that Hyatt was able to consummate the transaction. Eagle Agency, Inc. v. Hucks, 296 S.C. 179; 371 S.E. 2d 5 (Ct. App. 1988). Also, the testimony of

4
Kenny Hyatt established that at the time he entered into the Real Estate Purchase Agreement, he had no intentions of consummating the transaction unless he could find another Buyer to whom he could "flip" the property to, did not have the wherewithal to consummate the transaction and never sought financing for the purchase of the property. He did not disclose this to the Plaintiff or the Defendants at the time he entered into the contract. This conduct violates the covenant of good faith and fair dealing which is included in every contractual agreement in South Carolina, and displays a volitional unwillingness to meet his contractual obligations under the Real Estate Purchase Agreement. Volitional unwillingness, as distinguished from good faith inability, to meet contractual obligations, is not a ground for cancellation of a real estate contract, nor a defense in a breach of contract action. Meisels v. Union Equities Corp., 307 A.D. 2d 144; 761 N.Y. S.2d 48 (N.Y. A.D. 1 Dept., 2003). Lastly, the testimony of Tom Naomi indicated that Kenny Hyatt was a ready, willing and able buyer.

Based on my findings of fact as set forth herein, I conclude that the Plaintiffs are entitled to judgment against the Defendants in the amount of \$290,000.00 for the real estate commissions earned by the Plaintiffs in the transaction between the Defendants and Kenny Hyatt. I further conclude that the Defendants are entitled to a setoff in the amount of \$20,000.00, the amount paid by Hyatt to the Plaintiffs in settling their dispute over this matter. IT IS, THEREFORE,

ORDERED, ADJUDGED, AND DECREED that the Plaintiffs shall have Judgment against the Defendants, Scott L. Lemons and Gold Coast Resorts, LLC, in the sum of \$270,000.00.

AND IT IS SO ORDERED, this the 18 day of June, 2008, at Conway, South Carolina.


The Honorable J. Stanton Cross, Jr.,
Master-In-Equity for Horry County, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

CSE Enterprises, Inc., et.al.

☐ Plaintiff

v.

Scott L. Lemons, et.al.

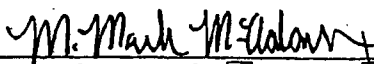
☒ Defendant.

IN THE COURT OF COMMON PLEAS

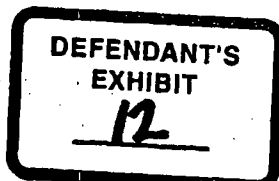
CASE NO.

2006-CP-26-6300

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Phil Thompson, Bar No. Address: Thompson and Henry, Conway, SC phone: fax: e-mail: other:		Defendant's Attorney: M. Mark McAdams, Bar No. 15758 Address: Myrtle Beach, SC phone: fax: e-mail: other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion to Alter or Amend the Judgment Estimated Time Needed: 30 Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted: 6-26-08			
SECTION III: Motion Fee ☒ PAID - AMOUNT: ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)



MCNAIR_GOLD_COAST_00156

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

C.S.E. Enterprises, Inc., d/b/a RE/MAX)
At The Coast and Tom Naomi,)

Plaintiffs,)

v.)

Scott L. Lemons and Gold Coast Resorts,)
LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A: 2006-CP-26-6300

MOTION TO ALTER OR AMEND
THE JUDGMENT

FILED
CLERK OF COURT
JULY 26 2006
PM 1:29

TO: PLAINTIFF, TOM NAOMI, AND HIS ATTORNEY, PHIL THOMPSON, ESQ.:

The Defendants, Scott L. Lemons and Gold Coast Resorts, LLC, hereby moves that this Court alter and amend the judgment issued against the Defendants, Scott L. Lemons and Gold Coast Resorts on June 18, 2008. This Motion is made pursuant to Rules 59(e) and 60 of the South Carolina Rules of Civil Procedure. The Defendants request that the Court alter and/or amend its judgment for the following reasons:

1. The Court erred in holding that the Plaintiff's real estate commission was earned at the time he procured a Contract from a buyer that was financially incapable of closing upon the property during the pendency of the Contract;

2. The Court erred in holding that the real estate commission agreements, prepared by the Plaintiffs, did not require the Plaintiff to procure a purchaser that was "able" to close upon the transaction on November 23, 2006; and,

3. The Court erred in denying the Defendant, Scott L. Lemons', Motion for an Involuntary Non-Suit as to his personal liability. The real estate sales commission was between

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MCNAIR_GOLD_COAST_00157

the Plaintiff and the Defendant, Gold Coast Resorts, LLC, as opposed to Scott Lemons; and therefore, there existed no legally cognizable basis as to holding Mr. Lemons personally liable.

WHEREFORE, the Defendants Scott L. Lemons and Gold Coast Resorts, LLC, respectfully request that this Court reconsider and alter and amend its judgment of June 18, 2006, as set forth above.

McNAIR LAW FIRM, P.A.



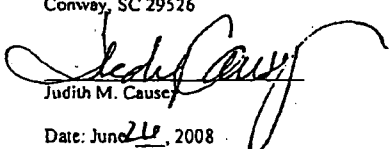
Mark McAdams
SC Bar #15785
P.O. Box 336
Myrtle Beach, South Carolina 29578
Phone: 843-444-1107
Fax: 843-443-9137
Attorneys for Defendants

Date: June 26, 2008
Myrtle Beach, South Carolina

I, Judith M. Causey, an employee
of the McNair Law Firm, P.A.,
certify this document was served
via United States Mail with
sufficient postage attached to the
individual as follows:

ADDRESSED TO:

Phillip C. Thompson
PO Box 1533
Conway, SC 29526



Judith M. Causey

Date: June 26, 2008
Myrtle Beach, South Carolina

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MCNAIR_GOLD_COAST_00158

McNAIR LAW FIRM, P.A.

ATTORNEYS AND COUNSELORS AT LAW

BANK OF AMERICA TOWER
1301 GERVAS STREET, 17TH FLOOR
COLUMBIA, SOUTH CAROLINA 29201

www.mcnairlaw.net

POST OFFICE BOX 336
MYRTLE BEACH, SOUTH CAROLINA 29578
TELEPHONE (843) 444-1107
FACSIMILE (843) 444-1720

August 12, 2008

Via: E-mail & US mail: scottlemons@valion.com

Mr. Scott Lemons
1514 Chianni Lane
Myrtle Beach, SC 29579

Mr. Lemons:

As stated in our earlier telephone conversation, Mark McAdams has resigned from McNair Law Firm.

As a client of McNair Law Firm for whom Mr. McAdams performed services, we are required to notify you of this event. You have the option to direct that your files be released to you or your designee (who may be Mr. McAdams or another attorney). You may also elect to have McNair Law Firm retain your files. Consequently, we are requesting your instructions as to your desired disposition of your files. If you have multiple files with McNair Law Firm, you may wish to treat them differently. In that event, McNair Law Firm will consider your request that McNair Law Firm retain some but not all of your files and will respond to that request promptly. Please indicate your choice below on the enclosed copy of this letter and return the copy to McNair Law Firm in the envelope provided. I would appreciate you also delivering a copy of your response to me via telefax (843-444-3971) or e-mail (lstevens@mcnairlaw.net).

Under the Rules of Professional Conduct, McNair Law Firm is responsible for your files unless you deliver instructions to the contrary. All outstanding costs and fees due McNair Law Firm are required to be paid or adequately provided. McNair Law Firm must obtain a signed receipt from anyone receiving any file on your behalf.

If you wish to speak with Mr. McAdams, he can be reached at 843-424-5382. We had a conversation with Mark a short while ago and he asked that we provide this contact information to you and asked us to encourage you to call him to discuss the pending matters.

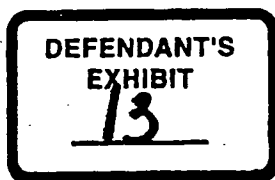
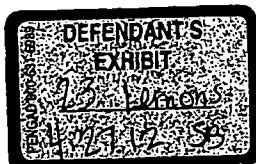
Additionally, I have attached hereto a copy of the Summons and Complaint on the particular matter that we discussed earlier today. This matter is on the trial roster for August 25, 2008 so you need to make arrangements for this matter as quickly as possible. However, opposing counsel has agreed to an order of continuance which will allow you to retain other counsel to prepare for the case. You should be aware that I did not find any evidence of any fee retainer being paid to McNair Law Firm on this file as you had indicated. The only money received by McNair Law Firm to date on this file was the payment of an earlier invoice in the amount of \$1,506.00 for legal services rendered previously.

We look forward to hearing from you.

Very truly yours,
McNAIR LAW FIRM, P.A.

By: Lynn G. Stevens
Lynn G. Stevens

McNair_Sub 01388



ANDERSON • BLUFFTON • CHARLESTON • CHARLOTTE • COLUMBIA • GEORGETOWN • GREENVILLE • HILTON HEAD ISLAND • MYRTLE BEACH

MYRTLEBEACH 113449VI

McNAIR LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS AT LAW

Mr. Scott Lemons

August 12, 2008

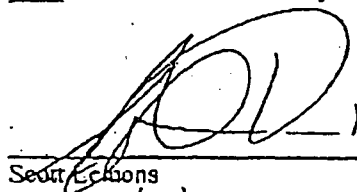
Page -2-

☐ Files to be delivered to client

☒ Files to be delivered to M. Mark McAdams, Esquire

☒ Files to be delivered to Tommy Brittain
(other designee)

☐ Files to be retained by McNair Law Firm, P.A.



Scott Lemons

Date: 8/18/08

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2006-CP-6300

C.S.E. Enterprises, Inc.)
d/b/a RE/MAX At the Coast)
and Tom Naomi)
Plaintiffs,)

v.)

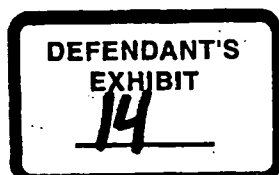
Scott L. Lemons and Gold Coast)
Resorts, LLC,)
Defendants.)

Defendants' Memorandum in Support of
Motion to Alter or Amend the Judgment

To: Plaintiff, Tom Naomi, and his Attorney Phil Thompson, Esq.:

This action was commenced on December 19, 2006, wherein the Plaintiffs alleged that the Defendants breached the terms and conditions of a real estate agreement, and sought judgment against the Defendants in the amount of \$290,000.00. The Defendants duly answered, setting forth a general denial and other defenses, and initiating a Third party Complaint against Kenny Hyatt. The Third Party Defendant Kenny Hyatt, answered the Third Party Complaint and set forth cross claims against the Plaintiffs. The plaintiffs later amended their Complaint to allege a direct cause of action against Kenny Hyatt. After a mediation of this matter, in April of 2008, Kenny Hyatt agreed to pay the Plaintiffs \$20,000.00 and agreed to pay the Defendants \$5,000.00 in exchange for a Release from the parties and a Dismissal from the case.

In March of 2008, Plaintiffs filed a Motion for Summary Judgment against Scott L. Lemons and Gold Coast Resorts, LLC. In April of 2008, the parties consented to a referral of this matter to the Master to hear all testimony in this matter and to make a final determination with findings of fact and conclusions of law. Master Stanton Cross denied the Plaintiff's Motion for Summary Judgment



MCNAIR_GOLD_COAST_00197

on May 27, 2008. The matter was then tried before the Master on June 3, 2008.

The issue presented to the Court was whether or not the Defendants, as the sellers in the real estate transaction, breached their real estate commission agreement with the Plaintiff. The Court ruled in favor of the Plaintiff's and made the following findings:

1. The Plaintiff's and Defendant Scott Lemons entered into a listing Agreement wherein and whereby Lemons agreed to pay the Plaintiff's 10% of the gross selling price of 15 acres in the event the Plaintiff's procured a buyer.

2. The Plaintiff's marketed the property and procured a buyer, Kenny Hyatt, who entered into an Agreement to Buy and Sell Real Estate dated October 28, 2006, with the Defendant company Gold Coast Resorts, LLC and the Defendants accepted Hyatt as purchaser of the property.

3. On that same date (October 28, 2006), the Defendant Scott Lemons agreed to pay the Plaintiff's a 10% commission **upon the close of the subject property with Hyatt.**

4. On the last date scheduled for the closing, November 23, 2006, the Defendants were ready, willing and able to sell the property, but Hyatt failed and refused to close as required pursuant to the terms of the real estate contract.

The Court concluded that the Plaintiffs fully performed the requirements of their Real Estate Commission Agreement with the Defendants and earned their commission when they procured Hyatt as a purchaser. The Court relied on case law, including Thomas-McCain, Inc. v. Siter, 268 S.C. 194; 232 S.E.2d 728 (1977), to support its finding that the commission was due even though the transaction was never consummated, and that the terms "upon close" included in the Commission Agreement were nothing more than the date when the commission, already earned, should be paid, and that this phrase did not create a condition precedent.

Moreover, the Court disagreed with the Defendant's argument that Kenny Hyatt was not a

ready, willing and able buyer. The Court concluded that although Kenny Hyatt testified he had no intentions of closing the transaction unless he could "flip" the property, this type of volitional unwillingness is not a ground for cancellation of a real estate contract, nor a defense in a breach of contract action. Therefore, the Court found that the Plaintiffs were entitled to judgment against the Defendants in the amount of \$290,000.00.

Defendant, Scott Lemons, filed a motion to alter or amend the judgment under Rules 59(e) and 60 of the SCRPC on June 26, 2008. Accordingly, the Defendant requests that the Court alter and/or amend its judgment for the following reasons:

1. The Court erred in holding that the Plaintiff's real estate commission was earned at the time he procured a Contract from Kenny Hyatt because the Commission Agreement stated that the 10% Commission was "upon close of the transaction."

The Court correctly stated the general rule regarding brokers, "ordinarily, a broker has earned his commission when he procures a purchaser who is accepted by the owner of the land and with whom the owner, uninfluenced by any misrepresentation or fraud of the broker, enters into an enforceable contract....such right is not defeated by failure of the purchaser to consummate the contract." Hamerick v. Cooper River Lumber Co., 223 S.C. 119; 7 S.E.2d 575.

However, the Court overlooked other applicable case law which holds, "It is equally well settled that the broker and owner may make the payment of the broker's commission dependent upon the full performance of the contract of purchase for sale, or make the broker's right to the commission contingent upon the happening of future events. Id. at 577. Moreover, promises to pay a broker's commission for selling real estate have been held to be conditional when expressed to be performed, 'on the date of passing of title,' 'when the sale is completed,' 'at settlement,' 'when the sale is consummated,' at the time of settlement, and 'upon closing title.'" Id. at 577, 578. In

Hamerick v. Cooper River Bridge, the contract provided that seller was to pay broker a commission of 10% on the date of settlement. The Court reasoned that the words "'on the date of settlement' as used in the contract were intended to make liability for commissions contingent upon the payment of the purchase price and the closing of the transaction. This is the meaning the contract would have conveyed to the ordinary businesses man and no good reason appears why it should not be given that construction. The parties clearly did not contemplate that in executing this contract, there arose an absolute obligation on the part of the seller whether the sale was ever consummated." Id. at 578.

In this case, the Court found that the Commission Agreement reflected that Scott Lemons agreed to pay Plaintiffs' their commission "upon close of the transaction." These words "upon close of the transaction," were intended to make the payment of a commission contingent upon the payment of the purchase price and hence, the closing of the transaction. As the Court reasoned in Hamerick v. Cooper River Bridge, an ordinary business man would interpret this phrase as meaning the commission is contingent upon the transaction actually closing. It does not make sense to hold that the Seller, who is not the party unwilling to close, is still obligated to pay 10% of a purchase price, that was never paid, and for a transaction that was never closed.

2. The Court also erred in finding that the Plaintiffs' procured a ready, willing, and able person to purchase the property.

The Commission Agreement drafted by ReMax, and signed by Tom Naomi, agent for ReMax, as well as Scott Lemons, specifically states "in the event ReMax at the Coast procures a party ready, willing, and able to purchase the property...." it will receive a commission of 10% of the selling price. In Huffines Company, LLC v. Lockhart, the South Carolina Court of Appeals held, "each of the words, 'ready, willing,' and 'able' express an idea that the others do not convey. All three of these elements must exist in the customer, in order to entitle the broker to a commission.

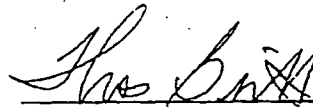
It is not sufficient that the customer is ready and willing, he or she must also have the ability to carry out the loan. The procurement of a ready, willing and able purchaser involves not only showing that the purchaser has the financial ability to complete the contract, but also that the purchaser is **ready and willing to purchase.**" Lockhart, 365 S.C. 178, 617 S.E.2d 125. (Emphasis added).

In this case, Kenny Hyatt, was not ready or willing to purchase the property. He testified, in his deposition, that he only intended to purchase the property if he could "flip it," i.e. find a subsequent purchaser to sell it to. The Court found that "volitional unwillingness as distinguished from good faith inability to meet contractual obligations, is not a ground for cancellation of a real estate contract." See Order, Meisels v. Union Equities Corp., 307 A.D. 2d 144; 761 N.Y. S.2d 48.

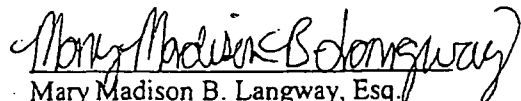
First and foremost, the Meisels case is not binding on this Court, as it was decided by the New York State Court. Additionally, the case speaks to the grounds for cancelling a contract, which is not an issue here. This case is not about whether the Buyer was proper in failing to follow through with the contract; rather this case is about whether the Broker, fulfilled its part of a Commission Agreement, in providing a buyer that did not intend on closing the transaction.

WHEREFORE, the Defendants Scott L. Lemons and Gold Coast Resorts, LLC respectfully request this Court reconsider and alter or amend its judgment of June 18, 2006 as set forth above.

Hearn, Brittain, & Martin, P.A.



Thomas C. Brittain, Esq.



Mary Madison B. Langway, Esq.
ATTORNEYS for DEFENDANTS

MCNAIR_GOLD_COAST_00201

4614 Oleander Dr.
Myrtle Beach, SC 29577
(843) 449-8562

November _____, 2008
Myrtle Beach, South Carolina

MCNAIR_GOLD_COAST_00202

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
) THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) CIVIL ACTION NO. 2006-CP-26-6300

C. S. E. Enterprises, Inc.,
d/b/a RE/MAX At The Coast
and Tom Naomi

Plaintiffs,

vs.

Scott L. Lemons and Gold Coast
Resorts, LLC,

Defendants:

ORDER

FILED
HOBBS COUNTY
2000 DEC 10 PM 2:48
MELANIE HUGGINS
CLERK OF COURT

This action was referred to Judge J. Stanton Cross, Jr. by Consent Order of Reference dated April 24, 2008 to enter Final Judgment, any appeal directly to the Supreme Court of South Carolina. An Order was entered by Judge Cross on the 18th day of June, 2008. A timely Motion For Reconsideration was filed by the Defendant Scott Lemons and based on the temporary absence of Judge Cross, the matter was heard by Interim Master In Equity, Ralph P. Stroman.

The Plaintiffs were represented at both hearings by Phillip C. Thompson, Esquire of Thompson & Henry, P.A. in Conway, South Carolina and the Defendant was represented by Thomas C. Brittain, Esquire and Mary Madison Langway, Esquire of Hearn, Brittain & Martin, P.A. in Myrtle Beach, South Carolina. (Gold Coast Resorts, LLC had been dismissed earlier)

As to the Motion For Reconsideration, pursuant to South Carolina Rules of Civil Procedure, Rule 59(c), the Court considered only the original pleadings and all attachments and/or exhibits thereto; the Order and Findings of Judge Cross at the earlier proceeding and the arguments of counsel. No other additional evidence was considered by the Court or accepted as evidence over any

**DEFENDANT'S
EXHIBIT**

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objection. Defendant asserted the Court misunderstood and failed to fully consider several issues raised at trial Rule 59(e), South Carolina Rules of Civil Procedure and SC Lawyer 2007, Article 13, *Should I stay or should I go? Deciding whether to appeal or file a Motion to Reconsider* by David Proffit.

The Plaintiff originally sought judgment against the Defendant in the amount of Two Hundred Ninety Thousand Dollars (\$290,000.00). Earlier a Third Party Complaint was filed against Mr. Ken Hyatt (repeatedly referred to as "the buyer"). Mr. Hyatt answered the Third Party Complaint and set forth cross-claims against the Plaintiffs. At the end of discovery, the Plaintiffs alleged a direct cause of action against Mr. Hyatt. Prior to the hearing before Judge Cross, Mr. Hyatt paid the Plaintiffs Twenty Thousand Dollars (\$20,000.00) and the Defendant Five Thousand Dollars (\$5,000.00) in exchange for a release from the parties and a dismissal from the case.

The trial between these parties occurred on June 3, 2008 before Judge Cross. The Court considered whether or not the Defendant, as a seller in the real estate transaction, breached the Real Estate Commission Agreement with the Plaintiff. The Court found that there was a listing agreement whereby Scott Lemons agreed to pay the Plaintiffs Ten (10%) percent of the gross selling price; further, that the Plaintiffs did market the property and procured a "buyer" to enter into an Agreement to Buy and Sell Real Estate as of October 28, 2006 and that the Defendant accepted Mr. Hyatt as a Purchaser of the property. On that date, a handwritten note expressing an obligation to pay ten (10%) percent by the Defendant was executed stating that the commission would be paid "upon the closing of the subject property". The Court also found that Mr. Hyatt failed and refused to close as required.

The Court found that Mr. Hyatt made clear to all parties the fact that he never intended to consummate the transaction (unless he could find another buyer prior to the closing and "flip" the

property). Further, he made known that he did not have the wherewithal to consummate the transaction and never sought financing for the property.

The Court found the conduct of Mr. Hyatt violated the covenant of good faith and fair dealing which is included in every contractual agreement in South Carolina and displayed a volitional unwillingness to meet his contractual obligation under the agreement.

This Court finds that such a position creates a fraudulent agreement; that Mr. Hyatt is a necessary party to all of the agreements and that his fraudulent misrepresentation to all parties makes the original contract null and void. The finding is that Mr. Hyatt was never a "buyer" regardless of definitions with respect to when a particular commission was earned.

Any other finding would give full force and effect to what was a fraudulent misrepresentation. Furthermore, the parties were aware and recovered money from and released Mr. Hyatt. Therefore, this Court reaches the opposite conclusion from the finding of Judge Cross, based on the same findings of fact, but a different conclusion as to the legal application of those facts to the set of circumstances present here,

Mr. Hyatt was never a legitimate "buyer" under any definition, under law or common sense and therefore no duty to pay a commission results.

It would make little sense for a transaction which never took place, one that both parties knew (even though later) was not going to take place, to result in the obligation of a party (who never received any funds for the sale of real estate to pay a real estate commission of Two Hundred Ninety Thousand Dollars (\$290,000.00) and/or Two Hundred Seventy Thousand Dollars (\$270,000.00). It is therefore ordered and decreed the Defendant Scott Lemons prevails, and that the complaint is hereby dismissed with prejudice.

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Ralph P. Symon, Interim Master in Equity

December _____, 2008
Myrtle Beach, South Carolina.

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

C. S. E. Enterprises, Inc., d/b/a/ RE/MAX at the Coast and Tom
Naomi, Appellants,

v.

Scott L. Lemons and Gold Coast Resorts, LLC, Respondents.

Appeal From Horry County
Ralph P. Stroman, Master-in-Equity

Unpublished Opinion No. 2011-UP-266
Heard December 9, 2010 – Filed June 7, 2011

AFFIRMED AS MODIFIED

Philip Coleman Thompson, of Conway, for Appellants.

Thomas C. Brittain, Mary Madison B. Langway, and Andrew
Preston Brittain, all of Myrtle Beach, for Respondents.

DEFENDANT'S
EXHIBIT

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PER CURIAM: C.S.E. Enterprises, Inc., d/b/a RE/MAX at the Coast and Tom Naomi (collectively Naomi) appeal the order of the interim master holding Naomi was not entitled to a real estate commission. We affirm.

FACTS/PROCEDURAL HISTORY

Scott Lemons secured an option to purchase a fifteen-acre tract of waterfront property from John Delduco. Although Lemons was a realtor, he contacted Naomi, a real estate agent for RE/MAX at the Coast, about marketing the property. On September 27, 2006, Lemons and Naomi executed a listing agreement which provided Lemons would pay Naomi a commission of ten percent of the gross selling price if Naomi procured "a party ready, willing and able" to purchase the property. The next day the parties executed a similar agreement, which provided a more detailed description of the property and set the selling price as \$3,400,000.

In October, a potential purchaser, Kenny Hyatt, contacted Naomi about the property. Hyatt executed a buyer agency contract and a dual agency agreement with Naomi on October 28, 2006. He then made an offer on the property for \$2,900,000, which Lemons accepted that same day. When Lemons signed the purchase agreement, he also hand-wrote and signed an agreement, which provided: "I Scott Lemons agree to pay RE/MAX at the Coast (Ref. Tom Naomi) a 10% commission upon close of the referenced prop. on the waterway approx. 15 ac. with contract for/with Kenny Hyatt." The purchase agreement contained no contingencies and provided for a closing date of November 23, 2006.

Hyatt had intended to immediately resell (flip) the property. When he was unable to find a buyer, he refused to close on the property. Because Hyatt refused to close, Lemons did not exercise his option to purchase the property. On December 19, 2006, Naomi brought this action against Lemons and his company, Gold Coast Resorts, LLC, seeking payment of \$290,000 as the real estate commission. Lemons filed a third-party complaint against Hyatt for breach of contract and specific performance. The action was referred to the master-in-equity, the Honorable J. Stanton Cross. Prior to trial, Hyatt settled with Lemons for \$5,000 and with Naomi for \$20,000.

Judge Cross found Hyatt's testimony established that he had no intention of consummating the transaction unless he could flip the property, did not have the wherewithal to consummate the transaction, and never sought financing for the property. He found this conduct violated the covenant of good faith and fair dealing and displayed a volitional unwillingness to meet his contractual obligations. However, Judge Cross held volitional unwillingness was not a ground for cancellation or a defense in a breach of contract action. Thus, he concluded Naomi had fully performed the requirements of the real estate commission agreement and earned the commission when he procured Hyatt as a purchaser who was accepted by Lemons and who entered into a valid and enforceable contract with Lemons. He granted Naomi a judgment for \$270,000, allowing for a set-off for the settlement paid by Hyatt.

Lemons timely filed a motion to alter or amend. Due to the illness of Judge Cross, the motion was heard by the interim master-in-equity, the Honorable Ralph P. Stroman. Judge Stroman found Hyatt's fraudulent misrepresentation to the parties made the original purchase agreement null and void. Thus, he concluded Hyatt was never a legitimate buyer and no duty to pay a commission resulted. This appeal followed.

STANDARD OF REVIEW

"An action for a broker's commission is an action at law." Springs & Davenport, Inc. v. AAG, Inc., 385 S.C. 320, 325, 683 S.E.2d 814, 816 (Ct. App. 2009). In a law action tried before a master, this court's review is limited to the correction of errors of law, and the findings of fact of the master will not be disturbed upon appeal unless found to be without evidence that reasonably supports the master's findings. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 85-86, 221 S.E.2d 773, 775 (1976). "Where mixed questions of fact and law are presented, the legal conclusions to be drawn are not entitled to the same deference." Springs & Davenport, Inc., 385 S.C. at 325, 683 S.E.2d at 816.

LAW/ANALYSIS

I. Interim Master's Authority

Naomi argues the interim master erred in granting Lemons' motion to alter or amend and reversing Judge Cross without reviewing the trial transcript or recalling witnesses. Naomi never objected to Judge Stroman making his own findings of fact or conclusions of law on the motion to alter or amend, never requested Judge Stroman recall witnesses, and never questioned whether Judge Stroman had reviewed the transcript. Accordingly, this argument is not preserved. See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); see also State v. Oxner, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (2011) ("Even though subject matter jurisdiction may be raised at any time, there is no error preservation exception allowing a party to bypass calling an erroneous ruling to the attention of the tribunal making it before appealing that ruling to a higher court.").

II. Commission

Naomi argues the interim master erred in finding Naomi had not earned his commission. We disagree.

"As a general rule, a broker has earned his commission when . . . he procures a purchaser who is accepted by the owner of the property and with whom the latter, uninfluenced by any representation of fraud on the part of the broker, enters into a valid and enforceable contract." Cass Co. v. Nannarello, 274 S.C. 326, 328,

262 S.E.2d 924, 926 (1980). "[S]uch right to compensation will not be defeated by the failure or refusal of the purchaser to consummate the contract." Id. However, the broker and owner may set their own terms in the contract for the broker's services and "may make the payment of the broker's commission dependent upon the full performance of the contract of purchase or sale, or postpone the payment of the commission, or make the broker's right to the commission contingent upon the happening of future events." Hamrick v. Cooper River Lumber Co., 223 S.C. 119, 124, 74 S.E.2d 575, 577 (1953). "Where the obligation of the principal to pay commissions depends upon the performance of conditions precedent, the broker takes the risk of nonperformance on the part of the customer." Id.

Each of the words "ready," "willing," and "able" expresses an idea that the others do not convey. All three of these elements must exist in the customer, in order to entitle the broker to a commission. It is not sufficient that the customer is ready and willing, but he or she must also have the ability to carry out the loan, sale, purchase, or exchange. So also, the procurement of a ready, willing, and able purchaser by a broker involves not only a showing that the purchaser has the financial ability to complete the contract, but also that the purchaser is ready and willing to purchase at a price and on terms prescribed by the vendor.

The Huffines Co., LLC v. Lockhart, 365 S.C. 178, 191-92, 617 S.E.2d 125, 131-32 (Ct. App. 2005) (quoting 12 C.J.S. Brokers § 225 (2004) (footnotes omitted by court)).

Judge Stroman held Hyatt was not a buyer as contemplated by the parties' agreement and thus no commission was earned. The first two listing agreements provided Naomi earned the commission when he procured a "ready, willing, and able" purchaser. However, the handwritten agreement did not include such a provision.

Where instruments entered into by the same parties at different times relate to the same subject matter, the instruments will be construed together to determine the entire agreement between the parties. If the provisions of one instrument limit, explain, or otherwise affect the provisions of the other, they will be given effect to accomplish the entire agreement between the parties.

Bishop Realty & Rentals, Inc. v. Perk, Inc., 292 S.C. 182, 184-85, 355 S.E.2d 298, 300 (Ct. App. 1987) (citations omitted).

Although the handwritten agreement did not include the "ready, willing, and able" language, we find that in construing all of the instruments together, Naomi was required to procure a "ready, willing, and able" purchaser to earn the commission. We further find Hyatt did not meet this description.

Naomi testified he believed Hyatt had the financial means to close the transaction because according to the tax records, Hyatt owned many other properties, including ones on the waterway. However, the record contains no evidence that Hyatt had \$2,900,000 available on the date of the closing. Hyatt testified that when he entered into the sales contract, he did not have the financial ability to close on the property. He stated he could not close on the property without being able to flip it to another buyer and never found a buyer. He explained he believed he would only lose his \$10,000 earnest money by defaulting on the contract.

We find Hyatt was not ready, willing, or able to purchase the property. Thus, Naomi did not procure a ready, willing, and able buyer and did not earn a commission.

Naomi's counsel stated at oral argument Lemons had admitted Hyatt was a ready, willing, and able buyer in his answer. In his complaint Naomi alleged: "On or about October 28, 2006, the Plaintiff procured a buyer, Kenny Hyatt, as a party ready, willing and able to purchase the property" Lemons admitted this allegation in his answer. Naomi never asserted at trial Lemons was bound by the admission in the answer and the issue of whether Hyatt was a ready, willing, and able buyer was contested at trial. We find Naomi's argument concerning the admission in Lemons' answer is not properly before this court and furthermore, the issue of whether Hyatt was in fact a ready, willing, and able buyer was tried by consent. See Wilder Corp., 330 S.C. at 76, 497 S.E.2d at 733 ("It is axiomatic that an issue cannot be raised for the first time on appeal,

but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); McCurry v. Keith, 325 S.C. 441, 447, 481 S.E.2d 166, 169 (Ct. App. 1997) ("When issues not raised in the pleadings are tried by consent, they will be treated as if they had been raised in the pleadings.").

Naomi's counsel also asserted at oral argument Lemons's counsel acknowledged at the hearing before Judge Stroman that Lemons believed Hyatt was a ready, willing, and able buyer. In our review of the hearing, we find Lemons's counsel did not concede Hyatt was a ready, willing, and able buyer. Instead, he was explaining Lemons's belief at the time Lemons entered into the handwritten agreement. Lemons' counsel clearly argued at the hearing that Hyatt did not fit the definition of a ready, willing, and able buyer. Thus, we find no merit to this argument.

III. Consideration of Settlement with Hyatt

Naomi argues the interim master erred in considering the partial settlement between the parties. Hyatt settled with Lemons for \$5,000 and with Naomi for \$20,000. Judge Cross's order mentioned the settlement in allowing for a set-off from his award to Naomi.

Naomi failed to raise this issue to Judge Stroman. Accordingly, it is not preserved. Wilder Corp., 330 S.C. at 76, 497 S.E.2d at 733 ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

IV. Gold Coast as a Party

Naomi argues the interim master erred in finding that Gold Coast Resorts, LLC, had been dismissed from the case. In listing the attorneys who represented the parties at the hearing on the motion to alter or amend, Judge Stroman noted: "Gold Coast Resorts, LLC, had been dismissed earlier." In his brief, Lemons acknowledges that Gold Coast Resorts, LLC, is still a party to the action. Accordingly, the master's order is modified to reflect Gold Coast Resorts, LLC, is still a party to the action.

CONCLUSION

We hold Judge Stroman correctly found Naomi was not entitled to the real estate commission. However, we find Judge Stroman erred in noting Gold Coast Resorts, LLC, had been dismissed from the action. Accordingly, the order of Judge Stroman is

AFFIRMED AS MODIFIED.

HUFF, KONDUROS, and LOCKEMY, JJ., concur.



Scott Lemons

Fortis Consulting INC, MBI Development INC.
Charleston, South Carolina Area Venture Capital & Private Equity

Current	• CFO, Case Manager at Fortis Consulting INC
Past	• CEO at GOLD COAST RESORTS • Realtor at Keller Williams Realty
Recommendations	8 people have recommended Scott
Connections	232 connections

Scott Lemons's Summary

Over two hundred million in real estate transactions in past 10 years. Deal structure and special organization and j/v's over 150mm last 6 years.

Scott Lemons of Myrtle Beach South Carolina has been involved in helping people re structure and walk with them through complex issues stemming from the downturn in the economy. Scott Lemons has lived the past 10 years providing expert representation in complex real estate transactions, as well as private money finance in Myrtle Beach and throughout South Carolina. Scott Lemons of Myrtle Beach, has been able to use his experience of the horrendous economic conditions to work to tailor a client specific plan that could change lives of his clients. His greatest joy comes when his clients take hold of the process and are able to "Pay It Forward". Lemons of Myrtle Beach is a strong advocet of "The Great Recovery" and is involved in Church, Bible Study Fellowship, and other organizations that shall remain anonymous. Lemons continues to help clients on a "Pro Bono" basis on many different occasions bringing Lemons to a new standard in the business world.

Specialties

Equipment Acquisitions, Lawsuit Advance, Sale-Leasebacks, Refinance, Working, Capital, Bridge Loans, Mezzanine Loans, Real Estate Consulting and Finance

Scott Lemons's Experience

CFO, Case Manager

Fortis Consulting INC

May 2010 – Present (1 year 8 months) South Carolina

CEO

GOLD COAST RESORTS

January 2004 – February 2008 (4 years 2 months) Myrtle Beach, South Carolina Area

Realtor

Keller Williams Realty

February 2004 – May 2006 (2 years 4 months)

View Scott Lemons's full profile to...

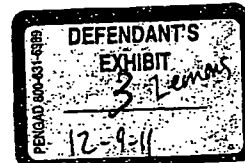
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I Scott Lyons agree to
Pay RE/MAX @ The Coast (Ref. Tom Nouri)
a 10% commission upon close of the
Refinanced Prop. on the under way approx 15a.
w/ contract for/will Tony Hyatt.

X [Signature] 10/28/06

X Amy Love Oglesby 10/28/06

Shed Goyton
839 - 2100

EXHIBIT F



MCNAIR_GOLD_COAST_00117

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry County
Circuit Court

Wanda E. Saragat, Intervenor-Plaintiff-Appellee

Case No. 2006-CV-26-6380

C.S.E. Enterprises, Inc., d/b/a Re/Max at
the Coast and Tom Naomi.....Appellants

vs.

Scott L. Lemons and Gold Coast, LLC.....Respondents.

IN FAVOR OF RESPONDENTS

Wanda E. Saragat, Intervenor-Plaintiff-Appellee
Hanna C. Brinson
JENNIFER BRITTON
Jill Alexander
Wanda Bruch, Sr.
Telephone: (843) 419-8867
Columbia, SC 29204

ATTORNEYS FOR RESPONDENTS

DEFENDANT'S
EXHIBIT

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STATEMENT OF THE CASE

Appellant, Remax at the Coast/ Tom Naomi instituted this action in Horry County on December 19, 2006, against Respondents Scott Lemons and Gold Coast Resorts, LLC, asserting that Mr. Lemons breached a real estate contract and therefore owed Mr. Naomi the sum of \$290,000.00. Respondents answered and filed a third-party complaint against Kenny Hyatt alleging breach of a purchase agreement between Mr. Lemon, Gold Coast as seller, and Mr. Hyatt, as purchaser. Mr. Hyatt entered into a real estate contract to purchase said property and ultimately did not close on this transaction. On May 21, 2008, all parties entered into a settlement agreement whereby Mr. Lemons agreed to dismiss Mr. Hyatt from the lawsuit in exchange for \$5,000, and Mr. Naomi agreed to dismiss Mr. Hyatt in exchange for \$20,000.00.

On June 10, 2008 the remaining parties, tried this case before the Honorable J. Stanton Cross, Jr., Master-in-Equity for Horry County. By Order dated June 18, 2008, Judge Cross awarded Tom Naomi and Remax at the Coast (appellants) \$290,000.00 for the real estate commission earned by the transaction between Mr. Lemons (Respondents) and Kenny Hyatt. Judge Cross also found that Mr. Lemons was entitled to a setoff amount of 20,000.00, the amount paid by Hyatt to the Plaintiffs in settling their dispute over this matter, and therefore ultimately ordered that Tom Naomi shall have a judgment against Mr. Lemons in the amount of \$270,000.00.

Mr. Lemons filed a Motion to Alter or Amend the Judgment on June 26, 2009. By the time this Motion was heard, Judge Cross had taken a leave of absence from the Judiciary and Ralph P. Stroman had been appointed as interim Master-in-Equity for the Horry County. Judge Stroman heard oral arguments on the Motion on November 7, 2008. By Order dated December

10, 2008 Judge Stroman granted Mr. Lemons' Motion to Alter or Amend, reverse the judgment, and dismissed Mr. Naomi's Complaint with prejudice.

Mr. Naomi and his counsel timely filed notice of appeal on March 17, 2009.

FACTS

Scott Lemons paid \$20,000.00 for an option to purchase a large tract of land (approximately 15 acres) in Socastee, South Carolina from a man named John Delduco. (R.135 & 136). In September of 2006, Mr. Lemons began discussing this property with a man named Tom Naomi who worked as a realtor for C.S.E. Enterprises Inc., d/b/a Re-Max at the Coast. (R. 136 & 103). Subsequently, Mr. Lemons and Mr. Naomi entered into a contract whereby Mr. Lemons agreed to pay Remax At The Coast (Mr. Naomi) a commission of 10% of the Gross Selling Price at the time of closing, IF Remax At The Coast procured a party ready, willing and able to purchase said property. (R. 105 & 142). The following day, September 28, 2009, the parties executed another commission agreement, that specified the tax map number for the property and listed the gross selling price as three million four hundred thousand dollars. (R. 106).

Sometime thereafter, Mr. Naomi produced a "Buy-Sell Agreement" to Mr. Lemons, whereby a man named Kenny Hyatt was to purchase said property for two million, nine hundred thousand dollars, and Mr. Lemons agreed to sell the property for said amount. (R. 109-112). Mr. Hyatt executed a dual agency agreement, and then paid a ten thousand dollar earnest money deposit for the property. (R. 112 & 113, & 206) Mr. Lemons signed this Buy/Sell Agreement on October 28, 2006. (R. 114 & 206). At this time, Mr. Lemons drafted a handwritten document stating that he agreed to pay Mr. Naomi a "10% commission upon close of the property on the waterway, approximately 15 acres, with contract with Kenny Hyatt." (R. 219).

The closing of this property did not occur as a result of the Buyer, Kenny Hyatt's, failure to perform under the Agreement. (R. 122-125). On December 19, 2006, Tom Naomi and Remax At The Coast filed a lawsuit against Mr. Lemons and Gold Coast Resorts, LLC for

breach of contract of a real estate commission contract. Mr. Lemons filed an answer and asserted third-party claims against the buyer, Kenny Hyatt. At some point, before the case was tried, Tom Naomi and Mr. Lemons entered into a Settlement Agreement whereby Hyatt paid \$20,000.00 to Mr. Naomi and \$5,000.00 to Mr. Lemons and Mr. Hyatt was dismissed from the lawsuit.

The remaining parties and their attorneys tried this case before the Honorable J. Stanton Cross Jr., Master-in Equity for Horry County. Judge Cross awarded Tom Naomi judgment against Scott Lemons in the amount of two hundred and seventy thousand dollars (\$270,000.00) by written order dated June 18, 2009. Mr. Lemons moved to alter or amend the Order dated June 26, 2008. On November 7, 2008, The Honorable Ralph P. Stroman, as interim Master-in-Equity, heard arguments of counsel as to the Motion to Alter or Amend the Judgment. (R. 183-193) Judge Stroman reversed Judge Cross's ruling by Order dated December 10, 2008 finding the conduct of Mr. Hyatt violated the covenant of good faith and fair dealing and displayed a volitional unwillingness to meet his contractual obligation, thereby creating a fraudulent agreement, and that Mr. Hyatt was never a 'buyer' regardless of definitions with respect to when a particular commission was earned. (R. 13-16). This Appeal followed.

**I. THE MASTER IN EQUITY DID NOT ERR IN GRANTING RESPONDENT'S
RULE 59(e) AND 60 MOTIONS TO ALTER OR AMEND THE JUDGMENT NOR
DID THE MASTER IN ERR IN REVERSING THE PRIOR JUDGMENT
WITHOUT REVIEWING THE TRIAL TRANSCRIPT OR RECALLING
WITNESSES.**

A. Failure to recall witnesses

On November 7, 2009, Judge Stroman heard arguments from counsel on the Motion to Alter or Amend the Judgment. (R. 183-193). At this hearing, Judge Stroman considered the original pleadings and all attachments, all exhibits placed on the record, the order and findings of Judge Cross, and the arguments of counsel. Appellants are correct in stating that Judge Stroman did not recall any witnesses to the stand. However, Appellants did not ask to recall witnesses to the stand. It is not clear, based on Judge Stroman's order whether or not he reviewed the trial transcript. Regardless of whether or not he reviewed the trial transcript, Judge Stroman did not err in failing to recall witnesses or in failing to review the trial transcript. In his order, Judge Stroman states "This Court reaches the opposite conclusion from the findings of Judge Cross, based on the same findings of fact, but a different conclusion as to the legal applications of those facts to the set of circumstances present here." (R. 15). Judge Stroman did not recall any witnesses to the stand because he did not see a discrepancy in the factual findings. He agreed with Judge Cross's findings of fact, as stated in his Order. Respondents were unable to find case law that requires a Judge to recall witnesses to the stand when hearing a Motion to Alter or Amend the Judgment.

B. SCRCR RULE 63

Appellants cite Rule 63 of the SCRCP and Charleston County Department of Social Services v. Father, Stepmother, and Mother, 317 S.C. 283, 454 S.E.2d 307, 310 (1995) for the proposition that “One Judge of the same court cannot overrule another.” However, Rule 63 of SCRCP provides “if by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then the successor judge *may perform* those duties; *but* if the successor judge is satisfied that he *cannot* perform those duties because he did not preside at the trial or for any other reason, he *may* in his discretion grant a new trial.”

In this case, Judge Cross made specific findings of fact. Judge Stroman, looked at the evidence, pleadings, and Judge Cross’s order and determined that he *could* perform the post-trial duties necessary. He took the issue under advisement, and ultimately came to a different conclusion as to the legal application of the facts as to this particular set of circumstances.

Appellants cite, Charleston County Department of Social Services v. Father, Stepmother, and Mother, 317 S.C. 283, 454 S.E.2d 307, 310 (1995) for the proposition that one Judge of the same court cannot overrule another.” However, in Charleston County DSS, the Judge granted a new trial because he *could not* adequately rule on the Motion to Alter or Amend based on what was before him. He ruled that he could not perform the required post-trial duties under Rule 59 because he did not preside at the trial. In Charleston County DSS, the Court looked at whether Judge Mallard abused his discretion in granting a new trial. In reaching its conclusion, the Court examined Judge Mallard’s reasons for granting a new trial. Upon looking at these reasons, it is clear Judge Mallard was not comfortable with the evidence rulings before him and he decided a

new trial must be granted. The South Carolina Supreme Court found that none of his reasons supported the granting of a new trial and that the Judge abused his discretion in doing so.

This appeal before the Court does not involve the same situation. In this case, Judge Cross made specific findings of fact. Judge Stroman, looked at the evidence, pleadings, and Judge Cross's order and determined that he could perform the post-trial duties necessary. Judge Stroman exercised his right under the clause of Rule 63 that reads, "if a judge is unable to perform "post-trial duties," . . . the successor judge *may* perform those duties." Therefore, Charleston County DSS is not applicable to this case, as it pertains to situations in which an interim judge decides he cannot capably perform the post-trial duties, because he was not present at the trial, and therefore grants a new trial.

C. Not Preserved

Finally, even if Judge Stroman erred in handling the post-trial matters pursuant to Rule 63, Appellants did not preserve this argument and therefore have failed to preserve this issue for appeal. Appellants did not raise an objection to Judge Stroman hearing this matter during the motion hearing, or after the motion hearing. Nor did Appellants ask to recall witnesses to the stand or present any other evidence. SC Dept. of Social Services v. Lisa C., 380 S.C. 406, 415, 669 S.E. 2d 647 (SC App 2008). If Appellants believed Judge Stroman to be acting outside of his authority as the interim Master-in-Equity, they should have raised this issue to Judge Stroman and given him a chance to rule on it, whether by way of an objection at the hearing, or by way of a post-hearing motion, after the Order had been signed. State v. Nelson, 331 S.C. 1, 6, 501 S.E.2d 716 (S.C. 1998).

II. THE INTERIM MASTER-IN-EQUITY DID NOT ERR IN HOLDING THAT THE BROKER HAD NOT EARNED HIS COMISSION.

Appellants correctly cite the law in South Carolina as to when a broker has earned his commission. In this state, "as a general rule, a broker has earned his commission when, he procures a purchaser who is accepted by the owner of the property and with whom the latter, uninfluenced by any representation or fraud on the part of the broker, enters into a valid and enforceable contract, and such right to compensation will not be defeated by the failure or refusal of the purchaser to consummate the contract. Cass Co. v. Nannarello, 274 S.C. 326, 328, 262 S.E.2d 924, 926 (S.C. 1980). The key words in the above statement are, "enters into a valid and enforceable contract." Judge Stroman found that the contract was null and void due to Mr. Hyatt's fraudulent misrepresentation to all parties. Therefore, the contract between Mr. Lemons (Respondent) and Mr. Hyatt was not a valid or enforceable contract, and as such, Mr. Naomi (Appellant) did not earn his commission. "In order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the contract." Grant v. Magnolia Manor-Greenwood, Inc., 383 S.C. 125, S.E.2d 435 (S.C. 2009).

Moreover, there are three commission agreements in the record, two of which were prepared on forms generated by Remax At The Coast/ Tom Naomi, wherein the language states, "In the event Remax At The Coast procures a party *ready, willing, and able* to purchase the following described property: Tax Map number, and upon terms and conditions acceptable to Owners, the Owner agrees to pay the Remax At The Coast agent at the time of closing a commission of 10% of the gross Selling Price." (R. 196 & 197). Therefore, Mr. Naomi's obligation was to procure a ready, willing and able person to purchase said property. Mr.

Lemon's obligation was to pay a 10% commission to Mr. Naomi at the time of closing IF, and only if Mr. Naomi fulfilled his obligation to procure a ready, willing, and able buyer. The clause, "in the event," is a condition precedent. Therefore, Mr. Naomi must perform first, and if he fully performs, then Mr. Lemons has an obligation to pay the 10% commission. In this case, Mr. Naomi did not procure a ready, willing, and able buyer, and as such, Mr. Lemons is not obligated to perform his part of the contract. Both Appellants and Respondent agree that Mr. Hyatt, the purchaser, failed to perform and was the reason the closing did not occur. As Judge Stroman found, Mr. Hyatt only intended on closing this property if he could find another purchaser to "flip it to." (R. 14 & 15). Mr. Hyatt testified that he did not have the financial means to consummate the transaction and never even sought financing. (R. 14& 15). Therefore, the court properly found that based on the facts as set forth by Judge Cross, the issue is not when the commission was earned, which has been decided by this Court and the South Carolina Supreme Court several times, but rather the issue here is whether Mr. Naomi fulfilled his part of the obligation in order to earn his commission. The court properly found that Mr. Naomi did not procure a person who was ready, willing, and able; Mr. Naomi did not procure a legitimate buyer. Therefore, he is not entitled to, and did not earn his commission.

As Judge Stroman found in his Order, common sense and the law compel this finding because as he wrote, "any other finding would give full force and effect to what was a fraudulent misrepresentation." (R. 15)

III. THE INTERIM MASTER-IN-EQUITY DID NOT ERR IN CONSIDERING THE PARTIAL SETTLEMENT BETWEEN THE PARTIES.

As the appellants mention in their brief, prior to the trial of this matter, mediation was held between all parties, including Mr. Hyatt. At this meditation, Mr. Namoi agreed to release Mr. Hyatt from the lawsuit upon the payment of twenty thousand dollars (20,000.00). Mr. Lemons agreed to release Mr. Hyatt from the lawsuit upon the payment of Five thousand dollars. The appellants also point out that this Agreement was not mentioned by Counsel at the trial on the merits.

A. RULE 408 SCRE

Counsel mentioned the settlement for the purpose of providing the Interim Master-in-Equity with all the background surrounding this case. Rule 408 of SCRE states that settlement is “not *admissible* to prove liability for or invalidity of the claim or its amount.” Respondent’s Counsel did not admit any evidence of the Settlement Agreement, or any other document referencing the settlement. Counsel’s arguments are not considered evidence. There was no evidence of the Settlement Agreement, therefore Judge Stroman did not violate Rue 408 of the SCRE. (South Carolina Rules of Evidence, Rule 408). Moreover, there is no indication in Judge Stroman’s Order that he used the existence of a partial settlement as proof that Mr. Lemons was or was not liable for the commission. (R. 14 & 15). Finally, even if Judge Stroman improperly allowed mention of a partial settlement, it is harmless error, not reversible error. Appellants have failed to show that this error is prejudicial to the substantial rights of the Appellants. Davis v. Davis, 372 S.C. 64, 641 S.E.2d 446 (Ct. App 2006). Judge Stroman, sitting as the trier of fact and the trier of the law, is aware of what is considered improper evidence and is capable of ignoring such evidence in making his decision.

A. Not Preserved for Appellate Review

The Appellants assert that counsel for Mr. Lemons improperly referred to the settlement at the Hearing on the Motion to Alter or Amend, however counsel for Mr. Naomi made no objection following this alleged improper statement by Lemons' counsel, and did not raise this issue to Judge Stroman at any time. Appellants first raised this issue in their initial brief.

Therefore, this issue was not properly preserved for appellate review. SC Dept. of Social Services v. Lisa C., 380 S.C. 406, 415, 669 SE2d 647 (SC App 2008). Mr. Naomi did not give Judge Stroman an opportunity to rule on that issue. State v. Nelson, 331 S.C. 1, 6, 501 SE2d 716 (S.C. 1998).

**IV. THE INTERIM MASTER-IN-EQUITY ERRED IN FINDING THAT GOLD
COAST RESORTS, LLC HAD BEEN DISMISSED FROM THE CASE.**

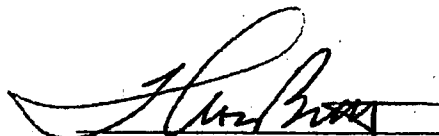
The Order Dated December 10, 2008, does incorrectly state in a parenthetical that Gold Coast Resorts, LLC had previously been dismissed. (R.14). Respondents assume this was an oversight, or a clerical error, since Gold Coasts Resorts, LLC, is listed in the caption.

Respondents agree that Gold Coast Resorts, LLC is still a party to this action.

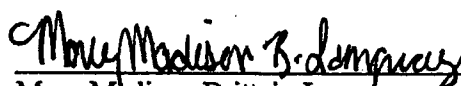
CONCLUSION

The Master's decision to grant Respondent's Motion to Alter or Amend and reverse the judgment, was proper and should be affirmed.

Respectfully submitted,



Thomas C. Brittain



Mary Madison Brittain Langway

HEARN, BRITTAIN & MARTIN, P.A.
4614 Oleander Dr.
Myrtle Beach, SC 29577
Telephone (843) 448-8562
Facsimile (843) 497-6124
ATTORNEYS FOR RESPONDENTS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph. P. Stroman, Interim Master-in-Equity

Case no. 2006-CP-26-6300

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SC Court of Appeals

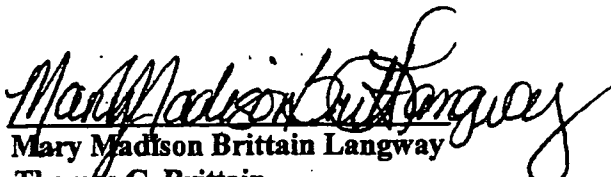
Scott L. Lemons and Gold Coast Resorts, LLC.....Respondents.

vs.

C.S.E. Enterprises, Inc., d/b/a Re/Max at
the Coast and Tom Naomi.....Appellants,

PROOF OF SERVICE

I certify that I have served the Final Brief of Respondents on C.S.E. Enterprises, Inc., d/b/a/ Re/Max at the Coast and Tom Naomi, by depositing a copy of them in the United States Mail, postage prepaid on November 19, 2009, addressed to their attorneys of record, Philip C. Thompson, Esquire, Thompson & Henry, P.A. 1300 Second Avenue, Third Floor, Conway, SC 29528


Mary Madison Brittain Langway
Thomas C. Brittain
HEARN, BRITTAIN & MARTIN, P.A.
4614 Oleander Drive
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Telephone: (843) 449-8562

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Scott Lemons and Gold Coast Resorts, L.L.C.)
)
Plaintiffs,)
v.)
Mark McAdams and McNair Law Firm)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A: _____

AFFIDAVIT OF JOHN FREEMAN

Personally appeared before me John Freeman who first being duly sworn, deposes and states as follows:

1. The undersigned, John P. Freeman, being first duly sworn, gives this affidavit to the Court, and hereby states that the information contained herein is true and correct to the best of my knowledge and belief:

2. Following my graduation from the University of Notre Dame Law School in 1970, I worked at the Jones Day law firm (then known as Jones, Day, Cockley and Reavis). I left Jones Day in 1972 to take a Fellowship at the University of Pennsylvania Law School's Center for Study of Financial Institutions. I subsequently received my LL.M. from Penn Law School. In 1973 I joined the faculty of the University of South Carolina Law School. I retired from USC Law School in 2008 and am not a Professor of Law Emeritus. Besides teaching at USC, I have taught at the University of Texas Law School and Loyola Law School in Chicago. I have also worked for the Securities and Exchange Commission as a special counsel. As a law school professor I have specialized in business courses and legal ethics. I am familiar with lawyer disciplinary proceedings, having participated in the litigation of discipline cases as a

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defense lawyer, consultant to disciplinary counsel, and as an expert witness on various occasions. I have served as a member of the South Carolina Bar's Ethics Advisory Committee and have written various ethics opinions published by the Bar. Before my retirement in 2008, I taught legal ethics for 35 years at USC Law School. I have also taught professional responsibility subjects at numerous CLE programs, and at several JCLE programs. I have served as a litigation consultant, or as a testifying expert in numerous investment-related matters and legal malpractice cases. I have lectured on the standards applicable to lawyers practicing business law and litigation many times, and have written about the topic. I have done the same concerning the field of legal malpractice. I have participated in disputes as to the behavior of lawyers and law firms in handling legal matters and in their dealings with others many times, and have testified as an expert in such cases many times. I have served as an expert witness in cases involving legal malpractice issues and investment and litigation issues many times. My curriculum vitae is attached as Exhibit 1, which further establishes my qualifications.

3. This affidavit is presented under S.C. Code § 15-36-100 which requires, in a complaint against a lawyer, for the plaintiff to file "an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit."

4. I have reviewed the factual allegations being advanced in this matter, hereto and have consulted with both Mr. Lemons and counsel for Plaintiffs who is bringing the subject case against Mr. McAdams and his former law firm.

5. As reflected by the Complaint's allegations, it appears that Mr. McAdams and his law firm engaged in multiple negligent acts and omissions in their representation of Plaintiffs including the following:

- a. Incompetence in handling litigation arising out of an investment transaction;
- b. Failure properly to inform his clients of material facts;
- c. Improper termination of the attorney-client relationship in the Kenny Hyatt matter in a way prejudicial to the clients;
- d. Making false statements of material fact and omitting to state material facts in connection with representation of clients to the clients' prejudice;
- e. Breach of the duty of loyalty;
- f. Failure to protect the clients' interests;
- g. Breach of the duty to act diligently and competently;
- h. In the case of the law firm failure to supervise McAdams' behavior, and failing to supervise office staff;
- i. McAdams in the course of his business, profession, and in the course of his employment with the McNair firm, and in a transaction in which he had a pecuniary interest, supplied false information for the guidance of his clients in the business transactions, causing pecuniary loss caused to his clients by their justifiable reliance upon the information, all while failing to exercise reasonable care or competence in obtaining or communicating the information;

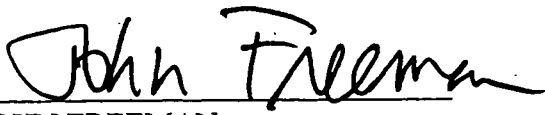
j. In the case of the law firm, failure to have in place proper internal controls to protect against improper actions taken by a lawyer cloaked by the firm with apparent authority.

6. It appears to me that the occurrence of the failings listed above resulted in injury and damage to the Plaintiffs.

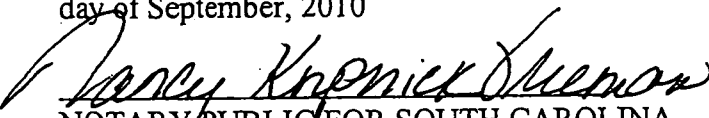
7. In my opinion, Mr. McAdams' conduct fell below the standard of care, skill, diligence and loyalty expected of lawyers in South Carolina. It appears this deficient conduct proximately caused injury to Plaintiffs and constitutes legal malpractice. I believe the law firm is accountable for McAdams' failings by virtue of his status as an employee-agent-partner, and also due to breaches of duty on the part of the firm itself as stated above.

8. Based on the materials available, I hold the foregoing opinions to a reasonable degree of professional certainty as an expert in the field of legal malpractice, and lawyers' duties in dealing with litigation matters.

9. Further affiant sayeth not.


JOHN FREEMAN

SWORN TO BEFORE ME this ¹⁶~~23~~ 24th
day of September, 2010


NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: 7/7/2018

Exhibit 1

RESUME John P. Freeman Professor of Law Emeritus

Address and phone numbers:

2329 Wilmot Avenue
Columbia, South Carolina 29205
803-254-4667 (phone)
753-9870 (fax)

Education history:

LL.M., 1976, University of Pennsylvania Law School; J.D., 1970, University of Notre Dame Law School; B.B.A., 1967, University of Notre Dame (Accounting)

Employment history:

1970-72, Attorney, Jones, Day Law Firm, Cleveland, Ohio

1972-73, Fellow, University of Pennsylvania Law School Center for the Study of Financial Institutions

1973-75, Assistant Professor of Law, University of South Carolina

1974 and 1975 (Summers), Special Counsel, Division of Investment Management, SEC, Washington, D.C.

1975-78, Associate Professor of Law, University of South Carolina; Visiting Associate Professor of Law at Loyola Law School (Chicago) Spring 1977

1978-2008, Professor of Law, University of South Carolina; Visiting Professor of Law at University of Texas Law School, summer 1978

Present:

Distinguished Professor Emeritus and John T. Campbell Chair in Business and Professional Ethics Emeritus

Honors and Awards:

Undergraduate: Member Beta Alpha Psi (Honorary Accounting Fraternity)

Law School: Executive Editor, Notre Dame Lawyer; Distinguished Military Graduate

Professional: At University of South Carolina Law School: Senior Class Annual Outstanding Faculty Award of 1975, 1976, 1977, 1984

Winston Churchill Award, South Carolina Jury Trial Foundation 1995; Distinguished Service Award, South Carolina Trial Lawyers Association 2000; Appointed Member, South Carolina Judicial Merit Selection Commission (presently serving) John Belton O'Neill Inn of Court McDonald/Rhoades Award 2010

Admitted to Practice:

Ohio; South Carolina

Teaching History
Courses Taught:

Professional Responsibility, Legal Accounting, Business Associations, Corporations, Agency-Partnership, Securities Regulation, Corporate Finance, Business Planning, Legal Research and Writing, Business Crime, Legal Malpractice Component of Advanced Legal Profession Seminar

Scholarly and Professional Publications

Author, 1999-2008, Regular Legal Ethics Column for South Carolina Lawyer.

Article (with Stewart Brown and Steve Pomerantz), Mutual Fund Advisory Fees: New Evidence and a Fair Fiduciary Duty Test, 61 Okla. L. Rev. 83 (2008).

Article, The Mutual Fund Distribution Fee Mess, 32 J. Corporation Law 739 (2007).

Viewpoint, Say No to Vending Machine Justice, S.C. Lawyer, July 2007, at 8.

Article, It's the Conflict of Interest, Stupid, Money Mgm't Exec., May 17, 2004, at 14.

Chapter on Legal Opinion Liability in Legal Opinion Letters A Comprehensive Guide to Opinion Letter Practice (M. John Sterba, Jr., ed. 2003) (plus annual updates).

Chapter in South Carolina Damages Treatise on Damages in Securities Cases (2004).

Article, The Ethics of Using Judges to Conceal Wrongdoing, 55 S.C.L. Rev. 829 (2004).

Article (with Stewart Brown), Mutual Fund Advisory Fees: The Cost of Conflicts of Interest, 26 J. Corporation Law 610 (2001).

Article, Liens, Fees and Taxes, South Carolina Trial Lawyer, Summer 2000, at 26.

Article, A Business Lawyer Looks at the Internet, 49 S.C.L. Rev. 903 (1998).

Article, Payments to Medical Care Providers: What Are the Lawyer's Obligations' South Carolina Lawyer, September-October 1994, at 39.

Article, Current Developments in Lawyer Liability: Coping with the Fraudulent Client, Delaware Lawyer, Winter 1993, at 27.

Article, Treble Damage Statutes Can Increase Trust Recoveries, 4 Probate Practice Reporter, June 1992, at 1.

Article (with Nathan Crystal), Scienter in Professional Liability Cases, 42 S.C.L. Rev. 783 (1991).

Article, How Computerized Databases Are Redefining Due Diligence, Carolina Lawyer (July-August 1991).

Article, When Are Lawyers' Gifts to Judges Improper' Carolina Lawyer (November-December 1990).

Article, Current Developments in Legal Opinion Liability, 1989 Col. J. Bus. L. 235.

Article, Understanding the Joint Client Exception to the Attorney-Client Privilege, Carolina Lawyer (July-August 1989).

Article, A RICO Primer, 1985 Small Business Counselor No. 4.

Article, The Use of Mutual Fund Assets to Pay Marketing Costs, 9 Loy. Chi. L.J. 553 (1978).

Article, Marketing Mutual Funds and Individual Life Insurance, 28 S.C.L. Rev. 1 124 (1976), reprinted in Nat'l Ins. L. Rev. Serv. (1977).

Article, Opinion Letters and Professionalism, 1973 Duke L.J. 371 439, reprinted in Securities Law Review 1974 (E. Folk, III, ed.).

Co-author, Multi student Survey, The Mutual Fund Industry: A Legal Survey, 44 Notre Dame Lawyer 732 983 (1969).

Case Comment, *Escott v. BarChris Constr. Corp.*, 44 Notre Dame Lawyer, 122 40 (1968).

Other Scholarly Activities

Speeches (with accompanying outlines) presented at numerous CLE courses sponsored by various entities including the South Carolina Bar, University of South Carolina Law School and the South Carolina Supreme Court.

CLE Presentations 2010-04: KershawHealth Board of Directors, Advice on Your Duties as Board Members, July 15, 2010, Camden, SC; American Ass'n of Matrimonial Lawyers, Ethics in Marital Cases, March 19, 2010 (Aruba), John Belton O'Neill Inn of Court, Ethics Lessons Taught by Lawyers, Nov. 17, 2009; South Carolina Defense Trial Lawyer's Ass'n, Judicial Selection in South Carolina, Nov. 7, 2009; Richland County Bar Ass'n, Legal Ethics, Nov. 6, 2009; South Carolina Legislature Employees, Legal Ethics Update, Oct. 21, 2009; Budget & Control Board, Ethics Lecture to SC State Employees, Oct. 2, 2009; South Carolina Bar, Family Law Ethics Update, Sept. 18, 2009; Motley Rice Law Firm, Legal Ethics Update, Sept. 11, 2009; South Carolina Judicial Selection Commission, Judicial Ethics, July 31, 2009; John Belton O'Neill Inn of Court, Ethics of Advertising Firms, Jan. 20, 2009; S.C. Bar, Ethics Presentation "Business Lawyer Horror Stories, Nov. 21, 2008; Participant, Mutual Fund Industry Regulation Roundtable, Chicago-Kent Law School, Nov. 7, 2008; SC Legislature, Ethical Duties of Legislative Employees, Oct. 2, 2008; SC Bar, Dealing with Ethical Duties When Dealing with Pro Se Parties, Oct. 10, 2008; Richardson Patrick Local Counsel CLE, Litigation Ethics, May 2, 2008 (Charleston, SC); Inst. of Public Utilities, 39th Ann. Reg. Policy Conf., Panel on Equity and Responsibility in the Public Utilities Sector (Charleston, SC), Dec. 3, 2007; S.C. Attorney General's Office; Litigation Ethics, Nov. 9, 2007; Richland County Bar, Ethics Update, Nov. 2, 2007; SC Bar, Litigation Ethics, Oct. 26, 2007; S.C. Children's Law Center, Ethical Problems in the Child Abuse Area, Oct. 19, 2007; National Ass'n of Medicaid Fraud Control Units, Ethics and the Government Lawyer (Savannah, Ga.), Oct. 1, 2007; SCACPA Litigation Conf., Litigation Ethics (Kiawah Island, SC), Sept. 21, 2007; S.C. Circuit Court Judges, May 17, 2007, Practice Tips in Civil Litigation; Energy & Mineral Law Foundation, May 15, 2007, Panel Member, Legal Ethics, 2 hr.; S.C. Government Investigators, Ethical Duties of Investigators, Feb. 23, 2007; S.C. Bar, Employment Law Section, Ethics Update, Jan. 26, 2007; S.C. Association of Counties, Ethics Update, Dec. 8, 2006; Lexington County Bar Ass'n, Ethics Update, Dec. 6, 2006; Richland County Bar, Ethics Update, Nov. 3, 2006; S.C. State Government Lawyers, Ethics Update, Nov. 3, 2006; S.C. Judicial Merit Selection Commission, Overview of Judicial Ethics, Sept. 14, 2006 (½ hr.); Federal Bar Ass'n, SC Bar, Ethics and Professionalism, Sept. 8, 2006; Commercial Law League of America, Avoiding Grievances and Malpractice Worries in Your Practice, July 6, 2006, Asheville, N.C. (2 hours); National Structured Settlement Trade Ass'n, Ethics in Litigation, Westin Rio Mar, Puerto Rico, May 9, 2006; S.C. Chamber of

Commerce, Legal Ethics for the Employment Lawyer, Hilton Head, S.C., May 6, 2006; American Ass'n Matrimonial Lawyers, Ethic Lecture, Los Cabos, Mexico, March 11, 2006; SC Bar, Legal Ethics for Health Care Providers, Jan. 28, 2006; S.C. Association of Counties, Ethics Update, Dec. 9, 2005; SCTLA, Making Money Out of Discovery Abuse, Dec. 2, 2005, Atlanta; Ass'n of S.C. Claimants Attorneys for Workers Compensation, Ethics Seminar, Nov. 4, 2005, Asheville; S.C. Bar, Ethics in Masters Court, Oct. 14, 2005; N.C. Bar-S.C. Bar Construction Law Ethics Program, Asheville, Oct. 1, 2005; S. C. Bar, Unauthorized Practice Problems in Probate Court, Sept. 16, 2005; Greenville County Solicitor's Office, Prosecutorial Ethics, May 9, 2005; Mass Tort Seminar, NYC, Discovery Abuse Issues, March 18, 2005; S.C. Ass'n of Counties, Legal Ethics, Dec. 10, 2004; Federal Bar Ass'n, S.C., Ethics CLE, Dec. 10, 2004 ½ hr.; S.C. Bar Construction Law Section, Ethics CLE on the new Oath; Dec. 3, 2004; NASAA, Salt Lake City, Legal Ethics for Securities Enforcement Lawyers, Dec. 4, 2004; DSS Ethics Training, Dec. 3, 2004; (2-hr. lecture); PIABA, Ethics for Securities Lawyers, and Comments on the Mutual Fund Mess, Oct. 20, 2004 (2 hrs.); Commercial Law League of America, Southern Region Members' Ass'n, Ethical Issues in Commercial Law, Oct. 1, 2004; S.C. Bar, Annual Probate Bench/Bar, Ethics in Probate Court, Sept. 17, 2004; Charleston Bar Ass'n, Lawyer's Oath Seminar, August 27, 2004; S.C. Government Lawyers, Legal Ethics for Government Attorneys, August 20, 2004; S.C. Judiciary, Judicial Ethics Lecture, August 19, 2004; S.C. Bar, Accounting for Non-tax Lawyers, May 2, 2004; Palmetto Land Title Ass'n, Ethics for Closing Attorneys, April, 24, 2004; Richardson, Patrick Law Firm, CLE on Legal Issues Concerning the Mutual Fund Mess, March 26, 2004; S.C. Bar, An Update on Ethical Considerations for the Guardian, March 5, 2004; S.C. Prof. Society on the Abuse of Children, Ethics and Child Abuse, Feb. 26, 2004; National Ass'n of State Boards of Accountancy, Professionalism, Accountability and the Accounting Profession, Feb. 9, 2004; Fidelity Nat'l Title, Ethical Duties of Closing Attorneys, Feb. 5, 2004; S.C. Bar, Annual Convention, Ethical Issues in Handling the Appeal, Jan. 22, 2004 (co-presenter).

Member, ABA Section of Business Law Task Force on Legal Opinions

Participant in Conference on Legal Opinions at Silverado, California, May 31-June 3 (1989).

University and Community Service

Author, Report on Tax Sheltered Annuities to USC Faculty and Staff (1976).

Faculty Senate (1996-98)

University Committees

Promotion and Tenure

Faculty Welfare

Annuities and Insurance

Budget Committee

Law School Committees

Faculty Selection

Academic Standing (currently serving)

Minority Student Affairs

Executive Committee

Dean Evaluation Committee

Dean Search Committee

Chairman, Supreme Court Commission on Continuing Lawyer Competence (1980-83)

President, Leaphart Elementary School PTO (1983)

Chairman, Irmo Middle School School Improvement Council (1985)

Member, Irmo Middle School School Improvement Council (1985-89),

President, Irmo High School Parent, Teacher, Student Association (1988-89, 1992-93) Member
Executive Board (1988-93)

Member, Irmo High School-School Improvement Council (1988-93)

Founder and Past-president, University of Notre Dame Club of South Carolina

Lexington District Five and South Carolina State School Volunteer of the Year 1993

Columbia, South Carolina
September 23, 2010

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Attorney for the Plaintiffs

MCNAIR LAW FIRM, P.A.

ATTORNEYS AND COUNSELORS AT LAW

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1301 GERVAIS STREET

TELEPHONE (803)799-9800
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MEMORANDUM

TO: Mark McAdams
FROM: Bhumi Patel
DATE: May 18, 2007
RE: Gold Coast/Scott v. Hyatt-Remax
Client # 04483.00003

Issue 1: Was a disclosure of wetlands on property required when Scott contracted to sell real property to Hyatt?

Answer: Probably not.

LAW/ANALYSIS

The Coastal Tideland and Wetlands Act contains a disclosure statement requirement. S.C. Code 1976 §48-39-330. The disclosure statement must state that the property being contracted for "is or may be affected by the setback line, baseline, and the seaward corners of all habitable structures..." *Id.* However, the absence of such disclosure statement does not affect the legality of the instrument that violates this provision. *Id.*

In the contract of sale for property at issue, it is clearly stated that the "Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns, including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, *wetlands study*, appurtenant buildings, heating..." [emphasis added] Agreement to Buy and Sell Real Estate Residential Section 19(B).

In a South Carolina Supreme Court case, Respondent claimed that although he contracted to purchase said property, he would not make payments on the land and demanded a refund of all payments made up to that date because property was discovered to be wetlands. Truck South, Inc. v. Patel, 339 S.C. 40, 43-44, 528 S.E.2d 424, 426 (2000). Petitioner claimed that they had no idea that said property was wetlands. *Id.* Respondent introduced no evidence showing that Petitioner knew prior to contracting that the property was wetlands and unsuitable for construction. *Id.* at 49, 528 S.E.2d at 439. This court held that Petitioner did not know or represent to Respondent that the property was free of wetlands or was suitable for the intended purpose and therefore Respondent's attempt to back out of the contract fails. *Id.* at 50, 528 S.E.2d at 439-50.

Similarly in our case, Scott did not know that the property was wetlands and did not assert to Hyatt, in any manner, that the property was not on wetlands. Also, the contract of sale clearly states that it was Hyatt's responsibility to inspect property for any such defects/conditions, which Hyatt failed to do properly.

Even if such disclosure statement were required by the Coastal Tideland and Wetlands Act, such disclosure can not be required to be made if the party making such disclosure does not know of the condition of the property at the time of contracting to sell. Even if Scott knew of the condition of the property and failed to disclose it, the disclosure statement of the Coastal Tideland and Wetlands Act does not invalidate the contract and still makes it binding between the parties.

CONCLUSION

Therefore, even though Scott would normally be required to make such disclosures under the Coastal Tideland and Wetlands Act, such disclosure was impossible due to his lack of knowledge of the wetlands condition on the property.

Issue 2: Can Scott contract to sell property he did not own at the time of contracting?

Answer: Probably yes.

LAW/ANALYSIS

If title is defective or seller has no title at time of entering into a contract for sale, but those defects are cured at the time designated for performance, then the purchaser can not withdraw from the contract. Searles v. Auld, 118 S.C. 430, 430 111 S.E. 785, 787 (1922). However, the above rule will not apply if the seller has been guilty of fraud. Id.

In the above case, Searles brought an action against Auld to rescind the contract claiming false representation that Auld could not deliver good title to the land. Id. at 430, 111 S.E. 786. Searles, however, did not make a proper tender for performance, and therefore did give Auld an opportunity to show good title. Id. The court found no fraudulent misrepresentation. Id. at 430, 111 S.E. 787.

Similarly, in our present case, if Scott can acquire title by the time performance is due in the contract between Scott and Hyatt, then Hyatt can not rescind the contract. If Hyatt can prove that Scott is guilty of fraud, then the above rule may not apply and Hyatt will probably be able to withdraw from the agreement.

CONCLUSION

Therefore, the contract of sale of the property at issue is a valid contract even though Scott did not own the property at the time of contracting with Hyatt.

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

From: McAdams, Mark <MMcAdams@mcnair.net>

To: Chuck Walker <quickfirefa@aol.com>; Dane Freeman <d.freeman@mchsi.com>

Sent: Sun, 13 Jul 2008 10:32 am

Subject: FYI

Dane and Chuck:

I've spoken with Ralph over the weekend and of course, Resident Evil (Scott) has been telling him all this shit... for example I know about Global they're screwing me etc. Accordingly, Ralph and I will be eating lunch with Resident Evil on Tuesday and this is what Ralph and I are telling him so that we're all on the same page.

First, Ralph owns Global. He asked Chuck and I to form it because Dane had located a trader who could do smaller amounts and Ralph funded the majority of the trade. None of which has a fucking thing to do with him. Further, Chuck and I are about to go to work for Ralph so if he wants to make any complaints he can complain to our boss ie Ralph. (This also solves our office problem when we're all together).

DD

Next, I'm going to explain to Scott that my friend serves on the RVC's board of directors (true). That he heard Scott, in his stupid, talking about what he does and what bank he does it with (true). That my friend had an investigation done and that the file is sitting on his desk (partially accurate). And that if he ever screws with any of us or mentions our names again, in any context, that then going to the proper authorities (true).

I believe that this should resolve any issues with him for now.

Mark

INTEROFFICE MEMO

TO: Mark
FROM: Judy
DATE: 8-15-07
RE: Lemmons/ Hyatt
Our File No.: 044883.00003

Mark, you asked me to research what property Kenny Hyatt had, to see if there was anything to go after... Here is what I have found according to the title work that Donna sent over.

PERSONAL PROPERTY:

1998 Dodge Viper
VIN#1B3ER69EXWV401601

2001 Softail
VIN# ULT68915T00006185

1992 Ford R10 Pickup
VIN# 1FTCR10A8NUD39834

Taxes not paid on Palm Harbor, 4513 Richmond Hill Drive, Murrells Inlet, SC...
Mobile Home in the amount of \$443.00

Taxes were paid on Kennys Mobile Home Plaza, 116 Highway 17 N., Latta, SC, in the amount of \$1046.01.

REAL PROPERTY:

Briarcliffe, Lot 149
Kenny owns 76% interest in this Lot – per filed copy of Deed 4-7-06. He paid \$250,100.00 plus exchange property in the amount of \$199,900.00. Shawn Seddinger owns the other 24%.

Little River Township, 5.04 Acre
Kenny owns under the name of HYATT & BRYAN ENTERPRISES, LLC. He paid \$900,000.00 for this tract, per filed copy of Deed 5-5-06.

Lot Fourteen (14) of Crystal Point Development – Kenny and Jean P. Hyatt purchased in 1998 for \$136,000.00. Ref'd in 2006, per filed copy of Mortgage, dated 4-21-06 in the amount of \$400,400.00. Lender is Equity Services, a North Carolina Corporation.

Same Lot – received home equity line of credit, from same lender as above - \$143,000.00 – copy of Mortgage filed 5-15-06. This equity line of credit was assigned to Indymac Bank – per filed Assignment 5-15-06.

Lots 1 – 5, along Casteler's Height Road and Hwy. 905 – purchased for \$100,000.00 with David C. Hyatt per Title To Real Estate filed 4-28-05. Taxes not paid in amount of \$91.09 as of 10-06.

Lot Two (2), .18 acre, purchased for \$100,000.00 with David C. Hyatt and Lot Three (3), .90 acre, purchased for \$150,000.00 with David C. Hyatt – both located at Washingtons Walk in July, 2005. Mortgage financed for both Lots, filed 7-12-05, in Kenneth and David's name in the amount of \$225,000.00. Lender is W/W Investors Corp.

Building Lot No. 14, of Little River Golf and Health Club, purchased for \$160,000.00 with David C. Hyatt, per filed copy of Title, dated 5-2-06. Quit Claim Deed filed 8-4-06, Salt Marsh Investments, LLC to Ken and David Hyatt – this Lot.

THOMPSON & HENRY, P.A.

ATTORNEYS AT LAW

1318 THIRD AVENUE

POST OFFICE BOX 1535

CONWAY, SOUTH CAROLINA 29528

JOHN F. HENRY

LINDA WEDDS GANGI

J. JACKSON THOMAS

EMMA RUTH BRITTAIN*

CLAY D. BRITTAIN, III

G. MICHAEL SMITH

PHILIP C. THOMPSON

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RETIRED

JOHN C. THOMPSON

November 27, 2006

***CERTIFIED EMPLOYMENT &
LABOR LAW SPECIALIST**

**Facsimile: 843-663-4142
Kenny Hyatt
4521 Landing Road
Little River, SC 29566-8233**

**Facsimile: 843-445-1603
Scott Lemons
C/o Waterfront Real Estate
2103 Farlow St., Suite A
Myrtle Beach, SC 29577**

**Re: Tom Naomi - Re-Max at the Coast Commission
Contract of Sale between Kenny Hyatt and Scott Lemons dated October 28, 2006**

Dear Mr. Hyatt and Mr Lemons:

This firm has been retained by Tom Naomi, Re-Max at the Coast with regards to their commission earned from the above referenced contract. As I am sure you are aware, a broker earns his commission when he procures a sales contract that is both valid and enforceable by the seller regardless whether the contract actually closes. The terms of the agency agreement required the seller, Mr. Lemons, to pay Mr. Naomi a ten percent commission. The date of closing was November 23, 2006, not later than 9:00 p.m. Ten percent of the sales price is \$290,000.00.

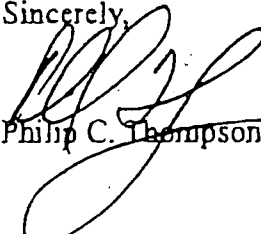
It is my understanding that both Mr. Lemons and Mr. Hyatt were ready willing and able to close the transaction by the closing date, but now Mr. Hyatt has refused to close based upon his belief that Mr. Lemons does not own the property. It is our understanding that Mr. Lemons has a contract to purchase the property. If that is so, then Mr. Lemons had a right to convey the property, thus having a valid, enforceable contract with Mr. Hyatt.

Mr. Kenny Hyatt
Mr. Scott Lemons
page 2

Based upon the foregoing, my client is demanding payment of his brokerage commission in the amount of \$290,000.00 within 10 days of the date of this letter. Failure to do so will leave him with no option but to bring an action to recover his commission.

Please feel free to contact me if you have any questions.

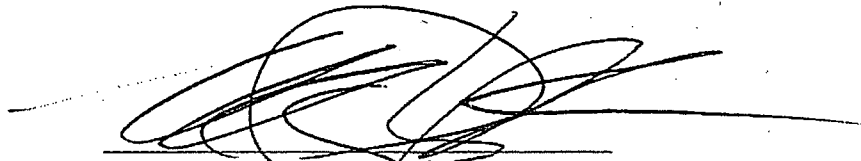
Sincerely,


Philip C. Thompson

PCT/mec
CC: Tom Naomi

Certificate of Counsel

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



Mark W. Hardee
The Hardee Law Firm
2301 Devine St
Columbia, SC 29205
(803)799-0905
Attorney for Appellant

RECEIVED

SEP 18 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 10-CP-26-9113
Appellate Case No.: 2012-213156

Scott Lemons and Gold Coast Resorts, LLC.....Appellant

v.

The McNair Law Firm, P.A.....Respondents

SUPPLEMENT RECORD ON APPEAL

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Roland M. Franklin, Jr.
William H. Jordan
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properly, don't you?

A: And I believe I did that.

Q: You told your realtor that.

A: That's, that's correct.

Q: And you expected him to disclose that on your behalf to Mr. Hyatt: is that correct?

A: That's correct.

Q: And you would consider wetlands to be a material defect in the property: wouldn't you?

A: I would consider that to be an issue.

Q: A material issue?

A: Okay.

Q: Is that right? Yes?

A: It depends on what you call material, but yeah, I would ---

Q: Significant.

A: Significant? It's an issue on a lot of properties. I'd consider it an issue.

Q: Now, did you ever tell Kenny Hyatt that you were wanting to close on this transaction?

A: I've never talked to Mr. Hyatt.

Q: And did you ever tell Mr. Naam that you were ready to close on the transaction?

A: I believe I did.

Q: What lawyer was going to help you with this

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Q: Have you terminated your contract with Mr. Delduca?

A: The contract has expired to my knowledge.

Q: And your ten thousand dollars was nonrefundable?

A: That is correct.

Q: Did you ever ask for the money back?

A: No, I did not.

Q: Did you speak with Mr. Delduca at any time during, say, November of '06?

A: Did I speak with him?

Q: Yes.

A: I'm, I'm sure I did.

Q: What were y'all talking about?

A: What's the status?

Q: Did you tell him you weren't going to buy the property?

A: I told him I had another opportunity on it.

Q: What does that mean?

A: It means that I had another opportunity to sell.

Q: I'm talking about buying it. Did you tell him, "I'm going to buy it regardless of whether I sell it," or "I'm not going to buy it now 'cause this guy's not going to buy it from me."

A: I don't recall any conversation like that.

Again, we're getting back into two-year-old

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THE DEPOSITION OF SCOTT LEMONS
CASE NO: 2004-CF-24-4300

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transition?

A: At first, it was going to be Dickie Lester. Then it was going to be Shep Guyton. I wasn't too sure on that, yet.

Q: Is Shep in private practice?

A: Shep is in private practice.

Q: He is?

A: (Indicates affirmatively.)

Q: And had you ever performed any kind of title work on the property?

A: I believe title work had been pulled through Dickie Lester's office but I think it was supposed to have been transferred, if I remember correctly, to Guyton Law Firm, and I don't remember. I don't know if it had ever gone that far.

Q: Were you aware of any mortgages or other liens that Mr. Delduca had against the property?

A: ~~I, I don't. No, I don't.~~

Q: Any other title defects that Mr. Lester or Mr. Guyton discovered from doing this title search?

A: No, not that I'm aware of. I don't.

Q: And Mr. Delduca has not returned your ten thousand dollar deposit?

A: No.

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THE DEPOSITION OF SCOTT LEMONS
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conversations. I don't remember specifically any real conversations, other than the contract, there was some wetlands. I was ready to close. I'm still ready to close but I do not recall any two-year-old conversations. I've had a lot of conversations since then.

Q: How about with Mr. Delduca since then?

A: Not many, no.

Q: Did you have the money available on November 21st to purchase this property?

A: Yes.

Q: Now, when you were answering Mr. Thompson's questions, you said, "I diverted monies other places, 'cause I didn't have it." Did you ---

A: No, you're incorrect.

Q: Okay.

A: I'm sorry to cut you off, but I didn't say that. I said that I did put some money somewhere else, but I did not say I did not have it.

Q: Okay. You could've paid cash for it on November

A: I could've closed on it multiple different ways. Closing a real estate deal is fairly, it's not that complicated.

Q: Did you have the money either through a bank or

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Lemons003517

in your bank account?

A: I have the availability to close on it.

Q: I'm talking about on November 21st.

A: I had the availability to close on it.

Q: On November 21st, 2006.

A: On November 21st, November 22nd, January 5th and today, yes.

Q: But the only reason you did not or have not bought this property is because you can't turn around and sell it to Kenny Hyatt?

A: Well, no, that's not the only reason, but, yes, that is the main reason, yes.

Q: The main reason, okay. What are some of the other reasons you haven't bought it?

A: Well, I mean, because we've been in litigations for two years, or a year and a half.

Q: Has that kept you from buying it from Mr. Delduca?

A: I mean, that would be a very good reason in my opinion.

Q: Why?

A: Why? I don't know. I mean, you mentioned me being a realtor. I see a clean contract here with no contingencies, cash purchase to offer. I mean, I know I'm not supposed to ask you

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A: I, I felt like that, yeah, there was some wetlands on the property. Of course, I'm not an expert by any means in that field, but it was obvious that there was some wet.

Q: Prior to the expiration of your contract in Exhibit J, you never made any effort with Mr. Delduca to tell him that I was not interested in buying it?

A: No.

Q: Why is that?

A: I didn't feel the need to.

Q: You didn't want your ten thousand dollars back?

A: I feel like a deal is a deal when I make a deal with somebody. I believe in doing the right thing.

Q: Even though you haven't bought it from him.

A: I made a deal.

Q: But you've never bought it from him.

A: I made a deal. When I wrote a hard money contract, right then and there I had the option to back out.

Q: So, the deal was a deal to buy this property within 45 days from November 21st of '06 is when this thing would've terminated, is that correct?

A: That's correct.

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THE DEPOSITION OF SCOTT LEMONS
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questions so I won't, but I believe I'm going to wait and see what the outcome of this is first, from a financial position.

Q: So, you say that's -- I mean, is the only reason that you haven't bought this property because you can't sell it to Kenny Hyatt; is that the only reason?

A: No. The only reason I haven't purchased it yet is because I want to see the outcome.

Q: Once this is over, you still might buy it from Mr. Delduca.

A: I might.

Q: Like anybody else might.

A: Yeah.

Q: Hasn't Exhibit 4 expired as well?

A: That's correct.

Q: Now, you told me there were wetlands on this property. How did you learn that? From Mr. Delduca and just your own personal knowledge; is that your answer?

A: That's correct.

Q: And your personal knowledge was just from when you went out there and looked at it and you thought that was something, in your experience, that you noticed?

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THE DEPOSITION OF SCOTT LEMONS
CASE NO: 2004-CF-24-4304

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Q: And you never bought it within that time. That's correct?

A: That's correct.

Q: But still, a deal was a deal and you were going to live up to your deal?

A: That's correct.

Q: Even though you didn't buy it.

A: That's correct.

Q: How do you live up to the deal when you don't buy this property?

A: I lost my money.

Q: The ten thousand was your deal.

A: I lived up to that deal and I still will buy it, as long as we can keep a good deal together.

Q: You will buy it, if you can turn around and sell it for two times what you bought it for.

A: Ten times, a deal is a deal in my book.

Q: Give me one second, Mr. Lemons.

A: Take your time.

***** OFF THE RECORD *****

(ON THE RECORD)

MR. PAYNE CONTINUES:

Q: Mr. Lemons, when's the last time you and Mr. Naomi have spoken?

A: The last time me and Mr. Naomi have spoken?

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Lemons003518

1 A: Not that I recall.
2 Q: Just sued you out of the blue?
3 A: I don't know. How, how do you sue people?
4 Q: I was just wondering about any kind of warning.
5 We talked about a letter. There was no phone
6 call. You had no ---
7 A: There could've been a letter. I mean, I can go
8 back and bring all my files from the office, if
9 you'd like, but I don't think that would be
10 relevant. I get ten thousand letters a day, over
11 fax, email, mail. I've got assistants that sift
12 through all my stuff.
13 Q: After the lawsuit was filed, I know y'all talked
14 recently. How many times have you and Mr. Naomi
15 spoken about other business deals or this lawsuit
16 or anything?
17 A: I don't recall, not many.
18 Q: What was the gist when he would call you or you
19 would call him?
20 A: Let's get a deal done.
21 Q: And was it more about your property, having him
22 sell your property for you or find you a buyer
23 for it?
24 A: Or vice versa.
25 Q: You were going to find a buyer for him on some

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1 estate, larger parcels, they normally require
2 that you have open areas or green areas: do they
3 not?
4 A: That is correct.
5 Q: Okay. Can't you use wetlands as those open or
6 green areas?
7 A: That is correct.
8 Q: So a wetland isn't necessarily a defect, is it?
9 A: Not necessarily. That's why I was having a hard
10 time understanding his question.
11 Q: Okay. As a matter of fact, it can be an asset.
12 A: It very well could be an asset.
13 Q: Okay. Do you know if Mr. Deiduca will still sell
14 you that property today for 1.4 million?
15 A: Yes, I do.
16 Q: And would you still sell that property today to
17 Mr. Hyatt for 2.9 million?
18 A: Yes, I will.
19 Q: You didn't buy this property to take a loss on
20 it, did you?
21 A: No, I did not.
22 Q: Nothing wrong with making a little money on it:
23 is there?
24 A: That's what it's all about.
25 Q: As far as not having legal title to it, have you

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1 property that he had listed?
2 A: I could be the buyer for him.
3 Q: Okay. And did you initiate calls to Mr. Naomi
4 since this lawsuit's been filed or did he call
5 you?
6 A: I'm sure it's been a little bit of both.
7 Q: I'm going to show you [Exhibit 7 here, Mr. Lemons.
8 Is that your signature, you say?
9 A: Yep.
10 Q: The top line is your signature, seller?
11 A: Yes.
12 Q: And you signed that at the same Cracker Barrel by
13 the Coastal Grande Mall?
14 A: I believe so.
15 Q: At the same time?
16 A: Yes.
17 Q: Okay, that's all I have.
18 **RE-EXAMINATION**
19 **BY MR. THOMPSON:**
20 Q: Mr. Lemons?
21 A: Yes.
22 Q: You've been involved in the development of real
23 estate, correct?
24 A: That is correct.
25 Q: And in Horry County whenever you develop real

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1 ever participated or have you ever seen anyone
2 participate in simultaneous closing?
3 A: All the time.
4 Q: So, if Mr. Hyatt came to you and said, "Let's
5 close," then you could close simultaneously with
6 Mr. Deiduca, correct?
7 A: Yes, sir.
8 Q: Is that what you'd planned on doing whenever ---
9 A: Yes, sir.
10 Q: And as far as not closing on the property, and
11 selling it to someone else, have you had anybody
12 come to you and offer you 2.9 million dollars
13 since Mr. Hyatt's contract?
14 A: No.
15 Q: Thank you. That's all I have.
16 **RE-EXAMINATION**
17 **BY MR. PAYNE:**
18 Q: You said you have used Dr. Beam for some other
19 issues, is that right, not so much wetland issues
20 but ---
21 A: Yes.
22 Q: He's very respected in the industry, don't you
23 think?
24 A: I feel like Dr. Beam is a respected guy, yes.
25 Q: And if he told you that over 90 percent of this

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1 A. Because there was a breach of contract. It
2 was my understanding, and I went to go talk to my lawyer
3 and I relied upon my lawyer.

4 Q. Did your lawyer tell you not to buy the
5 property?

6 A. I don't remember all the communications
7 verbatim, but there was -- I didn't do anything without
8 the instruction of Mark McAdams and McNair Law Firm from
9 then on.

10 Q. But you understood that you still had the
11 option yourself to purchase this piece of property?

12 A. That's correct.

13 Q. That you had a contract, a purchase option
14 that you had paid for to purchase the property from the
15 original seller?

16 A. That's correct.

17 Q. And are you telling me that you rely on your
18 attorneys to advise you whether or not to invest in real
19 property?

20 A. I'm not a lawyer, but when a situation arises
21 like this, yes, I rely almost 100 percent solely on the
22 advice of my lawyer and McNair Law Firm.

23 Q. Do you believe that Mr. Hyatt had the
24 financial ability to purchase the property from you?

25 A. I did.

1 Q. Do you now believe that he actually had the
2 financial ability to purchase the property from you?

3 A. Yeah, I do believe that.

4 Q. Why do you believe that it didn't go through?

5 A. I believe that he had other intentions or
6 motives, but I really don't know what his thought
7 process was. I never met the man really outside of
8 deposition.

9 Q. Did you have any information about what he
10 intended to do with the property once he acquired it
11 from you?

12 A. Prior to depositions, no.

13 Q. Do you have an understanding now of what his
14 intent was?

15 A. I have an understanding.

16 Q. What is your understanding?

17 A. My understanding now, it looks like he was
18 trying to flip the property or something else, but I
19 don't remember what his intentions were.

20 Q. When C.S.E. and Tom Naomi brought a lawsuit
21 against you for the commission, did you consider suing
22 them for telling you that Kenny Hyatt was able and
23 really and willing to purchase the property?

24 A. I did, and I relied on Mark McAdams and McNair
25 Law Firm.

1 A. I don't recall him telling me where it was to
2 get resolved; I don't remember that conversation.

3 Q. Prior to that deposition on March 11, had you
4 attended any other depositions?

5 A. In this case?

6 Q. Yes.

7 A. I attended other depositions, but I don't
8 recall the dates on them, Mr. Hyatt's.

9 Q. You attended Mr. Hyatt's deposition?

10 A. Yes.

11 Q. Had you attended any hearings in front of a
12 Judge that may have taken place?

13 A. No.

14 Q. Had you and Mark had any discussions about any
15 settlement of that case?

16 A. The best of my memory, he kept reassuring me
17 that it would settle, not go to trial.

18 Q. Did you have any discussions with him about
19 what you would be willing to settle the case for?

20 A. Actually, I remember a conversation saying
21 that I would be a fool to settle for anything less than
22 a million and-a-half, him telling me that. Yes.

23 Q. He told you that you would be a fool to settle
24 for less than \$1.5 million?

25 A. There was a conversation directly around that,

1 A. I did not.

2 Q. You mentioned that you had some concerns about
3 McAdams possibly cutting you out of this investment
4 deal, and that you contacted individuals at McNair Law
5 Firm in Columbia at that time; who did you contact?

6 A. Spoke with a gentleman named Michael at
7 McNair, I don't know his last name, on a few occasions,
8 quite a few occasions. And as it got more into it, I
9 got transferred to Jane Trinkley.

10 Q. Your first contacts, this is you contacting
11 the Columbia office of McNair, correct?

12 A. That's correct.

13 Q. And to the best of your recollection the first
14 contact that you had at McNair office in Columbia was
15 somebody named Michael?

16 A. That's correct.

17 Q. Was he an attorney?

18 A. That's my understanding, yes.

19 Q. I think you just testified that it was around
20 the same time frame, March of 2008, when all of this was
21 going on, but is that about the time that you remember
22 contacting Michael at McNair for the first time?

23 A. No, I believe I contacted him either late
24 December of '07 and into January of '08.

25 Q. How was Michael the individual that you ended

1 up talking with?

2 A. I don't know to be honest with you.

3 Q. Did you ask Mark who at the Columbia office
4 you should call?

5 A. No, I just called the Columbia office, told
6 them that I needed to speak to someone, that I was a
7 previous client and I had some concerns.

8 Q. And you were directed to an individual named
9 Michael?

10 A. That's correct.

11 Q. Do you recall what you talked with him about
12 the first time you spoke with him?

13 A. I don't recall what we spoke about but I
14 recall letting him know that I just wanted to open a
15 line of communication with somebody, I didn't want to
16 hurt myself. Things were very edgy and I didn't want to
17 hurt myself, I wanted an open line of communication to
18 the firm.

19 Q. Was this contact with McNair in the Columbia
20 office arising out of your concern that Mark was cutting
21 you out of this business deal that we've talked about?

22 A. Yes.

23 Q. Did you explain that to Michael at McNair?

24 A. I didn't explain, from what I recall,
25 especially on the first few calls I didn't explain any

1 specifics other than I was under the impression that a
2 lot of money was at stake and I didn't want to risk my
3 own personal security divulging too much but wanted an
4 open line of communication to my firm.

5 Q. Did you explain that your concern was with
6 Mark McAdams?

7 A. I did.

8 Q. Did you initially?

9 A. I didn't on the first call. I'm pretty sure I
10 didn't on the first call, maybe not even the second.

11 Q. Do you recall what this individual named
12 Michael at McNair told you when you contacted him?

13 A. From what I remember he was very nice and
14 listened pretty close, and I had direct contact to him
15 for the other occasions that I called. I let him know
16 that I would be calling some more.

17 Q. Did you call him some more?

18 A. I called him numerous times.

19 Q. Were all the calls that you made to Michael
20 related to your concern than Mark McAdams was going to
21 cut you out of a business deal?

22 A. At first, yes.

23 Q. You said at first, at some point did you make
24 other concerns known?

25 A. No, I made some other concerns known about the

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1 \$300,000 that was owed and I finally had to let my
2 credit go, I couldn't hold on anymore. And about that
3 time is when I got transferred to Jane Trinkley somehow,
4 it was around that time.

5 Q. Can you tell me how many times you talked to
6 Michael?

7 A. I can't tell you -- four, five, six seven,
8 eight, nine.

9 Q. What about Jane?

10 A. I spoke to Jane, I believe, it was three times
11 if my memory serves me, it may have been four; it was a
12 few times.

13 Q. You've testified that you talked to them about
14 your concern about being cut out of the business deal,
15 and the issue with your outstanding balance owed by
16 Colovin and Freeman. Did you raise any other concerns
17 with anyone in Columbia at McNair?

18 A. By the time I got to Jane, to the best of my
19 recollection, I was very stressed out. I was losing it
20 at this point. Didn't know what really to say, didn't
21 know what to say or what not to say.

22 I did ask her on numerous occasions on the
23 second or third call, I wanted to make sure that I was a
24 client of their firm. She was like, yes, but I can't
25 tell you what's going on here and was very astute to

1 that.

2 I don't remember which call it was to her but
3 I did express all my concerns and if I remember
4 correctly I was assured there was action being taken and
5 I remember I was concerned about my financial and
6 personal well-being at the time.

7 Q. Do you recall what time frame it was that you
8 called and made all your concerns known to Jane?

9 A. I don't remember exactly; early 2008.

10 Q. Would it have been before your deposition?

11 A. I have to think so, or right shortly there
12 after. But I have to think so.

13 Q. You mentioned at one point you made known your
14 concern about the loan you had made to Freeman and
15 Colovin, and that you were going to have to let your
16 credit go. Did you, at that point, had you sought the
17 advice of Counsel other than McNair to help you with
18 that?

19 A. At that point, no. Things were going very,
20 very, very quickly, very fast. And by the time -- I was
21 actually -- it took me -- I had stopped everything that
22 I was doing, everything in my life to figure out because
23 there was -- what I was told, millions of dollars on
24 this other stuff at stake.

25 So I devoted almost my entire being to

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1 figuring out what happened and what was going on.

2 Q. What would you say the time frame was that
3 this concern over the international investment and what
4 was going on with it was consuming your life?

5 A. From December, late December 2007 until I
6 started making good contact with Mark McAdams again. I
7 don't remember when that was, February maybe, early
8 February 2008, maybe.

9 Q. We just saw in the documents that we looked
10 at, we looked at the arrest records and your
11 interrogatory responses where you said you were in
12 rehabilitation in Florida from March 21, 2008 through
13 April 10th, 2008; is that accurate to the best of your
14 recollection?

15 A. Seems to be.

16 Q. Do you have any documents that show when you
17 were there and when you left?

18 A. I don't have any, I'm sure they can be gotten.

19 Q. Are the dates that you provided us that you
20 were there based on your memory, or did you look at
21 something to recall you were there?

22 A. I don't recall how I came up with that. I may
23 have looked at something or called down there and found
24 out.

25 Q. I believe your responses say that you were in

1 didn't even want to tell me what it was until I asked
2 him several times and when he told me it was a release
3 of escrow for RE/MAX, now sign it and I'll be in touch
4 with you, Scott, don't contact me, I'll be in touch with
5 you.

6 Q. Did you ask Mark McAdams if you could read the
7 document before you signed it?

8 A. I don't recall. I don't remember asking him
9 that specific question.

10 Q. Did Mark say anything to you about what would
11 happen if you didn't sign that document?

12 A. I don't recall.

13 Q. Tell me what Mark told you you were signing
14 this document for?

15 A. To release the earnest money, the \$10,000
16 Hyatt put up for escrow.

17 Q. The \$10,000?

18 A. That's correct, release 50 percent of it and
19 that was going to be whatever. Release of escrow for
20 Tom Naomi.

21 Q. It was going to be a partial release of
22 escrow?

23 A. I don't remember the term "partial", it was
24 partial payment for release of escrow.

25 Q. In your dealings in the real estate industry,

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1 had you ever heard of that before?

2 A. In my dealings in the real estate industry it
3 is standard. They do try to free up the real estate
4 company's trust accounts as quickly as possible.

5 Q. Even in the form of a partial release of that
6 money?

7 A. I was under the assumption -- again, this
8 conversation took literally three minutes, and I
9 believe -- my understanding, and don't ask me how I
10 understood this, I believed Tom Naomi was going to get
11 the other \$5,000 from Hyatt and we were commencing all
12 the other litigation.

13 Q. It was your understanding that by signing this
14 document you would be receiving \$5,000 that was being
15 held as earnest money?

16 A. That's correct.

17 Q. And as far as the claims between Tom Naomi and
18 you, and you and Kenny Hyatt, nothing was changing?

19 A. That was my understanding.

20 Q. So if you had refused to sign this, it isn't
21 the case that you wouldn't have gotten the money out of
22 your lawsuit, correct?

23 A. Ask the question again.

24 Q. You didn't understand that if you refused to
25 sign this document, you weren't going to get any of your

1 A. Karen Hartley being one of them.

2 Q. Okay. Anyone else?

A. No, Karen Hartley.

4 Q. Did you ask Mr. McAdams why he was taking
5 half of your earnest money?

6 A. No. I just wanted to make sure that the case
7 was still going on and that I had my money to look
8 forward to. He acknowledged that, so I felt pretty
9 confident.

10 Q. Tell me when you first learned that this
11 document, which is Exhibit Number 17 entitled Mutual
12 Release, was a release of your claims against
13 Mr. Hyatt?

14 A. I don't recall. I believe it was when I
15 showed up. It was either the day I showed up at court
16 or after I showed up at court or somewhere thereafter
17 where I was getting a judgment entered against me,
18 against the real estate agent. But it was somewhere in
19 that time frame. I can't honestly tell you. Again, it
20 was 2008. I'm sorry. Four years ago.

21 Q. Can you tell me how you came to understand
22 that the mutual release was actually a release of your
23 claims against Hyatt?

24 A. My memory serves me correctly, which it -- I
25 believe it was McAdams that told me after the fact.

1 Way after the fact, I think. But, again, I'm pretty
2 sure it was -- I think it was McAdams.

3 Q. Was that a telephone conversation or was it
4 in person, do you remember?

5 A. Well, there was many, many telephone
6 conversations, and I did not get to see him very much
7 thereafter. So I would assume it would be a telephone
8 conversation.

9 Q. To the best of your recollection, Mr. McAdams
10 told you that the claims against Mr. Hyatt had been
11 settled; is that correct?

12 A. I don't remember the nature of how the phone
13 call went down, but it was sometime -- and I don't even
14 remember how the conversation went, to be honest with
15 you, when he told me that. I remember being in shock
16 when I found out.

17 Q. Do you recall what you said to him?

18 A. I don't. I was just begging at the time for
19 him to take my calls. I was begging for him to answer
20 my calls. So I don't recall. I'm sorry.

21 Q. When you learned that this document was a
22 release of your claims against Hyatt, what steps did
23 you take?

24 A. Well, again, I don't know. It was there
25 about that time where when the judgment was entered

1 was to flip the property and sell it to someone else?

2 A. No. I don't remember ever even having a
3 conversation with Mr. Hyatt.

4 Q. Okay. Did you have any individuals who were
5 backup plans to Mr. Hyatt if Mr. Hyatt couldn't
6 perform?

7 A. Not that I can remember. I mean, I had a
8 clean contract, no contingencies, cash. I didn't feel
9 like I -- I pursued other things.

10 Q. Okay. Do you recall the amount of earnest
11 money that Mr. Hyatt put up in connection with his
12 contract to purchase the property from you?

13 A. I believe it was \$10,000.

14 Q. Okay. Why would you accept such a small
15 amount of earnest money on a contract of that size?

16 A. Well, it was a cash deal, no contingencies,
17 from a guy who I was being represented as a developer,
18 successful, and -- as well as another person that makes
19 pretty good income. And \$10,000 earnest money just --
20 if I remember -- I don't remember exactly what my
21 thought process was, but it seemed like an okay deal
22 considering the contract. Very clean contract. The
23 ~~cleaner the contract, the lower, you know, you can~~
24 negotiate on certain things.

25 Q. Had you ever dealt with Mr. Hyatt before?

1 A. No.

2 Q. Part of your claim in this case is that you
3 lost the value of a judgment against Mr. Hyatt,
4 correct?

5 A. Explain that question, please.

6 Q. Okay. Is it your claim that because of
7 McAdams settling this lawsuit for \$5,000, you did not
8 obtain the big judgment you believe you would have
9 obtained against Mr. Hyatt in connection with that
10 lawsuit?

11 A. Yeah. I mean, it's my belief that because of
12 McNair settling a transaction without me even being
13 present, I lost a substantial sum of money, yes.
14 That's my belief.

15 Q. If you got -- if you had obtained a judgment
16 against Mr. Hyatt in connection with your lawsuit, do
17 you know how much money you would have been able to
18 collect from him?

19 A. What I can recall, if -- coming out of Mark
20 McAdams was there were several assets that could have
21 been obtained. One of them that stands out in my mind
22 being a mini warehouse and some acreage and some lots
23 of ~~land on the intercoastal.~~ That's what I can recall
24 out of a conversation with Mark McAdams.

25 Q. Do you have any knowledge other than from

1 to sell it to Mr. Hyatt for 2.9?

2 A. That's correct.

3 Q. Okay. You testified a few minutes ago, I
4 believe, that even if Mr. Hyatt hadn't participated,
5 even if he had backed out, you were still able to go
6 ahead and purchase the waterway tract for \$1.4 million,
7 correct?

8 A. Okay. Yes. I could have still purchased the
9 waterway tract at \$1.4 million.

10 Q. Why didn't you use that money to get involved
11 in the St. Lucia deal if you needed a million dollars
12 to put up?

13 A. Immediately following -- immediately
14 following the breach of contract, there around
15 November, December, when I went in to see McDowell and
16 McAdams, McAdams salivating over the lawsuit, I stopped
17 pursuing this. And I did not have the means
18 necessarily to jump into what could have turned out to
19 be a -- I think it was about a hundred, I don't know,
20 hundred-and-some-odd-million-dollar deal. I just
21 couldn't take the risk.

22 Q. When were you approached with the opportunity
23 to get involved in this St. Lucia deal?

24 A. I don't recall. It was a lingering project
25 that had been around for some time, but I don't recall

Certificate of Counsel

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

A handwritten signature in black ink, appearing to read 'Mark W. Hardee', is written over a horizontal line.

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