THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTION COUNTY
Court of Common Pleas

James O. Spence, Master-in-Equity

Case No. 2010-CP-32-2038

Oliver Grady Query, and the Estate of Grady W. Query, by its Personal Representative, Oliver Grady Query, Appellants-Respondents,

v.

Ladislao Castrejon, Alberto Lozano and Jesus Brito, Defendants, Of Whom Ladislao Castrejon is the Respondent-Appellant.

INITIAL BRIEF OF RESPONDENT-APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err in failing to find the transaction involving owner financing which was scheduled to close in September 2008 was unenforceable because it violated the Statute of Frauds?

II. Did the trial court err in failing to find Appellants-Respondents' claim for breach of contract failed because the contract contained a condition precedent relating to financing which was never met.

STATEMENT OF THE CASE

This matter came before the Lexington County Court of Common Pleas by way of a complaint filed by Oliver Grady Query and the Estate of Grady W. Query ("Appellants-Respondents") on May 18, 2010. In their complaint Appellants-Respondents brought causes of action for breach of contract and novation against Ladislao Castrejon, Alberto Lozano and Jesus Brito. Mr. Castrejon, the Respondent-Appellant, timely answered. Mr. Lozano did not initially do so. Therefore, at Appellants-Respondents' request an order of default was entered against Mr. Lozano on June 23, 2011. While still under the order of default Mr. Lozano filed an answer. After a hearing on a motion for relief from the order of default, Mr. Lozano was subsequently relieved from the order of default by the lower court by order dated September 20, 2011, and his previously filed answer was entered as a response to Appellants-Respondents' complaint. Appellants-Respondents subsequently filed an amended complaint dated September 20, 2013, in which they brought an additional cause of action for specific performance against Defendants. Mr. Castrejon and Mr. Lozano both filed answers to the amended complaint. Mr. Brito did not.

Trial was held before the Honorable James O. Spence on November 21, 2013 at the Lexington County Judicial Center. Appellants-Respondents were present and represented by Mark V. Evans, Esquire. Mr. Castrejon and Mr. Lozano were present and represented by Allen Bullard, Esquire. Mr. Brito was not present and was not represented. At the outset of trial Appellants-Respondents withdrew their novation and specific performance causes of action against Defendants with prejudice. [Tr., p. 6, l. 17 – p. 7, l. 12]. At trial, Appellants-Respondents presented the testimony of Oliver Grady Query; Tommy Dawson, formerly of Re/Max Metro Associates; and Elizabeth Keys, a real estate appraiser with Intergra Realty

Resources. Mr. Castrejon and Mr. Lozano testified on their own behalves. They also presented the testimony of Joseph Rosen, a real estate appraiser with Rosen Appraisal Associates. The trial court also accepted eleven exhibits offered into evidence by Appellants-Respondents, and two exhibits offered into evidence by Mr. Castrejon and Mr. Lozano.

On November 22, 2011, Appellants-Respondents' informed the trial court that based upon the testimony and evidence presented at trial Appellants-Respondents' wished to dismiss all claims against Mr. Lozano with prejudice. The trial court entered an order to that effect dated December 27, 2013, which was filed with the Lexington County Clerk of Court on January 3, 2014. Subsequently, by order dated April 4, 2014 the trial court entered judgment in favor of Mr. Castrejon. The parties received written notice of entry of the order on April 7, 2014. Thereafter, the trial court entered an order dated April 25, 2014 which corrected a scrivener's error on page 11 of its April 4, 2014 order.

By letter dated May 7, 2014, Appellants-Respondents served notice of appeal on Mr. Castrejon. By letter dated May 9, 2014, Mr. Castrejon served Appellants-Respondents with his notice of cross-appeal. By letter dated May 12, 2014 Mr. Castrejon filed his notice of appeal with this Court and the Lexington County Clerk of Court. By letter dated May 14, 2014 Appellants-Respondents filed their notice of appeal with this Court and the Lexington County Clerk of Court. Mr. Castrejon's initial brief follows.

FACTS

This case involves a dispute over a contract for the purchase and sale of real property. Appellants-Respondents sought to hold Mr. Castrejon liable for breach of an agreement to purchase an 11.29 acre parcel of land located in Gaston, South Carolina ("the Property").

At trial Appellants-Respondents first presented the testimony of Elizabeth Keys, the aforementioned real estate appraiser with Intergra Realty Resources. The parties stipulated that she was an expert in appraising. [Tr. p. 39, l. 17 - p. 40, l. 4]. Ms. Keys testified that she performed an appraisal of the property and determined that its value as of September 24, 2008, the time of the parties' contemplated closing of the transaction, was $270,000. [Tr. p. 42, ll. 15-19]. As part of her testimony Ms. Keys explained the methodology she employed in compiling her appraisal. [Tr. p. 40, l. 15 - p. 41, l. 25].

Next, Plaintiffs presented the testimony of Oliver Grady Query. Mr. Query provided testimony regarding, among other things, the initial formation of the parties' contract in March 2008. He testified that Appellants-Respondents agreed to sell the property to Mr. Castrejon for $302,500, and Mr. Castrejon agreed to make a two thousand dollar ($2000) earnest money deposit, a forty-eight thousand dollar ($48,000) down payment, and obtain a loan of two hundred fifty-two thousand five hundred dollars ($252,500). Mr. Query testified that subsequent to the parties' execution of the contract, he learned that Mr. Castrejon was unable to secure conventional financing from his bank (BB&T). Mr. Query testified that Appellants-Respondents thereafter offered to owner finance the transaction. [Tr., p. 60, l. 15 - p. 61, l. 2; p. 64, ll. 8-20]. Mr. Query testified that based upon his interactions with the attorney tasked to close the transaction, Sam Jefcoat, it was his understanding that a closing would be held on September 24,

2008 to consummate the transaction under the new, owner financing terms. Mr. Query testified that he executed a HUD financing statement and deed transferring the property to Mr. Castrejon and Mr. Brito, which were delivered to Mr. Dawson for ultimate delivery to the closing. [Tr. p. 76, l. 19 - p. 78, l. 17]. Although he was uncertain of the reason why, Mr. Query testified that Mr. Castrejon did not purchase the property at the contemplated September 24, 2008 closing and still has not done so. [Tr. p. 79, ll. 2-7]. Appellants-Respondents stipulated they were seeking damages against Mr. Castrejon in the amount of the interest they would have earned on the owner financing offered to Mr. Castrejon as well as the difference between the contract price and the appraised value of the property at the time of the contemplated sale in September 2008, plus costs and attorney's fees. [Tr. p. 84, l. 1 - p. 87, l. 4].

Appellants-Respondents next presented the testimony of Tommy Dawson, an agent with Re/Max Metro Associates, who was Appellants-Respondents' real estate agent for purposes of this transaction. [Tr., p. 133, ll. 7-14]. Mr. Dawson conducted the negotiations with Mr. Castrejon on Appellants-Respondents' behalf which led to the formation of the March 2008 contract as well as the modification of the financing terms from conventional to owner financing. [Tr. p. 81, l. 21 - p. 82, l. 7; p. 104, ll. 2-17; p. 119, l. 17 - p. 121, l. 16; p. 123, ll. 8-24]. He testified that he forwarded the original contract to Mr. Castrejon's banker at BB&T, and understood that BB&T was unwilling to loan Mr. Castrejon the funds to purchase the property. [Tr., p. 112, l. 12 - p. 113, l. 7; p. 125, l. 15 - p. 126, l. 4; p. 127, ll. 7-15]. He also testified that he was the one who reduced the terms of the owner financing deal to writing [Appellants-Respondents' Trial Exhibit #10] and forwarded them to Mr. Jefcoat. [Tr., p. 105, l. 2 - p. 108, l. 25].

Mr. Castrejon testified on his own behalf. He testified once he became interested in purchasing the property, all discussion about the property and negotiations regarding a prospective sale were had with Mr. Dawson. [Tr., p. 155, l. 18 - p. 156, l. 21; p. 159, l. 4-22; p. 162, l. 11-19]. He testified that the terms of the contract he agreed to in March 2008 required him to make a $50,000 down payment and obtain financing for the remaining $252,500 of the purchase price. [Tr., p. 166, l. 22 - p. 167, l. 17; p. 168, ll. 13-20; p. 170, ll. 19-22]. Mr. Castrejon testified that he attempted to obtain financing from BB&T, a bank he had an ongoing business relationship with, but BB&T was unwilling to extend him any additional credit. [Tr., p. 160, l. 1 - p. 161, l. 2]. He testified that it was not until several months after he informed Mr. Dawson that he was unable to obtain financing from BB&T that owner financing began to be discussed. [Tr. p. 161, ll. 3-10]. He testified that he intended to obtain the $75,000 down payment called for under the terms of the owner financing deal from Jesus Brito, but Mr. Brito ultimately decided on the day of closing (September 24, 2008) not to provide the funds for the down payment. [Tr. p. 162, l. 20 - p. 163, l. 10; p. 164, l. 20 - 165, l. 7].

Mr. Castrejon also presented the testimony of Joseph Rosen, a real estate appraiser with Rosen Appraisal Associates. [Tr., p. 189, l. 15 - p. 190, l. 4]. As with Ms. Keys, the parties stipulated that Mr. Rosen was an expert in appraising. [Tr., Tr. p. 39, l. 17 - p. 40, l. 4; p. 191, ll. 24-25]. Mr. Rosen testified that he performed an appraisal of the property and determined that its value as of September 24, 2008, the time of the parties' contemplated closing of the transaction, was $315,000. [Tr., p. 196, ll. 4-8]. As part of his testimony Mr. Rosen explained the methodology he employed in compiling his appraisal. [Tr., p. 192, l. 23 - p. 196, l. 3].

Appellants-Respondents claimed Mr. Castrejon's failure to purchase the property constituted a breach of the parties' contract. Since Appellants-Respondents had not been able to secure a buyer for the property as of the date of trial, they claimed they were entitled to general damages measured as the difference between the contract price and the fair market value of the property on September 24, 2008, the time of the breach, as determined by Ms. Keys. In addition, Appellants-Respondents claimed they were entitled to special damages in the form of the interest they would have earned on the owner financing they offered to Mr. Castrejon ($103,404.29), plus costs and attorney's fees. Mr. Castrejon raised several defenses to the enforceability of the contract and to Appellants-Respondents' ability to prove and collect contract damages.

ARGUMENT I

I. The transaction involving owner financing which was scheduled to close in September 2008 was unenforceable because it violated the Statute of Frauds.

On or about March 27, 2008 the parties entered into a contract for the purchase of the Property. For purposes of their contract the parties utilized the standard form of the Greater Columbia Association of Realtors captioned "Land, Lots and Acreage Offer to Purchase." [Appellants-Respondents' Trial Exhibit #4]. Among the many provision in the contract, paragraph 3 required Mr. Castrejon to make a two thousand dollar ($2000) earnest money deposit, which was to be held by Mr. Query's realtor, a forty-eight thousand dollar ($48,000) down payment, and obtain a loan of two hundred fifty-two thousand five hundred dollars ($252,500). [Appellants-Respondents' Trial Exhibit #4, ¶ 3]. Paragraph 6 explicitly made the contract contingent upon Mr. Castrejon obtaining the financing referenced in paragraph 3. [Id., ¶ 6]. Additionally, the contract contained both a "time is of the essence" clause and one which set a specific deadline by which the transaction was to be consummated. [Id., ¶ 11, ¶ 13]. That deadline was April 25, 2008. [Id., ¶ 11.]. At trial Appellants-Respondents testified that it was this contract which they sought to enforce and which they claimed Respondent-Appellant breached. [Tr., p. 56, l. 24 – p. 59, l. 15; p. 69, ll. 6-13; p. 70, ll. 6-12]. Respondent-Appellant submits that contrary to the trial court's findings, it was not this contract that Appellants-Respondents truly sought to enforce. Rather, it was a modified version of this contract, which extended the contract's termination date and contained alternative financing terms.

At trial the parties acknowledged that Mr. Castrejon made a good faith attempt to secure the $252,500 in financing called for in the contract from BB&T, the bank with whom he had a previous lending relationship, but those attempts were unsuccessful. [Tr., p. 59, l. 16 – p. 60, l.

1; p. 60, ll. 15-20; p. 103, l. 6 – p. 104, l. 9; p. 160, l. 1 – p. 161, l. 2]. In addition, it was uncontroverted that the transaction did not close by the date contemplated in the contract. [Tr., p. 60, ll. 2-14; p. 63, l. 22 – p. 64, l. 8; p. 69, ll. 6-16; p. 75, ll. 8-10; p. 76, ll. 19-22; p. 79, ll. 1-7].

A condition precedent is an act which must occur before performance is due. Alexander's Land Co., L.L.C. v. M&M&K Corp., 390 S.C. 582, 596, 703 S.E.2d 207, 214 (2010). If a contract contains a condition precedent, that condition must occur before a party's duty to perform arises. McGill v. Moore, 381 S.C. 179, 187, 672 S.E.2d 571, 575 (2009). When a contract for the purchase of real estate contains a financing contingency, as was the case here, a purchaser is excused from performance if he is unable to obtain financing. Storen v. Meadors, 295 S.C. 438, 440, 369 S.E.2d 651, 652 (Ct. App. 1988) (prospective buyer excused from performance under a real estate purchase contract with a financing contingency clause when buyer made good faith effort to obtain financing). Since the contract was contingent upon Mr. Castrejon securing financing, and he was unable to do so by the date of closing, his performance under the contract was excused and the contract terminated.

However, the Appellants-Respondents argued, and the trial court ruled, that because the parties continued to discuss the purchase of the Property and eventually agreed upon an alternative financing arrangement, that the contract never actually terminated. Appellants-Respondents argued, instead, that these discussion merely constituted modifications to the original contract terms. The trial court agreed, explaining that neither of the parties attempted to terminate the contract or propose a new contract. Respondent-Appellant submits that the trial court's ruling was erroneous in both respects.

First, the terms of the contract were such that neither party was required to take any affirmative action to terminate it if the financing contingency was not met or the transaction was not closed by the date specified. As discussed above, if a condition precedent, such as a financing contingency, is not met, the party's duty to perform never arises and is excused. Alexander's Land Co., L.L.C. v. M&M&K Corp., 390 S.C. 582, 596, 703 S.E.2d 207, 214 (2010); McGill v. Moore, 381 S.C. 179, 187, 672 S.E.2d 571, 575 (2009); Storen v. Meadors, 295 S.C. 438, 440, 369 S.E.2d 651, 652 (Ct. App. 1988). Failure of the condition precedent, in and of itself, excused Mr. Castrejon's performance under the contract. No additional, overt declaration that the contract had terminated was required.

Furthermore, the contract terminated on April 25, 2008 by its own terms. It did not require either party to take any action to effectuate a termination. As mentioned above, paragraph 11 required the transaction to close on or before April 25, 2008, and paragraph 13 made time of the essence of the contract. "A time stipulated in a contract for its performance is of its essence, unless a contrary intent appears from the face of the contract, that is to say if a person promises another to do a certain thing by a certain day in consideration that the latter will do something for him, the thing must be done by the date named, or the latter is discharged from his promise." Dargan v. Page, 222 S.C. 520, 528, 73 S.E.2d 705, 709 (1952). Accordingly, the parties' failure to close the transaction on April 25, 2008 discharged both from performance, having the effect of terminating the contract. Once the contract expired there was no longer an active instrument for the parties to modify. Center Investments v. Penhallurick, 22 Wn. App. 846, 592 P.2d 685 (1979) (a contract which by its terms has expired is legally defunct and there

is nothing upon which an extension may legally operate); Thayer v. Damiano, 9 Wn. App. 207, 210, 511 P.2d 84 (1973).

Regardless, even if the contract had not terminated by its own terms, and the extension of the closing date and the new owner financing terms were correctly considered modifications thereof, these modifications did not comply with the Statute of Frauds, and were, thus, unenforceable. The Statute of Frauds, S.C. Code Ann. § 32-3-10, provides in pertinent part:

> § 32-3-10. Agreements required to be in writing and signed.
>
> No action shall be brought whereby:
>
> ...
>
> (4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them;
>
> ...
>
> Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.

To satisfy the Statute of Frauds, every essential element of the contract for the sale of land must be expressed in a writing signed by the party to be compelled. Fici v. Koon, 372 S.C. 341, 642 S.E.2d 602 (2007); Cash v. Maddox, 265 S.C. 480, 220 S.E.2d 121 (1975); Speed v. Speed, 213 S.C. 401, 49 S.E.2d 588 (1948). The burden of proof is on the party seeking to enforce the contract. Cash, supra.

As discussed above, the parties' original contract called for Mr. Castrejon to pay a $2000 earnest money deposit, a $48,000 down payment and obtain a loan for the $252,500 balance of the purchase price. The owner financing proposed by Appellants-Respondents varied these

terms and required a $75,000 down payment and a loan of $227,500.[1] [Tr., p. 69, ll. 1-4; p. 108, ll. 4-7; p. 108, l. 18 – p. 109, l. 9; p. 130, l. 24 – p. 131, l. 22; Appellants-Respondents' Trial Exhibit #10, p. 2]. Although these terms were reduced to writing by Appellants-Respondents' realtor, Mr. Dawson, they were never signed by Mr. Castrejon or any of the other parties to the contemplated transaction. [Tr., p. 131, l. 7 – p. 132, l. 4; p. 161, l. 11 – p. 162, l. 10]. Likewise, Mr. Castrejon did not sign any agreement to extend the closing date beyond April 25, 2008. [Tr., p. 89, l. 12 – p. 91, l. 12]. Contracts required by the Statute of Frauds to be in writing cannot be orally modified. Windham v. Honeycutt, 279 S.C. 109, 302 S.E.2d 856 (1983) (a contract required to be in writing by the Statute of Frauds cannot be orally modified); Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989) (same); State v. McIntyre, 307 S.C. 363, 365, 415 S.E.2d 399, 400 (1991) (same). Since neither of these alleged modifications to the contract were signed by Mr. Castrejon and the alleged extension of the closing date was not reduced to writing, they violate the Statute of Frauds, and no action can be maintained against Mr. Castrejon seeking to enforce them.

[1] It also appears that the owner financing terms varied the purchase price itself. If the earnest money, down payment and owner financing portions of the overall owner financing deal are added together, the total purchase price becomes $304,500 instead of the original $302,500 contained in the original contract. $2000 + $75,000 + $227,500 = $304,500.

ARGUMENT II

II. Appellants-Respondents' claim for breach of contract fails because the contract contained a condition precedent relating to financing which was never met.[2]

As mentioned in Argument I above, the parties entered into a contract for the purchase of the Property for $302,500 on or about March 27, 2008. Paragraph 3 of that contract required Mr. Castrejon to make a two thousand dollar ($2000) earnest money deposit, a forty-eight thousand dollar ($48,000) down payment, and obtain a loan of two hundred fifty-two thousand five hundred dollars ($252,500). [Appellants-Respondents Trial Exhibit #4, ¶ 3]. Paragraph 6 of the Contract explicitly made the contract contingent upon Mr. Castrejon obtaining the financing referenced in paragraph 3. [Id., ¶ 6]. The financing was never obtained and, thus, the contingency was not met.

All parties acknowledge that Mr. Castrejon made attempts to secure $252,500 in financing from BB&T, the bank with whom he had a previous lending relationship, but those attempts were unsuccessful. [Tr., p. 59, l. 16 – p. 60, l. 1; p. 60, ll. 15-20; p. 103, l. 6 – p. 104, l. 9; p. 160, l. 1 – p. 161, l. 2]. Mr. Castrejon also made attempts to secure the down payment from Mr. Brito, but that was unsuccessful as well. [Tr. p. 162, l. 20 – p. 163, l. 4; pp. 163, ll. 8-10; p. 164, l. 20 – p. 165, l. 7].

A condition precedent is an act which must occur before performance is due. Alexander's Land Co., L.L.C. v. M&M&K Corp., 390 S.C. 582, 596, 703 S.E.2d 207, 214 (2010). If a contract contains a condition precedent, that condition must occur before a party's duty to perform arises. McGill v. Moore, 381 S.C. 179, 187, 672 S.E.2d 571, 575 (2009). Generally,

[2] Respondent-Appellant has filed a motion requesting leave of this court to allow him to file a motion pursuant to Rule 60, SCRCP, to clarify the trial court's ruling on this issue found in section C of its order. He maintains that the trial court decided this issue in his favor. However, he briefs this issue here out of an abundance of caution.

the failure of one to perform under a contract because of his inability to obtain financing from a third party on whom he relied to furnish money will not excuse performance, in the absence of a contract provision in that regard. However, paragraph 6 of the contract had just such a term. It read, "Contract is contingent upon above financing." In 2008 this Court, construing identical language, determined that the phrase "is contingent upon" is a clear and unambiguous condition precedent. The Court reasoned as follows:

> The use of the language "is contingent upon" is unequivocal and patently indicates the parties' respective obligations to buy and sell ... are contingent on [the purchaser's] ability to secure financing. No other meaning could be deduced from such clear and commonly used language.

M&M Group, Inc. v. Holmes, 379 S.C. 468; 666 S.E.2d 262 (Ct. App. 2008).

Financing is "the act or process or an instance of raising or providing funds" or "the funds thus raised or provided." Merriam-Webster Dictionary, 2014 Online Edition, http://www.merriam-webster.com/dictionary/financing; BLACK'S LAW DICTIONARY 663 (8th Ed. 2004) ("the act or process of raising or providing funds"). The phrase "above financing" found in paragraph 6 of the contract had three components – (1) an earnest money deposit of $2000; (2) a $48,000 down payment; and, (3) a $252,500 loan. Since each of the three components of the contract purchase price noted above had to be paid to Appellants-Respondents before their obligation to deliver the property to Mr. Castrejon, they collectively make up the "financing" for this transaction. Although Mr. Castrejon made an effort to secure both, he was never able to deliver the down payment, nor the additional $252,500. Mr. Castrejon tried but failed to obtain the down payment from Jesus Brito. While there was some indication that he might be able to do so, Mr. Brito eventually decided he was not willing to provide the funds, and Mr. Castrejon had no other means to obtain them. Likewise, his attempts to obtain a loan from

BB&T for $252,500 proved unsuccessful. Mr. Castrejon's inability to obtain the down payment ($48,000) and the remaining funds ($252,500) for the purchase of the property, therefore, constitute a failure of the contract's financing contingency, and excuses him from performance. Storen v. Meadors, 295 S.C. 438, 440, 369 S.E.2d 651, 652 (Ct. App. 1988) (prospective buyer excused from performance under a real estate purchase contract with a financing contingency clause when buyer made good faith effort to obtain financing).

Appellants-Respondents contend that their offer to provide owner financing for a portion of the purchase price satisfied the condition precedent and, thereby, made the contract enforceable. However, Appellants-Respondents' position is untenable. First and foremost, as discussed in Argument I, Appellants-Respondents' attempt to modify the terms of the contract violated the Statute of Frauds, and those terms are, therefore, unenforceable.

Even if the owner financing terms had not violated the Statute of Frauds, they still failed to satisfy the condition precedent. As discussed above, although the contract broke the purchase price into three pieces (earnest money, down payment and loan), they all collectively constituted Mr. Castrejon's financing obligation for the transaction. The evidence presented at trial indicated that Mr. Castrejon intended to borrow the $252,500 loan portion of the financing called for in the contract from BB&T. [Tr., p. 160, ll. 1-24].[3] Mr. Castrejon contacted BB&T and attempted to arrange that financing, but was unable to do so. Thus, he could not secure the financing required under the terms of the original contract.

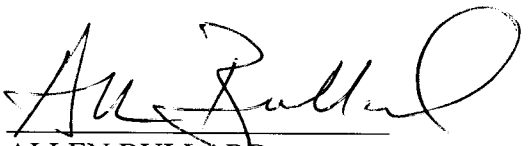
[3] Although it is not entirely clear, based upon his testimony that he was relying on Jesus Brito for the $75,000 down payment and his testimony that the property was going to be owned by Brito-Castrejon Properties, it appears that Mr. Castrejon was relying on Mr. Brito for the $48,000 down payment referenced in the Contract as well. [Tr., p. 160, ll. 1-24; p. 167, l. 22 – p. 168, l. 6]. Given the reason for Mr. Brito's ultimate decision not to lend the funds for the down payment would have existed under either financing scenario, it is reasonable to conclude he would not have loaned Mr. Castrejon the $48,000 down payment either.

Likewise, the uncontroverted evidence indicates that Mr. Castrejon was never able to secure the down payment component of his financing under the owner financing deal. Mr. Castrejon was relying on Jesus Brito to supply the funds for the down payment, and initially, Mr. Brito indicated he would do so. Unfortunately, Mr. Brito changed his mind, and Mr. Castrejon had no other means to make good on the $75,000 down payment. [Tr., p. 162, l. 20 – p. 163, l. 10; p. 164, l. 20 – p. 164, l. 7]. Thus, the financing condition precedent for th owner financing terms was not met, and Mr. Castrejon was relieved from his duty to perform.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the trial court on the issues addressed above.

Respectfully submitted,



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June 13, 2014.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTION COUNTY
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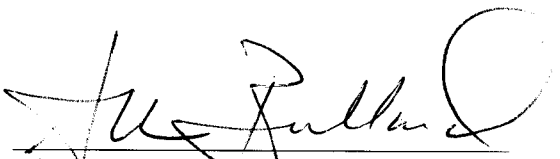
PROOF OF SERVICE

I certify that I have served Respondent-Appellant's Initial Brief on Appellants-Respondents by depositing a copy of it in the United States Mail, postage prepaid, on June 13, 2014, addressed to their attorney of record, Mark V. Evans, 147 Wappoo Creek Drive, Suite 202, Charleston, South Carolina 29412.



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June 13, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Oliver Grady Query v. Ladislao Castrejon
Appellate Case No.: 2014-001041
Our File No.: 2135450

Dear Ms. Kitchings:

Enclosed please find Respondent-Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal in the aforementioned matter. I am, by copy of this letter, serving a copy on Appellants-Respondents.

Please feel free to contact me if you have any questions or concerns.

Sincerely,

MONTGOMERY WILLARD, LLC

Allen Bullard

cc: Mark V. Evans, Esquire
Ladislao Castrejon

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