

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2010-CP-22-1233

Appellate Case No. 2012-213524

First South Bank,

Respondent,

v.

South Causeway, LLC,

Appellant,

RECEIVED
NOV 19 2013
SC Court of Appeals

**RECORD ON APPEAL
VOLUME II**

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INDEX

ORDERS and JUDGMENTS:

Order Denying Defendant's Motion to Dismiss Demand for Jury Trial, filed 11-17-11	1
Order Denying Plaintiff's Motion for Summary Judgment, filed 12-1-11	3
SC Court of Appeals Order of Dismissal, filed 2-21-12	9
Order of Foreclosure, filed 11-1-12	10
Supplemental Order of Foreclosure, filed 11-2-12	19
Order Denying Post Trial Motions, filed 11-5-12	27

PLEADINGS and MOTIONS:

Summons and Complaint, filed 8-5-10	39
Answer, filed 9-3-10	82
Amended Answer and Counterclaim, dated 10-4-10	84
Plaintiff's Motion for Summary Judgment, filed 6-3-11	108
Defendant's Memorandum in Opposition to Motion for Summary Judgment, filed 11-17-11 ...	388
Defendant's Post Trial Motions, filed 10-5-12	454
Affidavit of Attorneys Fees and Costs for Collins & Lacy, P.C, dated 10-8-12	468
Plaintiff's Opposition to Defendant's Post Trial Motions, filed 10-23-12	571
Plaintiff's Response/Consent to Defendant's Return in Opposition to Motion for Attorneys' Fees and Costs, dated 11-1-12	620
Notice of Appeal, filed 11-30-12	622

TRANSCRIPT:

Trial Transcript	655

OTHER MATERIALS OR DOCUMENTS:

Court’s Exhibit 1 1749

Plaintiff’s Exhibits 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 24, 26, 27, and 29 1758

Defendant’s Exhibits 2, 5, 6, 7, 8, 9, 10, 11, 13, 14, 21, 27.....1849

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

FIRST SOUTH BANK,

Plaintiff,

vs.

SOUTH CAUSEWAY, LLC,

Defendant.

) IN THE COURT OF COMMON PLEAS
)
)

) FIFTEENTH JUDICIAL CIRCUIT
)
)

) CIVIL ACTION NUMBER:
) 2010-CP-22-01233
)
)

) AFFIDAVIT OF ATTORNEYS FEES AND
) COSTS FOR COLLINS & LACY, P.C.
)
)
)

PERSONALLY APPEARED before me James L. Floyd III ("Lee"), Esquire, who upon being duly sworn, deposes and states: .

1. That Deponent is an attorney at law licensed to practice law in the State of South Carolina.
2. That Deponent is and has been an active member of the South Carolina Bar since 2007 and is a senior associate with the law firm of Collins & Lacy, P.C.
3. That Deponent's law firm was retained by Plaintiff in this matter to effectuate collection of the account of South Causeway, LLC, including foreclosure of Plaintiff's Mortgage and defending the Plaintiff against numerous counterclaims and affirmative defenses asserted by South Causeway, LLC in the foreclosure action.
4. That Deponent and Attorney Joel W. Collins, Jr., Esquire, were the attorneys practicing at Collins & Lacy who represented the Plaintiff in the litigation of this matter. Joel W. Collins, Jr., Esquire, has forty-four (44) years of trial experience.

5. The Universal Note and Security Agreement, Mortgage, and Loan Agreement executed by South Causeway, LLC, provides for South Causeway, LLC to pay the attorney fees and costs incurred by Plaintiff in hiring an attorney to collect the Note, which includes attorney fees and costs Plaintiff incurred for the collection of this account and defense of the counterclaims asserted by South Causeway, LLC in the foreclosure action.

6. Your Deponent is informed and believes that Plaintiff is entitled to an award of its litigation costs and attorneys fees because the terms of the Note and other loan documents provide that Plaintiff may recover its costs and attorneys fees to collect the Note and its costs and attorneys fees to defend the counterclaims because the counterclaims were intertwined with the foreclosure action and challenged the validity and enforceability of the Note and Mortgage. Charleston Lumber Co., Inc. v. Miller Housing Corp., 318 S.C. 471, 483-84, 458 S.E.2d 431, 438-39 (Ct. App. 1995). A copy of this decision is attached hereto as Ex. 1.

10. That Plaintiff has incurred the actual sum of \$179,566.52 in attorney's fees and \$5,970.60 in costs and expenses with Collins & Lacy, P.C. for the prosecution of the foreclosure action and defense of Defendant's counterclaims, as reflected on the itemized invoice(s) attached hereto as Exhibit 2.

11. That Deponent is of the opinion and belief that the attorney fees requested are fair and reasonable under the six (6) applicable factors to be considered under Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989):

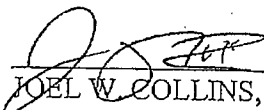
(1) This litigation involved a complex commercial dispute, which included the defense of numerous counterclaims and affirmative defenses containing allegations of breach of contract, fraudulent misconduct, and unfair trade practices by Plaintiff;

- (2) The time actually devoted to the matter was necessary to complete extended discovery, numerous motions and depositions, and present the case at a six (6) day jury trial;
- (3) The professional standing of the attorneys at Collins & Lacy, P.C. is excellent and they regularly represent clients in matters similar to the issues presented in this case;
- (4) The contingency of compensation factor is inapplicable since this was not a contingency case;
- (5) The rates and the fee are consistent with those customarily charged in the Counties of Columbia and Georgetown for similar legal services; and
- (6) The beneficial results that Plaintiff has received in prevailing on its action to foreclose on a Note exceeding \$5 million in value and prevailing on its defense of the counterclaims, which sought to invalidate the Note and/or to recover \$8 million in claimed actual damages.

FURTHER DEPONENT SAYETH NOT.

Respectfully submitted,
COLLINS & LACY, P.C.

By:


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ATTORNEYS FOR PLAINTIFF

SWORN before me this 9th day of October, 2012.

Richelle Z. Campbell (L.S.)
Notary Public for South Carolina
My Commission Expires: 11-9-16

Westlaw.

458 S.E.2d 431

318 S.C. 471, 458 S.E.2d 431

(Cite as: 318 S.C. 471, 458 S.E.2d 431)

Page 1

H

Court of Appeals of South Carolina.
CHARLESTON LUMBER COMPANY, INC., Respondent,
v.
MILLER HOUSING CORPORATION, and Robert E. Miller, Jr., Appellants.

No. 2318.

Heard Dec. 6, 1994.

Decided March 13, 1995.

Certiorari Denied March 21, 1996.

Creditor brought action against debtor and its principal, seeking recovery of money judgment allegedly due on open account, collection of promissory note, and foreclosure of mortgage. Defendants filed counterclaims for fraud, violation of Unfair Trade Practices Act (UTPA), negligence, setoffs, and libel and slander. The Circuit Court, Charleston County, A. Victor Rawl, J., granted summary judgment against defendants on fraud and negligence counterclaims, granted creditor's motion for summary judgment for balance due on note and against defendants on setoff and libel and slander counterclaims, entered judgment for creditor on open account, awarded no damages to defendants on UTPA counterclaims despite jury finding in their favor, denied attorney fees to defendants under UTPA, and awarded attorney fees to creditor under note. Defendants appealed. The Court of Appeals, Cureton, J., held that: (1) notice of appeal's failure to reference one of five related suits was clerical error that did not warrant dismissal of appeal; (2) defendants did not establish fraud defense to liability on note; (3) questions of fact precluded summary judgment for creditor on fraud counterclaim; (4) defendants failed to prove elements necessary to be awarded attorney fees under UTPA; and (5) creditor was entitled to full amount of attorney fees requested under note, even if some fees were attributable to defending counterclaims.

Affirmed in part, reversed in part, modified in part, and remanded.

West Headnotes

[1] Appeal and Error 30  422

30 Appeal and Error

30VII Transfer of Cause

30VII(D) Writ of Error, Citation, or Notice

30k416 Form and Requisites of Notice

30k422 k. Defects, objections, and amendments. Most Cited Cases

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Clerical errors in notice of appeal do not destroy appeal.

[2] Appeal and Error 30 ⚡422

30 Appeal and Error

30VII Transfer of Cause

30VII(D) Writ of Error, Citation, or Notice

30k416 Form and Requisites of Notice

30k422 k. Defects, objections, and amendments. Most Cited Cases

Failure of notice of appeal to mention one of five related suits was clerical in nature and did not warrant dismissal of appeal, where appellee did not allege any prejudice as result of omission, and there was no doubt that appellee had notice that appellants had appealed all cases.

[3] Judgment 228 ⚡181(2)

228 Judgment

228V On Motion or Summary Proceeding

228k181 Grounds for Summary Judgment

228k181(2) k. Absence of issue of fact. Most Cited Cases

To grant summary judgment, it must be shown that further inquiry into facts is not needed to clarify application of the law. Rules Civ.Proc., Rule 56.

[4] Judgment 228 ⚡185(2)

228 Judgment

228V On Motion or Summary Proceeding

228k182 Motion or Other Application

228k185 Evidence in General

228k185(2) k. Presumptions and burden of proof. Most Cited Cases

In ruling on motion for summary judgment, evidence and inferences which can be drawn therefrom should be viewed in light most favorable to nonmoving party. Rules Civ.Proc., Rule 56.

[5] Bills and Notes 56 ⚡442

56 Bills and Notes

56XI Actions

56k441 Right of Action

56k442 k. Nature and grounds in general. Most Cited Cases

Evidence 157 ⇨ 402

157 Evidence

157XI Parol or Extrinsic Evidence Affecting Writings

157XI(A) Contradicting, Varying, or Adding to Terms of Written Instrument

157k402 k. Bills and notes. Most Cited Cases

Note by its terms is unconditional promise to pay money, and parol evidence may not be introduced to vary its terms or otherwise inject conditions not apparent on its face.

[6] Bills and Notes 56 ⇨ 98

56 Bills and Notes

56I Requisites and Validity

56I(E) Consideration

56k98 k. Estoppel to deny consideration or allege failure of consideration. Most Cited Cases

Execution of note in payment of open account operates to cut off all defenses to account to which maker then had knowledge, where it is clear from record that person knew or should have known operative facts upon which note was based.

[7] Bills and Notes 56 ⇨ 98

56 Bills and Notes

56I Requisites and Validity

56I(E) Consideration

56k98 k. Estoppel to deny consideration or allege failure of consideration. Most Cited Cases

Obligors could not claim ignorance of falsity of obligee's representation that they owed \$149,000 as fraud defense to liability on promissory note, where, prior to signing note, obligors had all information necessary to compute what they asserted to be correct balance due on account.

[8] Fraud 184 ⇨ 20

184 Fraud

184I Deception Constituting Fraud, and Liability Therefor

184k19 Reliance on Representations and Inducement to Act

184k20 k. In general. Most Cited Cases

Whether reliance on misrepresentation is justified in given situation requires evaluation of circumstances involved, including positions and relations of parties.

[9] Bills and Notes 56 ⚡103(1)

56 Bills and Notes

56I Requisites and Validity

56I(F) Validity

56k100 Validity of Assent

56k103 Fraud and Misrepresentation

56k103(1) k. In general. Most Cited Cases

Obligors were not reasonable in relying on obligee's representations as to amount owed on account, and, thus, alleged falsity of those representations did not provide fraud defense to liability on promissory note, where obligors began noticing increase in errors in their account years prior to execution of note, and one obligor testified that obligee was exercising leverage over him and threatened to withhold critical materials if he refused to sign note.

[10] Fraud 184 ⚡12

184 Fraud

184I Deception Constituting Fraud, and Liability Therefor

184k8 Fraudulent Representations

184k12 k. Existing facts or expectations or promises. Most Cited Cases

When one promises to do certain thing, having at the time no intention of keeping the agreement, it is fraudulent misrepresentation of fact, and actionable as such.

[11] Judgment 228 ⚡181(33)

228 Judgment

228V On Motion or Summary Proceeding

228k181 Grounds for Summary Judgment

228k181(15) Particular Cases

228k181(33) k. Tort cases in general. Most Cited Cases

Question of fact, precluding summary judgment for creditor on fraud counterclaim filed by debtor and its principal, existed as to whether creditor had made promises to correct billing errors with present intention not to fulfill them. Rules Civ.Proc., Rule 56.

[12] Judgment 228 ⚡181(33)

228 Judgment

228V On Motion or Summary Proceeding
228k181 Grounds for Summary Judgment
228k181(15) Particular Cases
228k181(33) k. Tort cases in general. Most Cited Cases

Question of fact, precluding summary judgment for creditor on fraud counterclaim filed by debtor and its principal, existed as to whether debtor and its principal were damaged as result of creditor's alleged fraudulent billing practices, where debtor and principal alleged loss of employee time based on personnel having to spend numerous hours each month checking and correcting bids versus actual charges. Rules Civ.Proc., Rule 56.

[13] Fraud 184 ↪60

184 Fraud
184II Actions
184II(E) Damages
184k60 k. Elements of compensation. Most Cited Cases

Employee time diverted from pursuit of employer's business is compensable damage in fraud action.

[14] Antitrust and Trade Regulation 29T ↪134

29T Antitrust and Trade Regulation
29TIII Statutory Unfair Trade Practices and Consumer Protection
29TIII(A) In General
29Tk133 Nature and Elements
29Tk134 k. In general. Most Cited Cases
(Formerly 382k864 Trade Regulation)

Antitrust and Trade Regulation 29T ↪369

29T Antitrust and Trade Regulation
29TIII Statutory Unfair Trade Practices and Consumer Protection
29TIII(E) Enforcement and Remedies
29TIII(E)6 Evidence
29Tk369 k. Weight and sufficiency. Most Cited Cases
(Formerly 382k864 Trade Regulation)

To recover pursuant to Unfair Trade Practices Act (UTPA), one must prove each of the following three elements by the greater weight or preponderance of evidence: violation of UTPA; proximate cause; and damages. Code 1976, § 39-5-140.

[15] Antitrust and Trade Regulation 29T 397

29T Antitrust and Trade Regulation

29TIII Statutory Unfair Trade Practices and Consumer Protection

29TIII(E) Enforcement and Remedies

29TIII(E)7 Relief

29Tk395 Costs

29Tk397 k. Attorney fees. Most Cited Cases

(Formerly 382k864 Trade Regulation)

Debtor and its principal failed to prove elements necessary to be awarded attorney fees under Unfair Trade Practices Act (UTPA), even though jury found that creditor's actions constituted unfair or deceptive act or practice in conduct of trade of commerce, where jury further found that debtor and its principal suffered no actual damages as proximate result of unfair act. Code 1976, § 39-5-140.

[16] Costs 102 194.16

102 Costs

102VIII Attorney Fees

102k194.16 k. American rule; necessity of contractual or statutory authorization or grounds in equity. Most Cited Cases

Attorney fees are recoverable when authorized by contract or statute.

[17] Costs 102 194.32

102 Costs

102VIII Attorney Fees

102k194.24 Particular Actions or Proceedings

102k194.32 k. Contracts. Most Cited Cases

When contract provides for "reasonable attorney's fees" without specifying rate or amount, the amount of fees to be awarded is left to court's discretion.

[18] Bills and Notes 56 534

56 Bills and Notes

56XI Actions

56k528 Amount of Recovery

56k534 k. Attorney fees. Most Cited Cases

Trial court did not abuse its discretion in awarding full amount of attorney and paralegal fees

requested by creditor, which prevailed in action on promissory note that contained attorney fee provision, even though debtor and its principal contended that some fees were attributable to defending counterclaims, where facts and issues surrounding promissory note were intertwined with those of counterclaims, which had required extensive discovery and transformed normally uncomplicated action on note into complex litigation.

****433 *473** Edward J. Westbrook, of Ness, Motley, Loadholt, Richardson & Poole, Charleston, for appellants.

Steven L. Smith and Joe S. Dusenbury, Jr., both of Smith, Collins & Dusenbury, N. Charleston, for respondent.

CURETON, Judge.

Respondent, Charleston Lumber Company, Inc. (Charleston Lumber), brought six lawsuits against the appellants, Miller Housing Corporation and Robert E. Miller, Jr. (the Millers), seeking the recovery of money allegedly due on an open account, the collection of a promissory note, and the foreclosure of a mortgage on five separate lots.^{FN1} In its answer, ***474** the Millers denied liability and asserted two counterclaims for fraud, a counterclaim for violation of the Unfair Trade Practices Act (UTPA), and an affirmative defense of negligence. Charleston Lumber then moved for summary judgment on the grounds that the Millers had suffered no damages pursuant to their fraud counterclaim, and the Millers had no basis for a negligence cause of action. The Millers likewise moved for summary judgment on the open account on the ground that Charleston Lumber did not have a personal guarantee from Robert E. Miller, Jr. regarding the alleged open account balance. On June 28, 1992, the trial court issued an order granting Charleston Lumber's motion for summary judgment against the Millers on the first counterclaim for fraud and on the negligence counterclaim.^{FN2} In the same order, the court denied the Millers' motion for summary judgment ****434** on the open account, but allowed the Millers to amend their counterclaims to allege a set-off, general denial, causes of action for libel and slander, and violation of the UTPA.

FN1. The mortgage foreclosure causes of action were rendered moot when the first mortgage holder foreclosed and sold the subject properties.

FN2. In his order, the court stated that "[Charleston Lumber's] motion for summary judgment addressed three (3) of the five (5) causes of action raised by [Miller] in his counterclaim. The three causes of action in question where [sic] negligence, fraud, and violation of the Unfair Trade Practices Act."

Based on this order, the Millers amended their answer and counterclaims to include two counterclaims for violation of the UTPA, two set-offs, and one counterclaim for libel and slander.^{FN3} On September 9, 1993, the trial court granted Charleston Lumber's second motion for summary judgment for the balance due on the promissory note and against the Millers on their set-offs and libel and slander counterclaims.

FN3. Although one of the Millers' previous counterclaims for fraud was dismissed by the June 28, 1992 Order, the other counterclaim for fraud was not addressed in this Order, and in their amended answer, the Millers did not allege a counterclaim for fraud. In the amended answer, however, the Millers asserted two counterclaims for violation of the UTPA. The first UTPA counterclaim alleged that Charleston Lumber engaged in a deceptive bidding scheme whereby it would bid or quote a certain price, and after getting the job, would later bill the Millers for a higher amount. The second UTPA counterclaim alleged that Charleston Lumber reported confidential information to other suppliers concerning the Millers' credit history and this information was false.

The remaining issues in the case, Charleston Lumber's suit on the open account and the Millers' two counterclaims for violation of the UTPA, were tried before a jury. Two sets of interrogatories*475 were submitted to the jury, the first asked the jury to determine the balance of the open account and whether Miller Housing Corporation, Robert E. Miller, Jr. or both were liable for it. The second set of interrogatories asked the jury to determine whether Charleston Lumber committed a violation of the UTPA, and if so, whether the Millers suffered actual damages as a proximate result of the unfair or deceptive acts.

The jury found for Charleston Lumber against Miller Housing on the open account, which it determined to be \$24,884.36. Although the jury found that Charleston Lumber's actions constituted "an unfair or deceptive act," it awarded the Millers no damages because it concluded the Millers suffered no actual damages as a proximate result of the unfair and deceptive acts of Charleston Lumber. The Millers, nevertheless, moved for an award of attorney fees pursuant to the attorney's fee provision in the UTPA. Holding that attorney fees cannot be recovered unless the claimant has been awarded actual or nominal damages, the trial court denied the Millers' request for attorney fees, but awarded Charleston Lumber attorney's fees as provided for in the promissory note. The Millers appeal. We affirm in part, reverse in part, modify in part and remand.

FACTS

Charleston Lumber sells construction materials. Miller Housing was in the business of building homes and Robert E. Miller, Jr. was its Vice-President. Miller Housing began doing business with Charleston Lumber in the late 1970's. As is customary in the construction business, the Millers requested quotes from Charleston Lumber and other suppliers on homes they were building. If the Millers accepted Charleston Lumber's quote, Charleston Lumber would ship the materials and invoice them. Around 1987-88 Pelican Company of Conway, S.C. took over Charleston Lumber. After the takeover, the Millers began noticing an increase in errors in Charleston Lumber's invoices, all in Charleston Lumber's favor. Specifically, Charleston Lumber's invoiced price for an item would be higher than the price it had quoted in its bid. As a result of these errors, the Millers' personnel spent much more time than usual checking Charleston Lumber's invoices against its *476 quotes, correcting errors, and notifying Charleston Lumber of the mistakes.

After the Millers pointed out the mistakes, Charleston Lumber would agree to issue the Millers "credits" against the next month's statement. Charleston Lumber, however, often delayed or even failed to issue the promised credits. The Millers claim Charleston Lumber's actions were not inadvertent, but, instead, a concerted effort by Charleston Lumber's executives to intentionally delay giving the Millers credits to avoid showing an adverse impact on their sales in any one month.

****435** Since each incorrect monthly statement built on the last, the Millers claimed Charleston Lumber's practice of bidding low, billing high, and delaying credits created an accounting nightmare, and had a significant financial impact on them. In fact, Charleston Lumber's general manager was unable to reconcile the two examples of Charleston Lumber's monthly statements that the Millers' counsel showed him at trial. One of Charleston Lumber's own salesmen admitted that their executives met and agreed to delay issuing the credits.

According to the Millers, by December 1989, the account was so confused that they were unable to reconcile the Charleston Lumber statements with their own records. Charleston Lumber contended that the Millers owed it \$149,000, this amount including all purchases, credits, and payments on the account up to December 31, 1989. In February 1990, Charleston Lumber presented Mr. Miller with a personal note for \$149,000, representing the amount owed on the Millers' account.^{FN4} On February 15, 1990, Mr. Miller executed and delivered the promissory note on behalf of himself and Miller Housing in the amount of \$149,000 to Charleston Lumber. As security for this Note, Mr. Miller also executed a blanket mortgage on several parcels of real property.

FN4. The Millers argue the correct amount due on the open account at that time was only \$113,338.89.

By August 1990, the Millers had paid the note down to around \$65,000 to \$74,000. Mr. Miller offered to pay off the entire note in order to release the mortgage, but Charleston Lumber refused to accept the payment unless Mr. Miller ***477** agreed to be personally responsible for another outstanding open account in the amount of \$48,000.^{FN5} Mr. Miller refused.

FN5. In September 1990, Charleston Lumber alleged the open account to be delinquent in the amount of \$48,000. In its complaint filed one month later, Charleston Lumber alleged an outstanding balance of approximately \$28,042.40; and at trial in September 1993, Charleston Lumber alleged an outstanding balance of approximately \$24,844.39.

Charleston Lumber then filed this suit to foreclose on the mortgage on five pieces of property which secured the \$149,000 note. Charleston Lumber alleged the note to be due and owing in the amount of \$74,000. Charleston Lumber also filed suit against the Millers to receive the \$28,042.20 outstanding balance on an open account which Mr. Miller allegedly personally guaranteed in June 1983.

The Millers appeal the trial judge's orders for summary judgment, his refusal to award them attorney fees based on the UTPA, and the awarding of attorney fees to Charleston Lumber.

I.

We first note that Charleston Lumber maintains this appeal should be dismissed on jurisdictional grounds. Charleston Lumber asserts the trial court should be affirmed on all issues because the Millers have not appealed one of the cases and therefore should be bound by the trial court's ruling in the unappealed case.

Charleston Lumber brought five lawsuits (Case Nos. 90-CP-10-5028 through 90-CP-10-5032) to enforce the collection of the \$149,000 promissory note. The five suits were identical except for the differing property descriptions. They all sought to collect the balance due on a single note. The Millers submitted identical answers, counterclaims, and amended answers to the five suits. Although the trial court never consolidated the five cases, the judge signed a single order for all of them.

The Millers filed its first notice of appeal on December 28, 1993, which listed all the cases except Case No. 90-CP-10-5032. The Millers' amended notice of intent to appeal also neglected to mention this case. Charleston Lumber argues since all five of the complaints sought a single recovery and all of the Millers' counterclaims sought a single recovery, the failure to appeal one of the cases is a fatal error. We disagree.

*478 [1][2] Clerical errors in a notice of appeal do not destroy the appeal. Moody v. Dickinson, 54 S.C. 526, 32 S.E. 563 (1899) (the court may properly allow an appellant to correct a mere clerical error in the title to his notice of intention to appeal where there is no prejudice to the appellee). We find this error was **436 clerical in nature, and does not warrant a dismissal of the appeal. Charleston Lumber does not allege any prejudice as a result of the omission, and there can be no doubt that Charleston Lumber had notice that the Millers had appealed all cases. Charleston Lumber's effort to take advantage of a mere clerical error by which they were in no way prejudiced or misled is rejected. Both notices of appeal clearly state, "Robert E. Miller, Jr. and Miller Housing Corporation appeal from the following Orders and/or Judgments of The Honorable Circuit Court." Thereafter, each of the orders is described and attached. We therefore find this court has jurisdiction to hear this appeal.

II.

As relates to the merits of this case, the Millers first argue the trial court erred in granting summary judgment against them on the \$149,000 note because they claim the note was procured as part of a misrepresentation scheme.

[3][4] Rule 56 of the SCRCF provides that a trial judge may grant summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. In addition, it must be shown that further inquiry into the facts is not needed to clarify the application of the law. Butts v. AVX Corp., 292 S.C. 256, 355 S.E.2d 876

(Ct.App.1987). In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the non-moving party. Cafe Assoc., Ltd. v. Gerngross, 305 S.C. 6, 406 S.E.2d 162 (1991).

[5][6] A note by its terms is an unconditional promise to pay money and parol evidence may not be introduced to vary its terms or otherwise inject conditions not apparent on its face. Ray v. South Carolina Nat'l Bank, Inc., 281 S.C. 170, 314 S.E.2d 359 (Ct.App.1984). The execution of a note in payment of an open account operates to cut off all defenses to the account to which the maker then had knowledge *479 where it is clear from the record the person knew or should have known the operative facts upon which the note was based. Berry v. Atlas Metals, Inc., 152 Ga.App. 437, 263 S.E.2d 179 (1979).

The Millers asserted fraud by Charleston Lumber as a defense to the \$149,000 note. In South Carolina, the party bringing an action for fraud or deceit, based on a misrepresentation, must prove the following by clear, cogent and convincing evidence:

(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

First State Sav. and Loan v. Phelps, 299 S.C. 441, 385 S.E.2d 821 (1989); M.B. Kahn Const. Co. v. South Carolina Nat'l Bank of Charleston, 275 S.C. 381, 271 S.E.2d 414 (1980).

[7] The Millers admit the mortgage and note were duly signed, witnessed, and probated. Nevertheless, they assert the amount of the note was incorrect because they were overcharged for certain materials and not promptly credited. However, the record reveals that prior to signing the note, the Millers had all the information necessary to compute what they assert to be the correct balance. The Millers therefore cannot claim ignorance of the falsity of Charleston Lumber's representation that they owed \$149,000.

[8][9] Furthermore, the Millers were not reasonable in relying on Charleston Lumber's representations. Whether reliance is justified in a given situation requires an evaluation of the circumstances involved, including the positions and relations of the parties. Elders v. Parker, 286 S.C. 228, 332 S.E.2d 563 (Ct.App.1985). The Millers began noticing an increase in errors in their account with Charleston Lumber as early as 1987. Charleston Lumber did not present Mr. Miller with the note until February 15, 1990. Mr. Miller testified that Charleston Lumber was exercising leverage over him and threatening to withhold critical materials if he refused to sign the note. Thus, by his own testimony, Miller *480 was not reasonable in relying**437 on Charleston Lumber's representations. The time to have undertaken an examination of the amount of the note was before Mr. Miller signed it. We therefore affirm the trial court's summary judgment order in regards to the Millers' liability on the note.

III.

The Millers also claim the trial court erred in dismissing their counterclaim for fraud. We agree, and reverse the trial court's order of summary judgment against the Millers on their counterclaim for fraud. The trial court incorrectly held as a matter of law that the Millers failed to show the first and last elements of fraud, i.e., a representation and damages proximately caused by the representation.

[10][11] It is well settled in South Carolina that where one promises to do a certain thing, having at the time no intention of keeping the agreement, it is a fraudulent misrepresentation of fact, and actionable as such. Davis v. Upton, 250 S.C. 288, 157 S.E.2d 567 (1967). In Thomas & Howard v. Fowler, 225 S.C. 354, 82 S.E.2d 454 (1954), the Supreme Court held that fraud is actionable when it is grounded in a promise coupled with a present intention not to fulfill it. During the summary judgment hearing on the fraud counterclaim, the Millers' counsel persuasively argued:

[T]here has been, we believe, actual fraud in the way that Charleston Lumber conducted its business knowing it was overbilling Miller Housing, knowing it would take a lot of effort by Miller Housing to catch it.

When errors were caught and credits were due and intentionally delaying giving credits because "sometimes people forget the credits are due." Obviously Charleston Lumber is going to dispute the inference from the facts, but we think that it is information that a jury needs to hear.

This isn't just a case, Your Honor, of unintentional overbilling [on a] sporadic basis.... Mr. Ritchie, their [Charleston Lumber] credit man admitted that he couldn't point to one bill for any period that was correct.... We have evidence ... that an internal Charleston Lumber corporate decision was made to delay giving credits because sometimes people forget them. That is the testimony*481 in the record by a former Charleston Lumber employee. Obviously, they dispute it happened, but [the testimony creates] a question of fact.

Viewing the record in the light most favorable to the Millers, we find there was sufficient evidence to create a question of fact as to whether or not Charleston Lumber had made promises to the Millers with the present intention not to fulfill them.

[12][13] The trial court also improperly ruled as a matter of law that the Millers failed to show any damages as a result of the alleged fraud. The Millers alleged damages of lost employee time based on their personnel having to spend numerous hours each month checking and correcting the bids versus the actual charges. We find that employee time is a compensable damage. In Convoy Co. v. Sperry Rand Corp., 672 F.2d 781 (9th Cir.1982), the court awarded employee lost time as compensable damages. The Ninth Circuit stated, "[t]he issue is not whether Convoy would have paid the supervisors' salaries if the defendant had not breached the contract, but whether the breach deprived Convoy of the services it paid for." See also Dunn Appraisal Co. v. Honeywell Info. Systems, Inc., 687 F.2d 877 (6th Cir.1982) (explicitly following the analysis in

Convoy, the Sixth Circuit awarded one-fifth of Dunn's president's salary as damages because he claimed he spent approximately one-fifth of his time during the year dealing with system malfunctions of a computer whose capabilities Honeywell had misrepresented). The Third Circuit, in Comdyne I, Inc. v. Corbin, 908 F.2d 1142 (3rd Cir.1990), recognized that if an employee's time is diverted from pursuit of the employer's business due to the fault of another, that party is responsible for those costs. We accept the reasoning in these cases. A further development of the facts is needed to determine the extent of actual damages. We therefore reverse the trial court's order of summary judgment on the Millers' counterclaim for fraud.

****438 IV.**

[14][15] The Millers next contend they were entitled to an award of attorney fees on their UTPA counterclaim since the jury specifically found Charleston Lumber *482 committed unfair or deceptive acts or practices in trade or commerce. We disagree and affirm the trial court's denial of attorney fees to the Millers. S.C.Code Ann. § 39-5-140 (1985) provides:

(a) Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 [Unfair Trade Practices Act (UTPA)] may bring an action individually, but not in a representative capacity, to recover actual damages. If the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper. Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs.

The statute clearly requires that in order to recover pursuant to the UTPA one must prove each of the following three elements by the greater weight or preponderance of the evidence: 1) a violation of the Act, 2) proximate cause, and 3) damages. Although the jury found the actions of Charleston Lumber constituted an unfair or deceptive act or practice in the conduct of trade or commerce, it further found the Millers suffered no actual damages as a proximate result of the unfair act. Therefore, adhering to the plain language of the statute, the Millers failed to prove the elements necessary to be awarded attorney fees.

V.

Finally, the Millers contend the court erred in awarding Charleston Lumber \$54,775.70 in attorney fees and \$7,625.70 in costs in its December 1, 1993 Order because the same amount of costs had been previously awarded in its September 9, 1993 Order, making this award duplicious. The Millers further maintain a significant amount of the attorney fees awarded to Charleston Lumber was for defending counterclaims on which Charleston Lumber was unsuccessful and *483 therefore the attorney fee award on those claims is reversible error.

Charleston Lumber requested \$47,150 in attorney and paralegal fees, and \$7,625.70 in costs, for a total fees and costs award of \$54,775.70. In his September 9, 1993 Order, the trial judge

awarded \$7,625.70 in costs and deferred the awarding of fees until the case was resolved. Following the jury trial, the court awarded Charleston Lumber \$54,775 in attorney fees. Charleston Lumber concedes in its brief that the court mistakenly entered the total figure of all fees and costs rather than just the attorney's fee figure of \$47,150. Charleston Lumber maintains this error was merely a clerical error. We agree and therefore modify the attorney fee award to exclude costs previously awarded in the September 9, 1993 Order.

We hold, however, that the court was correct in awarding attorney fees to Charleston Lumber pursuant to the promissory note. The promissory note signed by Miller provided:

If this note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankrupt [sic] courts, or under foreclosure proceedings under the mortgage securing this note, then all cost of collections, including a reasonable sum for attorney fee [sic] shall be added hereto as attorney's fees secured and collectible as the principal hereof.

[16][17] The law is clear in South Carolina that attorney fees are recoverable when authorized by contract or statute. Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993). When the contract provides for "reasonable attorney's fees" without specifying a rate or amount, the amount of the fees to be awarded is left to the discretion of the court. Dedes v. Strickland, 307 S.C. 155, 414 S.E.2d 134 (1992).

[18] Although the Millers allege the amount of the award was improper because **439 some of Charleston Lumber's fees were attributable to defending counterclaims and not collection on the note, we find this distinction specious. The trial court clearly found that the facts and issues surrounding the promissory note were intertwined with those of the counterclaims which required extensive discovery and *484 transformed a normally uncomplicated action on a note into complex litigation. We agree with the trial court and find the amount of the award, with a proper adjustment for the clerical error, was within the sound discretion of the trial judge, and he did not abuse that discretion. See Hyload, Inc. v. Pre-Engineered Products, 308 S.C. 277, 417 S.E.2d 622 (Ct.App.1992) (The amount of attorney's fees awarded is within the sound discretion of the trial judge and will not be reversed on appeal absent an abuse of discretion). We therefore modify the attorney fee award to \$47,150.

AFFIRMED IN PART, REVERSED IN PART, MODIFIED IN PART AND REMANDED.

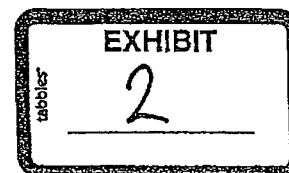
SHAW and GOOLSBY, JJ., concur.

S.C.App., 1995.
Charleston Lumber Co., Inc. v. Miller Housing Corp.
318 S.C. 471, 458 S.E.2d 431

458 S.E.2d 431
318 S.C. 471, 458 S.E.2d 431
(Cite as: 318 S.C. 471, 458 S.E.2d 431)

Page 15

END OF DOCUMENT



February 7, 2012

Billed through 01/31/12

Bill Number 001500 00102 61445 JWC

Federal Tax ID: 57-0989944

W. C. Lyerly, III
President
First South Bank
1330 Main Street., Suite 220
Columbia, SC 29211

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

REGARDING: First South Bank vs. South Causeway, LLC

FOR PROFESSIONAL SERVICES RENDERED

01/06/12	JWC	Telephone conference with Chip Lyerly regarding Georgetown County.	0.20 hrs	\$60.00
01/06/12	JWC	Review email regarding meeting. Send reply email.	0.20 hrs	\$60.00
01/10/12	JWC	Review and reply to email from Don Tyler. Meet with Don Tyler and Chip Lyerly. Prepare notes to file. Run conflicts check.	3.00 hrs	\$900.00
01/10/12	MLNI	With approval of Mr. Lyerly, identify Darwin Wheeler and Peggy Cribb Wheeler by SSN and DOB to prepare for background investigation. Confirm the relationship between Darwin and Peggy Wheeler.	0.40 hrs	\$68.00
01/10/12	MLNI	With prior approval of Mr. Lyerly, obtain the residential history of Darwin Wheeler.	0.20 hrs	\$34.00
01/10/12	MLNI	With prior approval of Mr. Lyerly, obtain the residential history of Peggy Wheeler to determine various jurisdictions.	0.20 hrs	\$34.00
01/10/12	MLNI	With prior approval of Mr. Lyerly, obtain comprehensive reports related to Darwin Wheeler to include out of state arrest, real property and bankruptcy data.	0.30 hrs	\$51.00
01/10/12	MLNI	With prior approval of Mr. Lyerly, obtain comprehensive reports related to Peggy Wheeler to include out of state arrest, real property and bankruptcy data.	0.20 hrs	\$34.00
01/10/12	MLNI	With prior approval of Mr. Lyerly, obtain Darwin Wheeler's SC SLED report for SC convictions.	0.40 hrs	\$68.00
01/11/12	JWC	Review file material.	2.00 hrs	\$600.00
01/11/12	MLNI	Research jury verdict information and sources for Georgetown County.	0.60 hrs	\$102.00

001500	00102		2
01/11/12	JLF	Receipt and review correspondence regarding new file.	0.10 hrs \$21.00
01/13/12	HER	[NO CHARGE] Review on-line jury, non-jury and motions docket for Georgetown County to determine status of case and any immediate calendar preparation needs.	0.20 hrs \$0.00
01/16/12	JWC	Office conference with Larry Nelson and Vickie Baker regarding new file and status.	0.30 hrs \$90.00
01/16/12	JWC	Prepare and file Notice of Appearance.	0.20 hrs \$60.00
01/16/12	MLNI	With prior approval of Mr. Lyerly, research terms of court for Allendale County from January through June, 2012.	0.60 hrs \$102.00
01/16/12	MLNI	With prior approval of Mr. Lyerly, identify the various judges assigned to the above terms of court.	0.30 hrs \$51.00
01/16/12	MLNI	With prior approval of Mr. Lyerly, examine current jury trial roster to determine when our case could be called for trial and where our case would be on the roster.	0.50 hrs \$85.00
01/16/12	MLNI	With prior approval of Mr. Lyerly, draft memo to Joel Collins regarding Georgetown Court of Common Pleas.	0.40 hrs \$68.00
01/16/12	MLNI	With prior approval of Mr. Lyerly, meet with Joel Collins regarding Georgetown Court of Common Pleas.	0.20 hrs \$34.00
01/16/12	VLB	Evaluation of claims issues and status of trial docket placement in Georgetown County and determine further strategy needs.	0.50 hrs \$67.50
01/19/12	JWC	Review material sent by Julie Cason relating to Will Wheeler.	0.70 hrs \$210.00
01/24/12	JWC	Office conference with Lee Floyd regarding legal issues.	0.30 hrs \$90.00
01/24/12	JLF	Meeting with Mr. Joel W. Collins, Jr. to discuss status of case and necessary activities moving forward.	0.20 hrs \$50.00
01/25/12	JWC	Telephone conference with Don Tyler regarding need for appraisal.	0.30 hrs \$90.00
01/31/12	JWC	Lunch with Ed Bell and his associates. Discuss juries in Georgetown County, likely racial composition. Telephone call to Chip Lyerly - left voice mail.	0.80 hrs \$240.00
01/31/12	MLNI	Research federal, civil, criminal and bankruptcy cases related to William Darwin Wheeler. Identify a 1997 racketeering case where Mr. Wheeler is a named defendant. Evaluate 1,137 docket entries to determine Mr. Wheeler's involvement in the case and allegations of complaint. (Complaint not available on-line) (194 pages of docket).	1.60 hrs \$272.00
Total fees for this matter			\$3,541.50

DISBURSEMENTS

01/31/12	Inhouse Copies	Units 15	\$1.50
01/31/12	Prints	24	\$2.40

001500

00102

3

Total disbursements for this matter

\$3.90

TIMEKEEPER SUMMARY

Jr., Joel W. Collins	SENIOR SHAREHOLDER	8.00 hrs	300.00 /hr	\$2,400.00
Nelson, Larry - Investigator	INVESTIGATOR	5.90 hrs	170.00 /hr	\$1,003.00
Riley, Hayden E.	PARALEGAL	0.20 hrs	0.00 /hr	\$0.00
Floyd, Lee	SENIOR ASSOCIATE	0.10 hrs	210.00 /hr	\$21.00
Floyd, Lee	SENIOR ASSOCIATE	0.20 hrs	250.00 /hr	\$50.00
Baker, Vickie L.	SENIOR PARALEGAL	0.50 hrs	135.00 /hr	\$67.50

TOTAL FEES

\$3,541.50

TOTAL DISBURSEMENTS

\$3.90

TOTAL AMOUNT OF CURRENT BILL

\$3,545.40

Please remit all payments to the following address:

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

PLEASE REFERENCE OUR 16 DIGIT BILL NUMBER LOCATED AT THE TOP OF THIS BILL.



March 5, 2012

Billed through 02/29/12

Bill Number 001500 00102 61908 JWC

Federal Tax ID: 57-0989944

W. C. Lyerly, III
President
First South Bank
1330 Main Street., Suite 220
Columbia, SC 29211

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

REGARDING: First South Bank vs. South Causeway, LLC

Balance carried forward from last bill date	\$3,545.40
Payments received since last bill	\$3,545.40
Net Balance Forward	\$0.00

FOR PROFESSIONAL SERVICES RENDERED

02/01/12	VLB	Follow up telephone call to Jamie Weller, Paralegal to Don Tyler requesting all documents relating to South Causeway to determine needs for continuing investigation. Left Voice Message.	0.10 hrs	\$13.50
02/02/12	JWC	Meet with Chip Lyerly and Wayne Lovelace. Prepare notes to file. Review documents furnished by Wayne Lovelace.	0.30 hrs	\$90.00
02/02/12	JLF	Receipt and review correspondence regarding additional document production and materials from client.	0.10 hrs	\$25.00
02/02/12	VLB	Follow up telephone call to Jamie Weller, Paralegal to Don Tyler regarding case file materials to date.	0.10 hrs	\$13.50
02/02/12	VLB	Receipt and begin evaluation of client file materials and pleadings to date and identify relevant information to determine strategy for continuing investigation and supplemental discovery needs.	1.80 hrs	\$243.00
02/02/12	VLB	Begin review transcript and exhibits of deposition of Don Thomas to identify relevant information to continue investigation and and for use in trial.	0.70 hrs	\$94.50
02/02/12	VLB	Telephone call with Georgetown County Clerk to discuss placement of case on jury trial roster and terms of Court.	0.20 hrs	\$27.00
02/02/12	VLB	Begin review transcript and exhibits of deposition of Peggy Wheeler-Crib to identify relevant information to	1.30 hrs	\$175.50

001500	00102		2
		continue investigation and and for use in trial.	
02/03/12	JWC	Telephone call to Roger Henderson of Lowe's Foods.	0.10 hrs \$30.00
02/07/12	VLB	Analysis of the South Causeway documents produced to date to identify relevant information and determine strategy for continuing investigation and research needs to move case forward.	1.30 hrs \$175.50
02/08/12	JWC	Confer with Chip Lyerly regarding his recent review of public records in Georgetown County. Telephone call to D.J. Tyler - left voice mail. Telephone call to Chip Lyerly. Review email from Vickie Baker regarding file material. Office conference with Vickie Baker. Telephone conference with D.J. Tyler.	0.80 hrs \$240.00
02/08/12	VLB	Evaluation of First South documents produced to date to identify specific issues relating to analyze and determine strategy for further research and investigation needs.	2.00 hrs \$270.00
02/09/12	JWC	Telephone conference with Chip Lyerly regarding possible "money laundering." Meet with D.J. Tyler and Vickie Baker. Prepare notes to file. Prepare to-do list.	2.20 hrs \$660.00
02/09/12	VLB	(NO CHARGE) Brief review of First South documents produced to date and prepare for use in determining information for continuing discovery and strategy needs.	1.50 hrs \$0.00
02/09/12	VLB	Participate in meeting with Mr. Joel W. Collins, Jr. and DJ Tyler and assist in evaluating potential trial witnesses to interview and/or depose, determine immediate pleadings to file and supplemental discovery responses and analysis of documents relevant to be used as exhibits for trial.	2.20 hrs \$297.00
02/14/12	JWC	Telephone conference with Audra Byrd, Attorney for Defendants. Prepare notes to file. Telephone conference with Chip Lyerly.	0.70 hrs \$210.00
02/14/12	VLB	Review and analysis of case law for relevant issues to determine strategy for jury charges, motions in limine and other trial preparation needs.	0.90 hrs \$121.50
02/15/12	VLB	Telephone call to Lori at SC Court of Appeals to discuss removal of matter from the Appellate Court and restore to Georgetown County roster.	0.10 hrs \$13.50
02/17/12	VLB	[NO CHARGE] Review on-line jury, non-jury and motions docket for Georgetown County to determine status of case and any immediate calendar preparation needs.	0.10 hrs \$0.00
02/21/12	JWC	Check on status of subpoena to First Palmetto Bank.	0.10 hrs \$30.00
02/22/12	VLB	Prepared Subpoena Duces Tecum directed to Palmetto First Savings Bank for all records and documents relating to Peggy Wheeler-Cribb, W. Darwin Wheeler and South Causeway, LLC.	0.20 hrs \$27.00
02/22/12	VLB	Draft letter to First Palmetto Savings Bank serving Subpoena Duces Tecum for all records relating to Peggy	0.10 hrs \$13.50

001500	00102	Wheeler-Cribb, W. Darwin Wheeler and South Causeway, LLC.		3
02/22/12	VLB	Prepared Plaintiff First South Bank's Supplemental Answers to Defendant's Interrogatories identifying witness, Julie Cason as records custodian.	0.30 hrs	\$40.50
02/23/12	CTP	Review and execute letter to Douglas Hinds, of Hinds, Cowan, Strange & Geer regarding serving Subpoena Duces Tecum commanding the production of documents.	0.10 hrs	\$21.00
02/23/12	CTP	Review and execute Subpoena Duces Tecum to Douglas Hinds, of Hinds, Cowan, Strange & Geer commanding the production of documents.	0.10 hrs	\$21.00
02/23/12	CTP	Review and execute letter to First Palmetto Savings Bank regarding serving Subpoena Duces Tecum commanding the production of documents.	0.10 hrs	\$21.00
02/23/12	CTP	Review and execute Subpoena Duces Tecum to Palmetto Savings Bank commanding the production of documents.	0.10 hrs	\$21.00
02/23/12	CTP	Review and execute letter to Chuck Cooper, Principal for Vintage Estates Realty regarding serving Subpoena Duces Tecum commanding the production of documents.	0.10 hrs	\$21.00
02/23/12	CTP	Review and execute Subpoena Duces Tecum to Chuck Cooper, Principal for Vintage Estates Realty commanding the production of documents.	0.10 hrs	\$21.00
02/23/12	CTP	Review and execute letter to Don Thomas, Broker in Charge Vintage Estates Realty, regarding serving Subpoena Duces Tecum commanding the production of documents.	0.10 hrs	\$21.00
02/23/12	CTP	Review and execute Subpoena Duces Tecum to Don Thomas, Broker in Charge Vintage Estates Realty, commanding the production of documents.	0.10 hrs	\$21.00
02/23/12	CTP	Review and execute letter to Robbie Buice, Prudential Source One Properties, regarding serving Subpoena Duces Tecum commanding the production of documents.	0.10 hrs	\$21.00
02/23/12	CTP	Review and execute Subpoena Duces Tecum to Robbie Buice, Prudential Source One Properties, commanding the production of documents.	0.10 hrs	\$21.00
02/23/12	CTP	Review and execute letter to Steven Strickland, The Earthwork Group, regarding serving Subpoena Duces Tecum commanding the production of documents.	0.10 hrs	\$21.00
02/23/12	CTP	Review and execute Subpoena Duces Tecum to Steven Strickland, The Earthwork Group, commanding the production of documents.	0.10 hrs	\$21.00
02/23/12	JLF	(NO CHARGE) Receipt and review report on status of case and activities necessary for preparing for trial.	0.20 hrs	\$0.00
02/23/12	VLB	Access internet search engines to perform research on various companies and individuals to identify nature of business, specific information relating to the relationship to South Causeway and its owners, and obtain correct	2.40 hrs	\$324.00

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4

contact information for service of subpoenas.

02/23/12	VLB	Preparation of five (5) custom Subpoena Duces Tecums with Certificates of Authenticity directed to Steven G. Strickland - The Earthwork Group, Inc.; Douglas L. Hinds and George R. Geer - Hinds, Cowan Strange & Geer; Don Thomas, Broker-in-Charge - Vintage Estates Realty; Chuck Cooper, Vintage Estates Realty; and Bobby Buice, Prudential.	0.60 hrs	\$81.00
02/24/12	JWC	Meet with Vickie Baker and Lee Floyd. Prepare notes to file with To Do List. Telephone conference with Chip Lyerly regarding additional investigation needed. Prepare notes to file.	1.20 hrs	\$360.00
02/24/12	JLF	(NO CHARGE) Analyze pleadings and initial documents from client regarding status of case and make notes on the same.	1.30 hrs	\$0.00
02/24/12	JLF	(NO CHARGE) Telephone conference with Mr. Joel W. Collins, Jr. and Mrs. Vickie Baker regarding status of the case and strategy moving forward.	0.80 hrs	\$0.00
02/24/12	VLB	Meeting with Mr. Joel W. Collins, Jr. and Mr. Lee Floyd to determine strategy for continuing investigation and research relating to Ms. Cribb & Mr. Wheeler, facts relating to the alleged Lowes Foods lease agreement and other discovery needs and movement of case on the Georgetown Jury Trial Roster.	0.70 hrs	\$94.50
02/26/12	JLF	Analyze deposition transcripts of Darwin Wheeler and Peggy Wheeler-Cribb to assess need for reconvening deposition and potential motion to reopen or reconvene depositions pursuant to instructions from Mr. Joel W. Collins, Jr..	1.00 hrs	\$250.00
02/27/12	JLF	Continue to analyze deposition transcripts of Darwin Wheeler and Peggy Wheeler-Cribb to assess need for reconvening deposition and potential motion to reopen or reconvene depositions pursuant to instructions from Mr. Joel W. Collins, Jr..	0.60 hrs	\$150.00
02/27/12	JLF	Telephone call to Audra Byrd regarding depositions of Darwin Wheeler and Peggy Wheeler-Cribb and potential consent motion for a date certain for trial; left message to call.	0.10 hrs	\$25.00
02/27/12	VLB	[NO CHARGE] Review on-line jury, non-jury and motions docket for Georgetown County to determine status of case and any immediate calendar preparation needs.	0.10 hrs	\$0.00
02/29/12	VLB	Evaluation of transaction documents and emails and analyze for all information relating to the development of the South Causeway property by Lowe's Foods and others to determine relevant information for continuing investigation and discovery needs.	1.30 hrs	\$175.50

Total fees for this matter

 \$4,522.50

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5

DISBURSEMENTS

		Units	
02/09/12	TRACERSINFO.COM; Invoice # 011200570; Research		\$1.50
02/16/12	THE PALMETTO CLUB OF COLUMBIA; Invoice # JOEL W COLLINS JR; Meals on 1/31/12		\$77.60
02/23/12	IKON OFFICE SOLUTIONS; Invoice # L0712020049; Outside Copies		\$310.11
02/29/12	Inhouse Copies	282	\$28.20
02/29/12	Postage		\$45.24
02/29/12	Prints	69	\$6.90

Total disbursements for this matter

\$469.55**TIMEKEEPER SUMMARY**

Jr., Joel W. Collins	SENIOR SHAREHOLDER	5.40 hrs	300.00 /hr	\$1,620.00
Prevost, Claude T.	ASSOCIATE	1.20 hrs	210.00 /hr	\$252.00
Floyd, Lee	SENIOR ASSOCIATE	2.30 hrs	0.00 /hr	\$0.00
Floyd, Lee	SENIOR ASSOCIATE	1.80 hrs	250.00 /hr	\$450.00
Baker, Vickie L.	SENIOR PARALEGAL	1.70 hrs	0.00 /hr	\$0.00
Baker, Vickie L.	SENIOR PARALEGAL	16.30 hrs	135.00 /hr	\$2,200.50

TOTAL FEES

\$4,522.50

TOTAL DISBURSEMENTS

\$469.55

TOTAL AMOUNT OF CURRENT BILL

\$4,992.05

Please remit all payments to the following address:

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

PLEASE REFERENCE OUR 16 DIGIT BILL NUMBER LOCATED AT THE TOP OF THIS BILL.

001500

00102

6



April 4, 2012

Billed through 03/31/12

Bill Number 001500 00102 62324 JWC

Federal Tax ID: 57-0989944

W. C. Lyerly, III
President
First South Bank
1330 Main Street., Suite 220
Columbia, SC 29211

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

REGARDING: First South Bank vs. South Causeway, LLC

Balance carried forward from last bill date	\$4,992.05
Payments received since last bill	\$4,992.05
Net Balance Forward	\$0.00

FOR PROFESSIONAL SERVICES RENDERED

03/01/12	JWC	Office conference with Lee Floyd regarding his conversation with Roger Henderson of Lowe's Foods. Telephone conference with Chip Lyerly regarding subpoenas to Accountant Kenneth Altman.	0.30 hrs	\$90.00
03/01/12	JWC	Review emails regarding subpoenas for tax returns. Office conference with Vickie Baker. Send reply email to DJ Tyler. Prepare memo regarding how to respond to expected motion to quash.	0.30 hrs	\$90.00
03/01/12	JLF	Telephone call to Roger Henderson at Lowe's Food to obtain information about failure of prospective lease agreement and dealings with South Causeway LLC.	0.50 hrs	\$125.00
03/01/12	JLF	Analyze documents obtained through discovery pertaining to South Causeway's dealings with Lowe's Food and the potential lease agreement.	1.60 hrs	\$400.00
03/01/12	JLF	Analyze and assess status of case, crucial issues, and necessary activities moving forward and preparing case for trial.	1.30 hrs	\$325.00
03/01/12	JLF	Draft report on communications with Roger Henderson and potential actions moving forward.	0.30 hrs	\$75.00
03/01/12	JLF	Telephone conference with Chip Lyerly and Mr. Joel W. Collins, Jr. regarding information from Lowe's Food and strategy for proceeding with obtaining documents surrounding transaction.	0.30 hrs	\$75.00

001500	00102		2
03/01/12	JLF	Telephone call to Counsel for Lowe's Food regarding obtaining documents surrounding dealings with South Causeway LLC.	0.20 hrs \$50.00
03/01/12	JLF	E-mail to counsel for Lowe's Food to confirm conversation and formally request documents surrounding dealings with South Causeway.	0.30 hrs \$75.00
03/01/12	VLB	Review of FSB and South Causeway file materials to determine timeline facts relating to the events surrounding all proposals, notices of intent, lease agreements, purchase agreements and listing of the property from June 2008-present for continuing strategy needs.	2.70 hrs \$364.50
03/01/12	VLB	(NO CHARGE) Meet with Mr. Lee Floyd to discuss research and investigation issues as to Peggy Wheeler-Cribb and Darwin Wheeler and facts surrounding the transaction history. Identify additional discovery needs, witness interview needs.	1.20 hrs \$0.00
03/02/12	VLB	[NO CHARGE] Review on-line jury, non-jury and motions docket for Georgetown County to determine status of case and any immediate calendar preparation needs.	0.10 hrs \$0.00
03/05/12	JWC	Review voice mail from Attorney Doug Hinds of Georgetown (843-527-2441.)	0.10 hrs \$30.00
03/05/12	JLF	Telephone conference with Mr. Joel W. Collins, Jr. and Chip Lyerly regarding subpoenas to South Causeway, Darwin Wheeler and Peggy Wheeler-Cribb and document request to Lowes Food	0.20 hrs \$50.00
03/06/12	JWC	Office conference with Vickie Baker regarding subpoenas. Review letter from Attorney Audra Byrd. Review voice mail from Attorney Doug Hines. Telephone conference with D.J. Tyler and Chip Lyerly - prepare notes to file, prepare letter to Attorney Byrd.	1.10 hrs \$330.00
03/06/12	JLF	Voice mail from counsel for South Causeway regarding reconvening depositions of Wheeler-Cribb and Darwin Wheeler.	0.10 hrs \$25.00
03/06/12	JLF	Receipt and review letter regarding subpoenas for documents to South Causeways attorneys in underlying transactions.	0.10 hrs \$25.00
03/08/12	JWC	Telephone conference with Chip Lyerly. Review memo prepared by Chip Lyerly regarding his review for possible expert witness, CPA Johnson.	0.70 hrs \$210.00
03/08/12	VLB	Drafted custom Subpoena Duces Tecums to Kenneth Altman, Peggy wheeler-Cribb and Will Darwin Wheeler for production of all federal and state tax documents, financial records, real estate transactions and bank statements for Peggy Wheeler-Cribb individually and Will Darwin Wheeler Individually and any business, corporate or organizations relating to Peggy Wheeler-Cribb and Darwin Wheeler and for South	0.70 hrs \$94.50

001500	00102	Causeway, LLC		3
03/08/12	VLB	Receive documents produced by First Palmetto Savings Bank and begin to evaluate for the purpose of identifying relevant information for the continuing analysis of loan documents and financial records and determine additional research needs.	2.60 hrs	\$351.00
03/12/12	JWC	(NO CHARGE) Receipt and review email from Vickie Baker regarding production of documents.	0.20 hrs	\$0.00
03/12/12	JWC	Conference with Chip Lyerly and Lee Floyd regarding need for subpoenas to go out.	0.10 hrs	\$30.00
03/12/12	JLF	(NO CHARGE) Receipt and review report on status of document production from Earthworks on work performed for South Causeway.	0.10 hrs	\$0.00
03/12/12	JLF	Receipt and review e-mail from Chip Lyerly regarding strategy for document production and request to Lowe's Food for documents surrounding dealings with South Causeway.	0.10 hrs	\$25.00
03/12/12	JLF	E-mail to Counsel for Lowe's Food to follow-up on request for documents surrounding dealings with South Causeway, LLC.	0.10 hrs	\$25.00
03/12/12	JLF	Review and revise draft subpoenas seeking financial records and records on real estate transactions to Peggy Wheeler-Cribb, Darwin Wheeler, and Kenneth Altman.	0.50 hrs	\$125.00
03/12/12	JLF	Review and execute subpoena for documents and accompanying correspondence to Kenneth Altman	0.10 hrs	\$25.00
03/12/12	JLF	Telephone call to Opposing Counsel regarding service of subpoenas and reconvening depositions of Peggy Wheeler-Cribb and Darwin Wheeler; left detailed message to call.	0.10 hrs	\$25.00
03/12/12	JLF	Telephone call from John Orgain General Counsel for Lowe's Foods regarding request for documents	0.20 hrs	\$50.00
03/12/12	JLF	E-mail to client contacts regarding status of document request to Lowe's Food.	0.10 hrs	\$25.00
03/12/12	VLB	Receive of documents produced by First Palmetto Savings Bank and begin evaluation for the purpose of identifying relevant information for the continuing analysis of issues and determine additional research needs. Prepare documents for production.	2.60 hrs	\$351.00
03/12/12	VLB	Receipt documents produced by Vintage Estates consisting of all combined documents from Don Thomas and Chuck Cooper, and evaluate for the purpose of identifying relevant information for the continuing analysis of claim and determine additional research needs. Prepare documents for production.	2.10 hrs	\$283.50
03/13/12	JLF	Receipt and review e-mails from Chip Lyerly regarding efforts to obtain documents from Lowe's Food.	0.10 hrs	\$25.00
03/13/12	JLF	Receipt and review memorandum from Chip Lyerly	0.50 hrs	\$125.00

001500	00102			4
		regarding his investigation and findings as to the transactions by the Wheelers during the past decade.		
03/14/12	JLF	Review and execute subpoena and accompanying correspondence to Peggy Wheeler-Cribb for her financial and tax records.	0.10 hrs	\$25.00
03/14/12	JLF	Review and execute subpoena and accompanying correspondence to Will Darwin Wheeler for his financial and tax records.	0.10 hrs	\$25.00
03/15/12	JWC	Receipt and review emails from Chip Lyerly.	0.10 hrs	\$30.00
03/15/12	JLF	Receipt and review e-mails from Chip Lyerly and DJ Tyler concerning document review and meeting to discuss strategy for moving forward.	0.10 hrs	\$25.00
03/16/12	JLF	Meeting with Chip Lyerly and Wayne Lovelace regarding status of case, strategy moving forward, activities for the immediate future, and document production from Earthworks on work performed at the property.	2.10 hrs	\$525.00
03/16/12	JLF	(NO CHARGE) Assess issue Chip Lyerly raised regarding document production from Earthworks on work performed at the property and providing copies to Opposing Counsel.	0.20 hrs	\$0.00
03/16/12	JLF	Telephone call from Jody Riley in response to settlement demand and documents concerning the reduction in value.	0.10 hrs	\$25.00
03/16/12	JLF	Receipt and review e-mail from Wayne Lovelace regarding document production from First Palmetto Savings Bank and additional documents to obtain concerning the loans to Peggy Wheeler-Cribb and Darwin Wheeler.	0.20 hrs	\$50.00
03/16/12	JLF	Receipt and review e-mails from Chip Lyerly regarding parallel action against Darwin Wheeler and obtaining additional information from attorneys involved in that suit and information on the auction of the property	0.20 hrs	\$50.00
03/16/12	VLB	[NO CHARGE] Review on-line jury, non-jury and motions docket for Georgetown County to determine status of case and any immediate calendar preparation needs.	0.10 hrs	\$0.00
03/16/12	VLB	File analysis and document preparation for meeting and document review by W.C. Lyerly, III and Wayne Lovelace to determine continuing strategy needs.	1.00 hrs	\$135.00
03/19/12	JWC	Prepare letter to D.J. Tyler regarding budget in trying case.	0.20 hrs	\$60.00
03/19/12	JLF	Pursuant to request from Chip Lyerly, analyze pre-report from DJ Tyler to Travelers Insurance Company.	0.30 hrs	\$75.00
03/20/12	JWC	Telephone conference with Chip Lyerly. Office conference with Vickie Baker regarding status of Georgetown County roster.	0.30 hrs	\$90.00
03/20/12	JLF	Receipt and review correspondence between Chip Lyerly and First Palmetto South Bank regarding additional	0.10 hrs	\$25.00

001500	00102		5
	document production requested.		
03/20/12	JLF	Review and revise letter to First Palmetto First Savings Bank regarding document production and requesting additional documents responsive to prior subpoena.	0.20 hrs \$50.00
03/20/12	JLF	Review and execute letter to First Palmetto First Savings Bank regarding document production and requesting additional documents responsive to prior subpoena, pursuant to request from Chip Lyerly.	0.10 hrs \$25.00
03/21/12	JLF	Receipt and review report on status of case and position on trial roster.	0.10 hrs \$25.00
03/22/12	JWC	Office conference with Lee Floyd.	0.30 hrs \$90.00
03/22/12	JWC	Meet with Chip Lyerly, Wayne Lovelace and D.J. Tyler. Prepare notes to file.	1.50 hrs \$450.00
03/22/12	JLF	Receipt and review status report regarding additional document production from First Palmetto Savings Bank.	0.10 hrs \$25.00
03/22/12	JLF	Prepare for and assess updated trial strategy for case-in-chief through meeting with Mr. Joel W. Collins, Jr.	0.30 hrs \$75.00
03/22/12	JLF	Meeting with DJ Tyler, Chip Lyerly, and Wayne Lovelace pursuant to their request to discuss agreed-to strategy and activities for trial.	0.70 hrs \$175.00
03/22/12	VLB	(NO CHARGE) Assemble Earthwork documents for re-review by Mr. Chip Lyerly.	0.40 hrs \$0.00
03/22/12	VLB	Continue review of file materials and documents to analyze to determine further research, investigative, strategy, discovery and document needs in connection with moving the case forward.	1.60 hrs \$216.00
03/23/12	JLF	Correspondence with client contacts regarding service of subpoenas upon Peggy Wheeler-Cribb and Darwin Wheeler.	0.10 hrs \$25.00
03/23/12	JLF	Telephone call to Audra Byrd regarding authority to accept service of subpoenas upon Peggy Wheeler-Cribb and Darwin Wheeler; left message to call.	0.10 hrs \$25.00
03/23/12	JLF	Receipt and review report on status and potential placement of case on trial roster.	0.10 hrs \$25.00
03/23/12	VLB	E-mail communication from John Kinard of First Palmetto Savings Bank regarding additional documents to be produced relating to Peggy Wheeler-Cribb and Darwin Wheeler in response to the subpoena.	0.20 hrs \$27.00
03/26/12	JLF	Analyze materials received from Chip Lyerly regarding separate law suit against Darwin Wheeler.	0.60 hrs \$150.00
03/26/12	JLF	E-mail to counsel for Plaintiff Mars Sapp in prior, separate lawsuit against Darwin Wheeler and requesting a brief call to discuss the same.	0.10 hrs \$25.00
03/26/12	JLF	Telephone conference with counsel for Plaintiff Mars Sapp in prior, separate lawsuit against Darwin Wheeler to	0.50 hrs \$125.00

001500

00102

6

obtain additional information about that action and the conduct of Mr. Wheeler.

03/26/12	JLF	E-mail to clients summarizing telephone conference with counsel for Plaintiff Mars Sapp in prior, separate lawsuit against Darwin Wheeler.	0.30 hrs	\$75.00
03/27/12	JWC	Review memo to file regarding Mars Sapp. Office conference with Lee Floyd regarding research. Telephone conference with Chip Lyerly regarding serving subpoenas.	0.30 hrs	\$90.00
03/27/12	JLF	Telephone call and e-mail to Audra Byrd to follow-up on authority to accept service of subpoenas to Darwin Wheeler and Peggy Wheeler-Cribb; left message to call and sent detailed e-mail.	0.20 hrs	\$50.00
03/27/12	JLF	Follow-up call to counsel for Mars Sapp regarding meeting with him as potential witness at trial and transcripts of the testimony of Darwin Wheeler and Peggy Wheeler-Cribb.	0.20 hrs	\$50.00
03/27/12	JLF	Voice mail and e-mails from Paul Hoefer regarding trial transcript of testimony of Darwin Wheeler in prior lawsuit brought by Mars Sapp.	0.20 hrs	\$50.00
03/27/12	JLF	E-mail to clients providing update and informing them we have obtained the trial transcript of testimony of Darwin Wheeler in prior lawsuit brought by Mars Sapp.	0.10 hrs	\$25.00
03/27/12	VLB	Review of the trial transcript of Sapp v. Wheeler and analyze testimony of Darwin Wheeler for use in determining strategy for preparation of additional discovery needs and for use in pre-trial preparations.	1.20 hrs	\$162.00
03/28/12	JWC	Revise draft memo to file. Add to memo. Office conference with Lee Floyd.	0.90 hrs	\$270.00
03/28/12	JWC	Review emails from Audra Byrd, Lee Floyd, and Chip Lyerly. Telephone conference with Chip Lyerly. Telephone call to Attorney Tom Bunch, left message (227-1103).	0.40 hrs	\$120.00
03/28/12	JLF	Receipt and review e-mail from Audra Byrd regarding authority to accept service of subpoenas on behalf of Peggy Wheeler-Cribb and Darwin Wheeler.	0.10 hrs	\$25.00
03/28/12	JLF	Receipt and review e-mail from DJ Tyler regarding trial preparations and activities moving forward.	0.10 hrs	\$25.00
03/28/12	JLF	E-mail to Chip Lyerly regarding Audra Byrd's response to inquiry about authority to accept service subpoenas for Darwin Wheeler and Peggy Wheeler-Cribb and strategy moving forward.	0.20 hrs	\$50.00
03/28/12	JLF	Receipt and review e-mail from Chip Lyerly regarding information from parallel action involving Darwin Wheeler and authority to accept service of subpoena.	0.10 hrs	\$25.00
03/28/12	JLF	Telephone call to Wayne Lovelace regarding timeline he referenced and created concerning the transactions with	0.10 hrs	\$25.00

001500	00102			7
		Darwin Wheeler and Peggy Wheeler-Cribb.		
03/28/12	JLF	Telephone conference with DJ Tyler to follow-up on activities for preparing for trial and strategy moving forward.	1.00 hrs	\$250.00
03/28/12	JLF	Analyze timeline from Wayne Lovelace documenting events surrounding various loans and the updated status report for strategy moving forward.	0.80 hrs	\$200.00
03/28/12	VLB	Meeting with Mr. James Lee Floyd, DJ Tyler and Jamie Weller to determine needs for continuing discovery, depositions, and research and begin developing strategy for pre-trial motions and trial preparations.	1.30 hrs	\$175.50
03/29/12	JWC	(NO CHARGE) Receipt and review email from Vickie Baker and Julie Cason regarding meeting next Tuesday for deposition.	0.20 hrs	\$0.00
03/29/12	JLF	Correspondence with Chip Lyerly and DJ Tyler and Julie Cason regarding preparing for trial and current loan payoff information.	0.30 hrs	\$75.00
03/30/12	JWC	(NO CHARGE) Office conference with Vickie Baker regarding preparation of letter to Administrative Judge and Julie Cason.	0.10 hrs	\$0.00
03/30/12	JLF	Receipt and review e-mail from DJ Tyler regarding documents for use in case in chief.	0.10 hrs	\$25.00
03/30/12	VLB	Continue evaluation of documents produced by Kenneth Altman to analyze financial records relating to Darwin Wheeler and Peggy Wheeler-Cribb to determine further research, investigative, discovery or any other strategy needs in support of claims.	1.70 hrs	\$229.50
03/30/12	VLB	Receipt and begin evaluation of documents produced by Kenneth Altman to analyze financial records relating to Darwin Wheeler and Peggy Wheeler-Cribb to determine further research, investigative, discovery or any other strategy needs in support of claims.	2.10 hrs	\$283.50
03/30/12	VLB	[NO CHARGE] Review on-line jury, non-jury and motions docket for Georgetown County to determine status of case and any immediate calendar preparation needs.	0.10 hrs	\$0.00
03/31/12	JLF	Analyze deposition transcripts for assessing deposition designations and potential requests for admission.	1.30 hrs	\$325.00
		Total fees for this matter		\$9,178.00

DISBURSEMENTS

03/14/12	WEST PAYMENT CENTER; Invoice # 824575365; Research	Units	\$0.33
03/21/12	FIRST PALMETTO SAVINGS BANK; Invoice # FIRST SOUTH V. SOUTH; Outside Copies		\$175.00

001500	00102		8
03/21/12	VINTAGE ESTATES REALTY, LLC; Invoice # FIRST SOUTH V. SOUTH; Outside Copies		\$28.50
03/22/12	MATT BOWERS; Invoice # 1500-102 3/14/12; Mileage - 3 miles @ .555 ea. for hand delivery to First South Bank/ Tyler Cassell		\$1.67
03/22/12	JENNIFER HATCHER; Invoice # 1500-102 3/14; Mileage - 6.3 miles @ .555 ea. to Earthworks		\$3.50
03/22/12	JENNIFER HATCHER; Invoice # 1500-102; Mileage - 5.1 miles @ .555 ea. to deliver boxes for client review.		\$2.83
03/31/12	Inhouse Copies	59	\$5.90
03/31/12	Postage		\$29.65
03/31/12	Prints	26	\$2.60
03/31/12	Long Distance Telephone		\$0.70

Total disbursements for this matter

\$250.68

TIMEKEEPER SUMMARY

Jr., Joel W. Collins	SENIOR SHAREHOLDER	0.50 hrs	0.00 /hr	\$0.00
Jr., Joel W. Collins	SENIOR SHAREHOLDER	6.60 hrs	300.00 /hr	\$1,980.00
Floyd, Lee	SENIOR ASSOCIATE	0.30 hrs	0.00 /hr	\$0.00
Floyd, Lee	SENIOR ASSOCIATE	18.10 hrs	250.00 /hr	\$4,525.00
Baker, Vickie L.	SENIOR PARALEGAL	1.90 hrs	0.00 /hr	\$0.00
Baker, Vickie L.	SENIOR PARALEGAL	19.80 hrs	135.00 /hr	\$2,673.00

TOTAL FEES

\$9,178.00

TOTAL DISBURSEMENTS

\$250.68

TOTAL AMOUNT OF CURRENT BILL

\$9,428.68

Please remit all payments to the following address:

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

PLEASE REFERENCE OUR 16 DIGIT BILL NUMBER LOCATED AT THE TOP OF THIS BILL.

001500

00102

9



May 15, 2012

Billed through 04/30/12

Bill Number 001500 00102 62922 JWC

Federal Tax ID: 57-0989944

W. C. Lyerly, III
President
First South Bank
1330 Main Street., Suite 220
Columbia, SC 29211

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

REGARDING: First South Bank vs. South Causeway, LLC

Balance carried forward from last bill date	\$9,428.68
Payments received since last bill	\$9,428.68
Net Balance Forward	\$0.00

FOR PROFESSIONAL SERVICES RENDERED

04/01/12	JLF	Correspondence with DJ Tyler regarding timeline created by Wayne Lovelace.	0.20 hrs	\$50.00
04/02/12	JWC	(NO CHARGE) Receipt and review email from DJ Tyler regarding payoff.	0.10 hrs	\$0.00
04/02/12	JLF	Receipt and review e-mail from Julie Cason regarding updated account statement and payoff amount and review updated statement of the account.	0.20 hrs	\$50.00
04/02/12	JLF	Continue to analyze deposition transcripts for assessing deposition designations and potential requests for admission.	3.50 hrs	\$875.00
04/02/12	VLB	Review and preparation of documents to be used as trial exhibits and in preparation for meeting with Julie Cason, records custodian witness for First South Bank.	1.20 hrs	\$162.00
04/03/12	JLF	Continue to analyze deposition transcripts for assessing deposition designations and potential requests for admission.	1.30 hrs	\$325.00
04/03/12	JLF	Plan and prepare for meeting with Julie Cason to discuss exhibits and trial testimony.	0.30 hrs	\$75.00
04/03/12	JLF	Meeting with Julie Cason to discuss exhibits and trial testimony for presenting case in chief for foreclosure of the mortgage.	3.00 hrs	\$750.00
04/05/12	JWC	Review financial records of Wheeler and Cribb sent by	0.50 hrs	\$150.00

001500	00102	2		
	Chip Lyerly.			
04/05/12	JLF	Receipt and review e-mail from Chip Lyerly regarding subpoena response from Ken Altman and expert review of those materials.	0.10 hrs	\$25.00
04/09/12	JLF	Continue to analyze deposition transcripts for assessing deposition designations and potential requests for admission.	1.40 hrs	\$350.00
04/11/12	JLF	Receipt and review e-mail from Julie Cason at First South regarding post-closing agreement between First South and South Causeway and potential trial dates.	0.10 hrs	\$25.00
04/11/12	JLF	Receipt and review post-closing agreement between First South and South Causeway that was sent by Julie Cason.	0.10 hrs	\$25.00
04/13/12	JLF	(NO CHARGE) Receipt and review e-mail from DJ Tyler regarding the insurance carrier for First South and invoices for services.	0.10 hrs	\$0.00
04/16/12	JWC	Receipt, review and reply to email regarding copies of attorney invoices submitted to First South. Follow up with bookkeeping to provide same.	0.20 hrs	\$60.00
04/17/12	JWC	Review voice mail from Chip Lyerly regarding 19+ acres appraisal on South Causeway.	0.20 hrs	\$60.00
04/17/12	JLF	Receipt and review e-mail from Chip Lyerly regarding current appraisal of South Causeway Property and discussions with Robert Buice about current offers on the property and how to proceed.	0.10 hrs	\$25.00
04/18/12	JWC	Receipt and review emails from/to Audra Byrd, D.J. Tyler and Lee Floyd regarding status, service on behalf of Darwin Wheeler and documents to Wheeler and Cribb.	0.20 hrs	\$60.00
04/18/12	JLF	E-mail to Audra Byrd to follow-up on the acceptance of service of the subpoena upon Darwin Wheeler.	0.20 hrs	\$50.00
04/18/12	JLF	Telephone call to Kenneth Altman regarding subpoena for documents and potential motion for contempt of court to obtain the same; left message to call.	0.10 hrs	\$25.00
04/18/12	VLB	Evaluation of discovery materials to determine whether requests have been satisfied and if any additional requests need to be served. Ensure all financial records have been requested and subpoenas have been complied with. Determine any depositions to be scheduled and any other strategy needs.	1.20 hrs	\$162.00
04/19/12	JLF	Review and revise letter to Ken Altman regarding subpoena for records and failure to respond to the same.	0.10 hrs	\$25.00
04/19/12	JLF	Review and execute letter to Ken Altman regarding subpoena for records and failure to respond to the same.	0.10 hrs	\$25.00
04/20/12	JWC	Receipt and review emails to Audra Byrd regarding responses from Mr. Altman.	0.20 hrs	\$60.00
04/20/12	JLF	Receipt and review e-mail from Audra Byrd regarding subpoena to Darwin Wheeler and requesting clarification	0.20 hrs	\$50.00

001500	00102		3
		on what documents we are still seeking.	
04/20/12	JLF	Response to e-mail from Audra Byrd regarding subpoena to Darwin Wheeler and requesting clarification on what documents we are still seeking.	0.20 hrs \$50.00
04/20/12	VLB	Preparation of Plaintiff's First Request to Admit to Defendants authenticating documents identified as exhibits A-I.	0.80 hrs \$108.00
04/20/12	VLB	[NO CHARGE] Review on-line jury, non-jury and motions docket for Georgetown County to determine status of case and any immediate calendar preparation needs.	0.10 hrs \$0.00
04/24/12	VLB	Evaluation of discovery materials to determine whether all requests have been satisfied and if any additional requests need to be served. Determine any depositions to be scheduled and any other strategy needs.	1.50 hrs \$202.50
04/26/12	JWC	(NO CHARGE) Check status of case in trial roster for 5/21/12. Telephone call to Vickie Baker, left voice mail, to check on three cases ahead of us.	0.20 hrs \$0.00
04/26/12	JLF	Receipt and review e-mail from Chip Lyerly regarding records custodian to present during case in chief at trial.	0.10 hrs \$25.00
04/26/12	JLF	Receipt and review e-mail from Ken Altman regarding response to subpoena for documents concerning South Causeway, Peggy Wheeler-Cribb and Darwin Wheeler.	0.10 hrs \$25.00
04/26/12	JLF	E-mail to clients regarding Ken Altman's response to subpoena for documents concerning South Causeway, Peggy Wheeler-Cribb and Darwin Wheeler.	0.10 hrs \$25.00
04/26/12	VLB	Review Notification from Georgetown County regarding case appearing as No. 4 on Jury Trial Roster for the Term of Court beginning May 21st, before Judge Cottingham.	0.20 hrs \$27.00
04/26/12	VLB	Telephone calls to various attorneys and staff of firms involved in cases set for trial the week of May 21st to determine trial readiness of their cases, note if any are planning to continue through Scheduling Orders or Motions for Continuance, or if anticipate settling before trial.	0.60 hrs \$81.00
04/27/12	JWC	Office conference with Lee Floyd regarding tax returns received, filed by Peggy Wheeler Cribb and Darwin Wheeler. Telephone conference with Chip Lyerly regarding subpoenas outstanding to Cribb and Wheeler and need to call Audra Byrd regarding our offer to make Chip Lyerly available for deposition.	0.50 hrs \$150.00
04/27/12	JWC	(NO CHARGE) Telephone conference with Lee Floyd regarding Request to Admit.	0.10 hrs \$0.00
04/27/12	JLF	Telephone conference with Chip Lyerly, Wayne Lovelace, and Mr. Joel W. Collins, Jr. regarding status of subpoena responses and activities moving forward to prepare for trial.	0.20 hrs \$50.00

001500	00102			4
04/27/12	JLF	Review and revise the Request to Admit to South Causeway LLC and analyze documents produced therewith to ensure their accuracy.	1.70 hrs	\$425.00
04/27/12	JLF	Review and execute the Request to Admit to Defendant regarding authenticity of documents for use at trial and accompanying correspondence to counsel for First South.	0.10 hrs	\$25.00
04/27/12	JLF	Telephone call to Audra Byrd regarding status of case, deposition of Chip Lyerly, and reconvening depositions of Peggy Wheeler Cribb and Darwin Wheeler; left detailed message requesting a return call.	0.10 hrs	\$25.00
04/27/12	JLF	Initial review of documents produced by Ken Altman in response to subpoenas for records on South Causeway, Darwin Wheeler and Peggy Wheeler-Cribb.	0.20 hrs	\$50.00
04/30/12	JWC	Meet with Chip Lyerly, Wayne Lovelace, Julia Cason, Vickie Baker, D.J. Tyler and Lee Floyd. Prepare notes to file.	1.80 hrs	\$540.00
04/30/12	JWC	Receipt and review emails from Robert Goings with Memorandum in Support of Motion to Compel In Camera Review. Telephone conference with Chip Lyerly regarding setting meeting. Email from Chip regarding D.J. Tyler's time for meeting and email regarding meeting.	0.40 hrs	\$120.00
04/30/12	JWC	Office conference with Lee Floyd.	0.10 hrs	\$30.00
04/30/12	JWC	Receipt and review email from Lee Floyd to Audra Byrd regarding Chip Lyerly's deposition, other issues, confirm acceptance of service authority.	0.20 hrs	\$60.00
04/30/12	JLF	Plan and prepare for meeting with Chip Lyerly, DJ Tyler, and Mr. Joel W. Collins, Jr. to discuss trial strategy and activities necessary to prepare for the same, pursuant to request from Chip Lyerly.	0.20 hrs	\$50.00
04/30/12	JLF	Pursuant to request from Chip Lyerly, appear for and attend meeting with Chip Lyerly, Wayne Lovelace, Julie Cason, DJ Tyler, Vickie Baker, and Joel W. Collins, Jr., to discuss status of case, trial strategy, necessary activities for preparing for trial, and assignment of trial preparations.	1.80 hrs	\$450.00
04/30/12	JLF	Review and respond to e-mails from Audra Byrd regarding deposition of Chip Lyerly, reconvening depositions of Peggy Wheeler Cribb and Darwin Wheeler, and subpoena responses from Darwin Wheeler and Peggy Wheeler Cribb.	0.30 hrs	\$75.00
04/30/12	JLF	Receipt and review e-mail from Chip Lyerly regarding status of case on the trial roster and meeting to finalize preparations for trial.	0.10 hrs	\$25.00
04/30/12	VLB	Pre trial strategy meeting with clients, Mr. Joel W. Collins, Jr., Mr. Lee Floyd, Mr. DJ Tyler, Julie Cason identifying outstanding discovery issues, identify replacement records custodian for First South Bank,	1.80 hrs	\$243.00

001500

00102

5

determine documents for exhibits, pre-trial motion in limine issues, outline projected evidentiary issues, identify direct witnesses and re-direct witnesses to be subpoenaed, voir dire pre-trial brief issues and assignment of the same.

Total fees for this matter

\$6,325.50
DISBURSEMENTS

		Units	
04/30/12	Inhouse Copies	53	\$5.30
04/30/12	Postage		\$31.30
04/30/12	Prints	793	\$79.30
04/30/12	Long Distance Telephone		\$1.70

Total disbursements for this matter

\$117.60
TIMEKEEPER SUMMARY

Jr., Joel W. Collins	SENIOR SHAREHOLDER	0.40 hrs	0.00 /hr	\$0.00
Jr., Joel W. Collins	SENIOR SHAREHOLDER	4.30 hrs	300.00 /hr	\$1,290.00
Floyd, Lee	SENIOR ASSOCIATE	0.10 hrs	0.00 /hr	\$0.00
Floyd, Lee	SENIOR ASSOCIATE	16.20 hrs	250.00 /hr	\$4,050.00
Baker, Vickie L.	SENIOR PARALEGAL	0.10 hrs	0.00 /hr	\$0.00
Baker, Vickie L.	SENIOR PARALEGAL	7.30 hrs	135.00 /hr	\$985.50

TOTAL FEES

\$6,325.50

TOTAL DISBURSEMENTS

\$117.60

TOTAL AMOUNT OF CURRENT BILL

\$6,443.10

Please remit all payments to the following address:

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

PLEASE REFERENCE OUR 16 DIGIT BILL NUMBER LOCATED AT THE TOP OF THIS BILL.

001500

00102

6



June 8, 2012

Billed through 05/31/12

Bill Number 001500 00102 63244 JWC

Federal Tax ID: 57-0989944

W. C. Lyerly, III
President
First South Bank
1330 Main Street, Suite 220
Columbia, SC 29211

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

REGARDING: First South Bank vs. South Causeway, LLC

Balance carried forward from last bill date	\$6,443.10
Payments received since last bill	\$6,443.10
Net Balance Forward	\$0.00

FOR PROFESSIONAL SERVICES RENDERED

05/01/12	JLF	Receipt and review e-mails from clients regarding witness to serve as custodian of records at trial.	0.20 hrs	\$35.00
05/01/12	JLF	Receipt and review e-mail from Chip Lyerly about mortgage applications by Peggy Wheeler Cribb and Darwin Wheeler and obtaining copies of the same.	0.10 hrs	\$17.50
05/01/12	JLF	Telephone call from Audra Byrd regarding deposition of Chip Lyerly, reconvening the depositions of Peggy Wheeler-Cribb and Darwin Wheeler, and authority to accept service of the subpoena to Darwin Wheeler.	0.50 hrs	\$87.50
05/01/12	JLF	Receipt and review e-mail from DJ Tyler regarding list of witnesses to subpoena for presenting re-direct case.	0.10 hrs	\$17.50
05/01/12	JLF	Draft letter to Audra Byrd confirming conversation and refusal to produce Darwin Wheeler and Peggy Wheeler Cribb for reconvening their depositions, inability to accept service of the Subpoena to Darwin Wheeler, and the date and time of the deposition of Chip Lyerly.	0.20 hrs	\$35.00
05/01/12	JLF	Telephone call from Chip Lyerly regarding conversation with opposing counsel about the service of the Subpoena to Darwin Wheeler, the deposition of Chip Lyerly, and status of outstanding offer on the property.	0.30 hrs	\$52.50
05/01/12	JLF	Telephone call to Chip Lyerly regarding conversation with opposing counsel about the service of the Subpoena to Darwin Wheeler, the deposition of Chip Lyerly, and	0.10 hrs	\$17.50

001500	00102			2
		status of outstanding offer on the property. Left message to call.		
05/02/12	JWC	Review file material. Prepare notes regarding witnesses. Lengthy telephone conference with D.J. Tyler.	1.30 hrs	\$390.00
05/02/12	JWC	Lengthy telephone conference with Bob Wood. Prepare notes to file. Telephone conference with Charles McCallum. Telephone conference with Chuck Cooper. Telephone conference with Don Thomas of My Vintage Christi Real Estate. Email to Vickie Baker regarding subpoenas for Mr. McCallum, Mr. Cooper and Mr. Thomas.	1.00 hrs	\$300.00
05/03/12	JLF	Receipt and review e-mail from Audra Byrd requesting documents obtained via subpoena and indicating she can now accept service on behalf of Darwin Wheeler.	0.10 hrs	\$17.50
05/03/12	JLF	Receipt and review issue surrounding procedure for moving forward with foreclosure where counter-claims are pled.	0.10 hrs	\$17.50
05/03/12	VLB	Receipt and review Defendant's Notice of Deposition of Chip Lyerly for First South Bank scheduled for May 11, 2012. Mark scheduled date in calendar.	0.10 hrs	\$13.50
05/03/12	VLB	Draft Plaintiff's Second Supplemental Answers to Defendant's First Set Interrogatories naming alternate records custodian.	0.20 hrs	\$27.00
05/04/12	JWC	Prepare Amended Answer to Interrogatories. Telephone conference with D.J. Tyler. Prepare notes to file. Review case law regarding procedure to follow when counterclaims are asserted in a foreclosure case. Telephone call to Attorney Joe Crosby (Master in Equity for Georgetown County). Confer with Vickie Baker. Confer with Lee Floyd. Review emails sent by Chip Lyerly.	2.50 hrs	\$750.00
05/04/12	JLF	(NO CHARGE) Research procedural issues surrounding whether foreclosure claim is decided by the judge or jury.	0.50 hrs	\$0.00
05/04/12	JLF	Receipt and review e-mails from Chip Lyerly and Wayne Lovelace regarding additional documents and correspondence surrounding other loans and the communications between Wayne Lovelace and Don Thomas.	0.20 hrs	\$35.00
05/04/12	JLF	Meeting with Mr. Joel W. Collins, Jr. about the status of the case and negotiations with opposing counsel and procedural issues surrounding counterclaims and foreclosure action.	0.30 hrs	\$52.50
05/04/12	JLF	Review and execute Second Supplemental responses to Defendant's Interrogatories identifying Teri Hartsoe as the records custodian for First South.	0.10 hrs	\$17.50
05/04/12	JLF	Research procedural issues surrounding whether foreclosure claim is decided by the judge or jury, pursuant to request from Chip Lyerly.	0.50 hrs	\$87.50

001500	00102			3
05/06/12	JLF	Receipt and review e-mail from DJ Tyler regarding subpoenas to obtain personal financial statements that Wheeler-Cribb and Wheeler submitted as part of personal loan applications.	0.10 hrs	\$17.50
05/07/12	JWC	Preparation of Motion. Prepare draft letter to Audra Byrd.	0.70 hrs	\$210.00
05/07/12	JWC	Meet with Terri Hartsoe. Telephone conference with Terri Hartsoe. Telephone call to D.J. Tyler (left voice mail). Office conference with Lee Floyd. Telephone conference with Chip Lyerly. Telephone conference with Tommy Lydon. Telephone conference with Paul Hoefer. Prepare notes to file.	3.70 hrs	\$1,110.00
05/07/12	JWC	Review emails from Chip Lyerly with pictures of SC property. Review email from D.J. Tyler meet with Terri Hartsoe. Review email from Tommy Lydon with attached copy of Answer and Counterclaim filed in his case. Review documents from Chip Lyerly and Julie Cason.	1.70 hrs	\$510.00
05/07/12	JLF	Meeting with Julie Cason and Terri Hartsoe regarding Terri's role as the custodian of records and testimony at trial concerning the documents surrounding the transaction with South Causeway, LLC.	1.20 hrs	\$210.00
05/07/12	JLF	(NO CHARGE) Receipt and review Defendant's Second Amended Deposition Notice for Chip Lyerly.	0.10 hrs	\$0.00
05/07/12	JLF	Analyze additional documents and materials from Chip Lyerly and DJ Tyler in order to complete activities necessary for preparing for trial.	0.50 hrs	\$87.50
05/07/12	JLF	Receipt and review correspondence concerning meeting with Chip Lyerly to prepare him for his deposition.	0.10 hrs	\$17.50
05/08/12	JWC	Telephone conference with D.J. Tyler. Review and reply to email regarding Mayor of Pawleys Island.	0.30 hrs	\$90.00
05/08/12	JWC	Office conference with Lee Floyd regarding trial preparation. Receipt and review email from Chip Lyerly regarding Terry Williams' availability May 14, 2012. Receipt and review emails regarding deposition preparation for 5/10/12 of Chip Lyerly. Telephone conference with Chip Lyerly. Telephone conference with Attorney Audra Byrd. Prepare notes to file. Telephone conference with D.J. Tyler. Telephone call to Chip Lyerly.	1.80 hrs	\$540.00
05/08/12	JLF	Telephone conference with Audra Byrd and DJ Tyler regarding document production Defendants have not received	0.50 hrs	\$87.50
05/08/12	JLF	Telephone call from Wayne Lovelace regarding e-mails with Neil Matone and potential issues with document production and handwritten notes on the correspondence.	0.50 hrs	\$87.50
05/08/12	JLF	E-mails to clients confirming conversation with Wayne Lovelace, supplemental document production, and	0.20 hrs	\$35.00

001500	00102			4
		production of e-mails with Neil Matone.		
05/08/12	JLF	Voice mail from DJ Tyler regarding production of e-mails between Wayne Lovelace and Neil Matone and holding production until tomorrow.	0.10 hrs	\$17.50
05/08/12	JLF	Review and execute letter to opposing counsel accompanying document production obtained pursuant to subpoenas.	0.10 hrs	\$17.50
05/08/12	JLF	Receipt and review e-mails from DJ Tyler regarding trial date and issues surrounding movement to a subsequent term of court, production of e-mails from Neil Matone, and meeting with Terry Williams.	0.20 hrs	\$35.00
05/08/12	JLF	Analyze additional documents from First South Bank regarding communications between Wayne Lovelace and Neil Matone.	0.80 hrs	\$140.00
05/08/12	JLF	Receipt and review e-mails from Chip Lyerly regarding Thomas Otis at NAI Avant and additional information on potential sale of property.	0.10 hrs	\$17.50
05/08/12	JLF	Receipt and review e-mail from Chip Lyerly regarding meeting with tax expert Terry Williams.	0.10 hrs	\$17.50
05/08/12	VLB	Review of file materials, documents, discovery and memorandum to determine pre-trial disclosures, jury and trial preparation needs.	1.80 hrs	\$243.00
05/08/12	VLB	Preparation of all documents received in response to subpoenas for production to Defendant South Causeway.	0.50 hrs	\$67.50
05/08/12	VLB	Continue review of file materials, documents, discovery and memorandum identifying potential trial witnesses, exhibits for submission and other trial strategy needs.	1.60 hrs	\$216.00
05/09/12	JWC	Review emails regarding status and regarding Terry Williams - send reply. Telephone call to D.J. Tyler. Office conference with Vickie Baker. Prepare notes to file. Telephone call to Cindy in Skeets Bellamy's office. Office conference with Lee Floyd regarding emails and preparation for Chip Lyerly deposition.	2.10 hrs	\$630.00
05/09/12	JWC	Telephone conference with Chip Lyerly regarding email from Wayne Lovelace to Doug Hinds and discussion with him as to whether or not that was withheld on claim of attorney - client privilege. Discussion regarding Chip Lyerly's upcoming deposition.	0.30 hrs	\$90.00
05/09/12	JLF	Continue to analyze additional documents from First South Bank regarding communications between Wayne Lovelace and Neil Matone.	0.30 hrs	\$52.50
05/09/12	JLF	Analyze deposition transcript of Wayne Lovelace and exhibits and comprehensive timeline of supporting documents for preparing witness examinations and preparing Chip Lyerly for his deposition.	2.00 hrs	\$350.00
05/09/12	VLB	Draft of Plaintiff's Third Supplemental Answers to Defendants Interrogatories identifying Greg Currie and	0.50 hrs	\$67.50

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00102

5

Alex Kelly as witnesses.

05/10/12	JWC	Meet with Chip Lyerly and Lee Floyd. Prepare for deposition. Office conference with Vickie Baker. Review emails, finalize supplemental answers to interrogatories. Check status of order from Court.	0.60 hrs	\$180.00
05/10/12	JWC	Prepare subpoenas for trial. Prepare amended answers to interrogatories. Office conference with Vickie Baker regarding letter to Judge Hyman. Office conference with Lee Floyd.	0.70 hrs	\$210.00
05/10/12	JWC	Review email from Chip Lyerly. Telephone conference with Thomas Otis (843-469-1964). Prepare notes to file. Telephone conference with Chip Lyerly regarding documents withheld.	0.70 hrs	\$210.00
05/10/12	JWC	Meet with Charles McCallum. Prepare notes to file.	0.40 hrs	\$120.00
05/10/12	JLF	Meeting with Chip Lyerly to prepare him for his deposition.	2.50 hrs	\$437.50
05/10/12	JLF	Continue to analyze deposition transcript of Wayne Lovelace and exhibits and comprehensive timeline of supporting documents for preparing witness examinations and preparing Chip Lyerly for his deposition.	2.50 hrs	\$437.50
05/10/12	JLF	Receipt and review e-mail from Julie Cason regarding current payoff amounts on the loan and printouts of current payoff statements for the loan	0.20 hrs	\$35.00
05/10/12	JLF	(NO CHARGE) Pursuant to request from Chip Lyerly and Mr. Joel W. Collins, Jr., appear for meeting with Audra Byrd and part of Chip Lyerly's deposition.	1.20 hrs	\$0.00
05/10/12	VLB	Telephone communications with Wanda Cribb, Clerk of Court for Georgetown County and Court Administration regarding the status of cases to be heard week of May 21st and administrative order regarding Judge Hyman and Judge Cottingham.	0.30 hrs	\$40.50
05/10/12	VLB	Draft of Trial Subpoena and instructions to appear as witness for trial to Charles McCallum.	0.20 hrs	\$27.00
05/10/12	VLB	Draft letter to Charles McCallum serving Subpoena for Trial Appearance.	0.10 hrs	\$13.50
05/10/12	VLB	Draft of Trial Subpoena and instructions to appear as witness for trial to Chuck Cooper of Vintage Estates Realty.	0.20 hrs	\$27.00
05/10/12	VLB	Draft letter to Chuck Cooper of Vintage Estates Realty serving Subpoena for Trial Appearance.	0.10 hrs	\$13.50
05/10/12	VLB	Draft of Trial Subpoena and instructions to appear as witness for trial to Don Thomas of Vintage Estates Realty.	0.20 hrs	\$27.00
05/10/12	VLB	Draft of Trial Subpoena and instructions to appear as witness for trial to Truitt Owens of Vintage Estates Realty.	0.20 hrs	\$27.00

001500	00102		6
05/10/12	VLB	Draft letter to Don Thomas of Vintage Estates Realty serving Subpoena for Trial Appearance.	0.10 hrs \$13.50
05/10/12	VLB	Draft letter to Truitt Owens of Vintage Estates Realty serving Subpoena for Trial Appearance.	0.10 hrs \$13.50
05/10/12	VLB	Continue review of file to identify trial exhibit documents and materials and identify additional documents to be authenticated by Defendants and continue identifying witnesses for trial.	1.60 hrs \$216.00
05/11/12	JWC	Attend Chip Lyerly's deposition. Prep notes to file.	5.00 hrs \$1,500.00
05/11/12	JLF	Review and execute First South Bank's Second Request to Admit regarding authenticity of the documents from First Palmetto Bank	0.20 hrs \$35.00
05/11/12	JLF	Continue to analyze comprehensive timeline and supporting correspondence and documents from South Causeway LLC, deposition exhibits, and comprehensive timeline of supporting documents for preparing witness examinations and exhibits for use at trial.	1.00 hrs \$175.00
05/11/12	JLF	Correspondence regarding contact with Citibank and service of Darwin Wheeler in a parallel foreclosure action.	0.10 hrs \$17.50
05/11/12	JLF	(NO CHARGE) Telephone call to Steve Strickland regarding dealings with South Causeway and to assess potential as fact witness at trial; left message to call.	0.10 hrs \$0.00
05/11/12	JLF	Analyze documents and materials in file and notes from meetings with Chip Lyerly, DJ Tyler, Wayne Lovelace, and Mr. Joel W. Collins, Jr. to update necessary activities for preparing for trial and strategy for the same.	1.60 hrs \$280.00
05/11/12	JLF	Telephone conference with DJ Tyler for trial and division of the same to avoid duplication of work.	0.90 hrs \$157.50
05/11/12	VLB	Review of Georgetown Docket for revision to May 21st Term of Court.	0.10 hrs \$13.50
05/11/12	VLB	Telephone call to John Powell, Judge Hyman's Law Clerk, to determine status of Order to be issued from Court Administration regarding the transfer of Judge Hyman to Georgetown County and Judge Cottingham to Horry County.	0.10 hrs \$13.50
05/11/12	VLB	Telephone conversation with The Honorable Judge Cottingham confirming he is switching to Horry County for the May 21st Term of Court and Judge Hyman will be coming in to Georgetown County.	0.10 hrs \$13.50
05/11/12	VLB	Draft and submit email to Judge Hyman, Wanda Cribb and counsels requesting a grant of allowance of time should the Fischer v. Shipyard case settle and this case be called granting time to contact and assemble witnesses and for travel time.	0.20 hrs \$27.00
05/11/12	VLB	Research Georgetown County public records for all active actions pending against Will Darwin Wheeler and Peggy	0.50 hrs \$67.50

001500

00102

7

Wheeler-Cribb, identifying type of matter, current status of the action and any disposition for use in preparation for trial.

05/11/12	VLB	Continue research of defendants, begin assimilation of documents and relevant information in preparation for pre-trial issues.	1.80 hrs	\$243.00
05/11/12	VLB	Receipt of revised jury list from Georgetown County and begin evaluation of potential jurors for use in determining jury strikes.	1.30 hrs	\$175.50
05/11/12	VLB	Meet with Mr. Lee Floyd to strategize, identify research and discovery information, additional exhibits and determine additional pre-trial submissions, witnesses and begin determining specific needs in preparation for trial..	1.60 hrs	\$216.00
05/14/12	JWC	Meet with Certified Public Accountant Terry Williams, Chip Lyerly, Wayne Lovelace, Lee Floyd and D.J. Tyler. Review emails. Prepare notes to file. Office conference with Vickie Baker regarding deposition of Ken Altman.	1.50 hrs	\$450.00
05/14/12	JWC	Telephone conference with Chip Lyerly regarding the advisability of me meeting with Audra Byrd to discuss with her downside considerations for Darwin Wheeler going forward.	0.30 hrs	\$90.00
05/14/12	JWC	Review email from Georgetown County regarding docket.	0.10 hrs	\$30.00
05/14/12	JWC	Receipt, review and respond to emails from Don Thomas of Lachicotte Company regarding his receipt of subpoena and availability.	0.10 hrs	\$30.00
05/14/12	JWC	Receipt, review and respond to email regarding law on waiver of attorney - client privilege in South Carolina and production of emails and correspondence between Wayne Lovelace and Neil Matone in supplemental document production.	0.10 hrs	\$30.00
05/14/12	JLF	Voice mail from Steve Strickland at Earthworks, LLC regarding dealings and work at South Causeway, LLC project.	0.10 hrs	\$17.50
05/14/12	JLF	Meeting with Terry Williams, tax expert, Chip lyerly, Wayne Lovelace, DJ Tyler, and Mr. Joel W. Collins, Jr. to discuss his review and opinons on the tax returns of Peggy Wheeler-Cribb and Darwin Wheeler.	1.50 hrs	\$262.50
05/14/12	JLF	Research privilege waiver issues surrounding the production of the June 29, 2009 e-mail in-house regarding Wayne Lovelace's telephone conversation with Peggy Wheeler-Cribb and refusal to renew the loan.	0.50 hrs	\$87.50
05/14/12	JLF	Receipt and review correspondence from Don Thomas regarding trial and subpoena for attendance.	0.10 hrs	\$17.50
05/14/12	JLF	Return call to Steve Strickland at Earthworks, LLC regarding dealings and work at South Causeway, LLC project; left message to call.	0.10 hrs	\$17.50
05/14/12	JLF	E-mail to clients regarding research of privilege waiver	0.20 hrs	\$35.00

001500	00102			8
		issues surrounding the production of the June 29, 2009 e-mail in-house regarding Wayne Lovelace's telephone conversation with Peggy Wheeler-Cribb and refusal to renew the loan.		
05/14/12	JLF	Work on supplemental document production and additional Request to Admit to South Causeway.	0.30 hrs	\$52.50
05/14/12	JLF	Continue to analyze comprehensive timeline and supporting correspondence and documents from South Causeway LLC, deposition exhibits, and comprehensive timeline of supporting documents for preparing witness examinations and exhibits for use at trial.	1.60 hrs	\$280.00
05/14/12	VLB	[NO CHARGE] Review on-line jury, non-jury and motions docket for Georgetown County to determine status of case and any immediate calendar preparation needs.	0.10 hrs	\$0.00
05/15/12	JLF	Assess status of case on trial roster for May 21, 2012 and status of case set for trial during that term of court.	0.20 hrs	\$35.00
05/15/12	JLF	Receipt and review e-mail from Audra Byrd regarding motion to quash or for a protective order in response to subpoena to Dan Fritz for financial statements	0.10 hrs	\$17.50
05/15/12	JLF	Continue to analyze comprehensive timeline and supporting correspondence and documents from South Causeway LLC, deposition exhibits, and comprehensive timeline of supporting documents for preparing witness examinations and exhibits for use at trial.	3.50 hrs	\$612.50
05/15/12	JLF	Receipt and review e-mail from Chip Lyerly regarding expert witness Stan Ashburne and assistance with case and testimony concerning practices relating to the loan to South Causeway.	0.10 hrs	\$17.50
05/15/12	JLF	Telephone call to Wayne Lovelace to obtain additional information about e-mail to Peggy Wheeler-Cribb concerning status of selection of contractor and to obtain clarification on the same for potential issues at trial; left message to call.	0.10 hrs	\$17.50
05/15/12	JLF	Receipt and review Defendant's Motion for a Protective Order or to Quash the subpoena to attorneys for documents in parallel foreclosure actions against Peggy Wheeler-Cribb and Darwin Wheeler and assess potential response to the same.	0.30 hrs	\$52.50
05/15/12	JLF	Analyze document production from Peggy Wheeler-Cribb and Darwin Wheeler for potential exhibits and documents to use for cross-examination at trial.	0.20 hrs	\$35.00
05/15/12	JLF	Telephone call from Wayne Lovelace about issues in e-mails and other factual issues for preparing and addressing at trial.	0.90 hrs	\$157.50
05/15/12	VLB	Review of deposition exhibits and begin review of exhibits to determine information for use in preparing for trial.	2.10 hrs	\$283.50
05/15/12	VLB	(NO CHARGE) Drafted Notice of Deposition and	0.30 hrs	\$0.00

001500	00102	Deposition Subpoena Duces Tecum to Kenneth D. Altman.		9
05/15/12	VLB	Receipt and review Notice of Motion and Motion to Quash Subpoenas of Plaintiff to Rogers Townsend & Thomas; Brock & Scott, LLC; McAngus Goudelock & Courie and Nelson Mullins Riley & Scarborough for a Protective Order.	0.20 hrs	\$27.00
05/16/12	JWC	Review email from Audra Byrd regarding acceptance of service. Review email regarding research on statute of limitations. Telephone conference with Lee Floyd. Office conference with Vickie Baker regarding deposition of Mr. Altman.	0.40 hrs	\$120.00
05/16/12	JLF	Pursuant to instructions from Mr. Joel W. Collins, Jr., analyze documents in file and research issues surrounding action to enforce guaranty agreements and statute of limitations and correspondence setting forth analysis of the same.	1.70 hrs	\$297.50
05/16/12	JLF	Receipt and review e-mail from Audra Byrd regarding status of case and upcoming term of court and e-mail to Chip Lyerly about responding to the same.	0.10 hrs	\$17.50
05/16/12	JLF	(NO CHARGE) Review and execute deposition notice, subpoena duces tecum, and accompanying correspondence to Ken Altman.	0.20 hrs	\$0.00
05/16/12	JLF	(NO CHARGE) Review and execute correspondence to Audra Byrd regarding the deposition of Ken Altman.	0.10 hrs	\$0.00
05/16/12	JLF	Receipt and review e-mail from Audra Byrd regarding trial subpoenas for Chip Lyerly and Wayne Lovelace and status of case on roster.	0.10 hrs	\$17.50
05/16/12	JLF	Telephone call from DJ Tyler regarding statute of limitations issues and guaranty agreements and strategy for proceeding and documents for cross-examinations at trial.	0.50 hrs	\$87.50
05/16/12	JLF	Voice mail DJ Tyler regarding issues surrounding statute of limitations and separate action against Darwin Wheeler and Peggy Wheeler-Cribb as guarantors of the loan	0.10 hrs	\$17.50
05/16/12	JLF	Telephone conference with Mr. Joel W. Collins, Jr. and Chip Lyerly and DJ Tyler regarding service of trial subpoenas, exhibits and potential power point presentation.	0.20 hrs	\$35.00
05/16/12	JLF	Review and execute First South Bank's Eighth Supplemental responses to Defendants' discovery requests.	0.10 hrs	\$17.50
05/16/12	JLF	Gather and review documents surrounding loans to designate portions to have blown-up for exhibits for use at trial, pursuant to instructions from Mr. Joel W. Collins, Jr.	2.80 hrs	\$490.00
05/16/12	VLB	Drafted Plaintiff's Eighth Supplemental Responses to Defendant's Request for Production.	0.50 hrs	\$67.50

001500	00102		10
05/16/12	VLB	(NO CHARGE) Continue preparation for trial, Index summary of potential jurors, review of emails to determine additional trial exhibits.	1.00 hrs \$0.00
05/17/12	JWC	Telephone call to Vickie Baker requesting status. Review voicemail from D.J. Tyler. Telephone conference with Chip Lyerly. Office conference with Lee Floyd.	0.40 hrs \$120.00
05/17/12	JLF	Continue to analyze pleadings, deposition transcripts and trial testimony of Darwin Wheeler in prior lawsuit for assessing deposition designations.	1.20 hrs \$210.00
05/17/12	JLF	Receipt and review e-mail from DJ Tyler regarding estimated damages to South Causeway and requesting input on the same.	0.10 hrs \$17.50
05/17/12	JLF	Telephone call from DJ Tyler to discuss potential damage scenarios and issues to be addressed with First South Bank's Liability Carrier.	1.10 hrs \$192.50
05/17/12	JLF	(NO CHARGE) Review and respond to e-mails from Chip Lyerly and Wayne Lovelace regarding deposition notice and subpoena to Ken Altman.	0.10 hrs \$0.00
05/17/12	JLF	Continue to analyze documents surrounding loans to designate portions to have blown-up for exhibits for use at trial, pursuant to instructions from Mr. Joel W. Collins, Jr..	1.00 hrs \$175.00
05/17/12	JLF	(NO CHARGE) Review and execute amended deposition notice and subpoena duces tecum to Ken Altman and accompanying correspondence.	0.10 hrs \$0.00
05/17/12	JLF	(NO CHARGE) Receipt and review e-mails regarding strategy for responding to the motion to quash the subpoenas for the files on the other foreclosure actions against Darwin Wheeler and Peggy Wheeler-Cribb.	0.10 hrs \$0.00
05/17/12	JLF	Analyze materials to prepare the motions in limine and pre-trial motions and memorandums in support of those motions for filing with the Court.	0.50 hrs \$87.50
05/17/12	JLF	Prepare the motions in limine and pre-trial motions and memoranda in support of those motions for filing with the Court.	0.90 hrs \$157.50
05/17/12	JLF	Research for preparing the motions in limine and pre-trial motions and memoranda in support of those motions for filing with the Court.	1.60 hrs \$280.00
05/17/12	JLF	(NO CHARGE) Continue research for preparing the motions in limine and pre-trial motions and memoranda in support of those motions for filing with the Court.	0.20 hrs \$0.00
05/17/12	JLF	(NO CHARGE) Telephone conference with Mr. Joel W. Collins, Jr. and Chip Lyerly regarding status of case on roster and Defendants' Motion for a Continuance.	0.50 hrs \$0.00
05/17/12	VLB	Telephone call to Attorney David Mills' office (McNair) regarding the status of the Fisher v. Shipyard case which is No. 1 on the May 21st roster. Case is set to be a 2 week	0.10 hrs \$13.50

001500	00102		11
		trial.	
05/17/12	VLB	(NO CHARGE) Review of Georgetown County Trial Roster to determine status of change of judges and for status of the cases on the roster. Judge Hyman has been substituted on the trial page. Access and confirm Terms of Court and assigned judge for June-October, 2012.	0.10 hrs \$0.00
05/17/12	VLB	(NO CHARGE) Email to Chip Lyerly, Wayne Lovelace and Donald W. Tyler, Jr., forwarding information known to date about the status of the cases on the jury docket preceding our case and future terms of court.	0.10 hrs \$0.00
05/18/12	JWC	Review emails from D.J. Tyler. Telephone conference with D.J.Tyler. Office conference with Lee Floyd. Telephone call to Frank Gibbes-left voice mail. Telephone conference with Georgia Prescott of the Clerk's office regarding the Request for Expedited Hearing. Telephone conference with Chip Lyerly (multiple calls). Telephone call to Frank Gibbes.	1.20 hrs \$360.00
05/18/12	JLF	Voice mail from DJ Tyler regarding status of case and section of pre-trial brief on mode of trial and requesting a return call.	0.10 hrs \$17.50
05/18/12	JLF	Telephone calls from DJ Tyler regarding roster meeting on Monday, motions in limine, division of witness examinations, and exhibits for use at trial.	0.80 hrs \$140.00
05/18/12	JLF	Correspondence with DJ Tyler and clients regarding update on the status of case on trial roster and the roster meeting Monday morning.	0.10 hrs \$17.50
05/18/12	JLF	Continue to analyze pleadings, deposition transcripts and trial testimony of Darwin Wheeler in prior lawsuit for assessing deposition designations and potential requests for admission.	0.30 hrs \$52.50
05/18/12	JLF	Continue to prepare the motions in limine and pre-trial motions and memoranda in support of those motions for filing with the Court.	0.50 hrs \$87.50
05/18/12	JLF	Telephone call and e-mails to Judge Hyman's Chambers and Law Clerk regarding upcoming roster meeting and attendance at the same.	0.10 hrs \$17.50
05/18/12	VLB	Determine trial status with Georgetown County, Identify pre-trial issues and determine strategy for identifying additional expert witnesses and other discovery needs should case be continued.	1.10 hrs \$148.50
05/21/12	JWC	Review email from Lee Floyd. Review emails from D.J. Tyler. Office conference with Vickie Baker and Lee Floyd. Telephone conference with Chip Lyerly.	0.80 hrs \$240.00
05/21/12	JLF	(NO CHARGE) Review status of case on the trial roster.	0.20 hrs \$0.00
05/21/12	JLF	Receipt and review e-mail from Chip Lyerly regarding deposition of Don Thomas and potential information from the auctioneer Truit Owens	0.10 hrs \$17.50

001500		00102		12
05/21/12	JLF	Prepare the updated list of activities for trial preparations.	0.30 hrs	\$52.50
05/21/12	JLF	Continue to prepare the memorandum in support of the motion in limine to exclude any parole evidence or extrinsic evidence beyond the terms of the agreements between the parties.	2.50 hrs	\$437.50
05/21/12	JLF	Continue to analyze materials and document production to draft the memorandum in support of the motion in limine to exclude any parole evidence or extrinsic evidence beyond the terms of the agreements between the parties.	1.20 hrs	\$210.00
05/21/12	JLF	Analyze statute of frauds applicable to banking actions and recent decision interpreting the same as potential grounds to include in the Motion in Limine to exclude parole evidence and supporting memorandum.	1.00 hrs	\$175.00
05/21/12	VLB	Telephone call to the McNair Law Firm and the Bellamy Law Firm to determine the status of the docket of cases preceeding our case.	0.10 hrs	\$17.50
05/21/12	VLB	(NO CHARGE) Meeting with James Lee Floyd to determine strategy for continuing trial preparation and additional discovery disclosures upon notification that case has been postponed from the May 21st term of court.	0.50 hrs	\$0.00
05/22/12	JWC	Office conference with Mr. Lee Floyd; Telephone conference with Chip Lyerly regarding need to contact Chuck Cooper and Bill Otis.	0.60 hrs	\$180.00
05/22/12	JLF	(NO CHARGE) Meeting with Mr. Joel W. Collins, Jr. to discuss status of case and activities for preparing for trial and immediate future in light of the continuance.	0.50 hrs	\$0.00
05/22/12	JLF	Review and respond to e-mail from DJ Tyler regarding Maurice Sapp matter against Darwin Wheeler and Ken Altman.	0.10 hrs	\$17.50
05/22/12	VLB	Receipt and review Notice of Motion and Motion to Quash Subpoena (Objection to Subpoena) served by Plaintiff to Brock and Scott, PLLC, to direct production under a protection order.	0.10 hrs	\$13.50
05/23/12	JLF	Telephone call to counsel for Maurice Sapp in prior lawsuit against Darwin Wheeler and Ken Altman to obtain additional information on Ken Altman and his involvement with Darwin Wheeler; left detailed message requesting transcript of Altman testimony and request a return call.	0.10 hrs	\$17.50
05/23/12	JLF	Voice mail from counsel for Maurice Sapp in prior lawsuit against Darwin Wheeler and Ken Altman to obtain additional information on Ken Altman and his involvement with Darwin Wheeler	0.10 hrs	\$17.50
05/23/12	JLF	Return call to counsel for Maurice Sapp in prior lawsuit against Darwin Wheeler and Ken Altman to obtain additional information on Ken Altman and his involvement with Darwin Wheeler	0.30 hrs	\$52.50

001500	00102		13
05/23/12	JLF	Receipt and review subpoenas from opposing counsel to Wayne Lovelace and Chip Lyerly.	0.10 hrs \$17.50
05/23/12	JLF	Receipt and review Motion to Quash the subpoena for financial statements of Peggy Wheeler-Cribb and Darwin Wheeler filed by Brock & Scott, PLLC.	0.10 hrs \$17.50
05/23/12	JLF	Receipt and review Nelson Mullins Response to Defendant's Motion to Quash the subpoenas for financial statements of Peggy Wheeler-Cribb and Darwin Wheeler.	0.10 hrs \$17.50
05/23/12	JLF	Receipt and review Defendant's Motion to Quash or Motion for a Protective Order regarding the subpoenas for financial statements of Peggy Wheeler-Cribb and Darwin Wheeler filed by Brock & Scott PLLC.	0.10 hrs \$17.50
05/23/12	VLB	Review causes of action as to foreclosure action and defenses to the cross claim and begin preparation for Jury Requests to Charge.	2.40 hrs \$324.00
05/24/12	JWC	Review email from Chip Lyerly - for telephone conference with Chip Lyerly - 2 calls. Telephone calls to Tommy Lydon - left message. Telephone call to Chuck Cooper - left 3 messages. Telephone conference with Chuck Cooper. Prepare notes to file, office conference with Vickie Baker. Prepare amended answers to interrogatories naming 2 new expert witnesses.	1.70 hrs \$510.00
05/24/12	JLF	Receipt and review e-mail from Chip Lyerly regarding status of case on June 16 trial roster and parallel foreclosure action against Darwin Wheeler on same docket.	0.10 hrs \$17.50
05/24/12	JLF	Prepare and revise supplemental discovery responses identifying Terry Williams and Stan Ashburne as expert witnesses and summarizing their expected testimony.	0.50 hrs \$87.50
05/24/12	JLF	Review and execute the supplemental discovery responses identifying Terry Williams and Stan Ashburne as expert witnesses and summarizing their expected testimony and accompanying correspondence to opposing counsel.	0.10 hrs \$17.50
05/24/12	VLB	Evaluation of transcript and exhibits of Deposition of Chip Lyerly to analyze and determine further research, investigative, discovery or any other strategy needs and for use in trial.	0.30 hrs \$40.50
05/24/12	VLB	Drafted Plaintiff First South Bank's Fourth Supplemental Answers to Defendant's First Set of Interrogatories identifying expert witnesses.	0.50 hrs \$67.50
05/25/12	JLF	Review and revise the Motion and Memorandum in support of the motion in limine to exclude any parole evidence or extrinsic evidence beyond the terms of the agreements between the parties.	0.70 hrs \$122.50
05/25/12	VLB	Drafted letter to Mr. Chip Lyerly forwarding transcript and exhibits from his deposition for review and errata sheet to record any corrections.	0.10 hrs \$13.50
05/28/12	JLF	Analyze trial testimony of Darwin Wheeler in prior law	1.50 hrs \$262.50

001500	00102			14
		suit involving breach of lease agreement for potential impeachment evidence and other grounds for cross-examination at trial.		
05/29/12	JWC	Office conference with Vickie Baker. Review emails regarding status of roster and prepare for depo with Ken Altman. Telephone call to Chip Lyerly regarding plans to fly back from Washington.	0.30 hrs	\$90.00
05/29/12	JWC	Exchange emails with Vickie Baker. Telephone conference with Chip Lyerly regarding Terry Williams helping with the depo of Ken Altman. Telephone call to attorney Tommy Lydon. Telephone call to Laura Sebo and Tommy Lydon's office. Left voicemail for Lee Floyd.	0.90 hrs	\$270.00
05/29/12	JWC	Telephone conference with Mayor Bill Otis, prepare notes to file. Telephone conference with Chip Lyerly.	0.90 hrs	\$270.00
05/29/12	JLF	(NO CHARGE) Telephone conference with DJ Tyler regarding meeting with tax expert Terry Williams concerning review of records and deposition of Ken Altman.	0.10 hrs	\$0.00
05/29/12	JLF	Receipt and review e-mail from providing an update of the status of this case as number 4 on the June 18 trial roster for the Georgetown Court of Common Pleas.	0.10 hrs	\$17.50
05/29/12	JLF	(NO CHARGE) Receipt and review e-mails from Terry Williams and DJ Tyler regarding Mr. Williams review of records, questions for Altman deposition, and meeting to prepare for Altman deposition.	0.10 hrs	\$0.00
05/29/12	VLB	[NO CHARGE] Review on-line jury, non-jury and motions docket for Georgetown County to determine status of case and any immediate calendar preparation needs.	0.10 hrs	\$0.00
05/30/12	JLF	Pursuant to request from Chip Lyerly, prepare correspondence to clients confirming agreed to activities during meeting with Terry Williams and circulating trial transcript from Sapp lawsuit.	0.20 hrs	\$35.00
05/30/12	JLF	Pursuant to instructions from Chip Lyerly, e-mail to expert Terry Williams regarding trial transcript from Maurice Sapp lawsuit against Ken Altman and Darwin Wheeler.	0.10 hrs	\$17.50
05/30/12	JLF	Receipt and review e-mails and additional documents from Chip Lyerly regarding documents surrounding initial purchase of South Causeway property and statements of financial condition of Darwin Wheeler.	0.30 hrs	\$52.50
05/30/12	JLF	Review and revise Motion in Limine concerning references to Mrs. Peggy Wheeler-Cribb at trial.	0.20 hrs	\$35.00
05/30/12	JLF	Review, revise, and execute letter to Audra Byrd concerning expert Terry Williams and providing a copy of his CV.	0.10 hrs	\$17.50
05/30/12	JLF	Correspondence regarding subpoenas to Peggy Wheeler-Cribb and Darwin Wheeler and responses to the	0.10 hrs	\$17.50

001500	00102		15
	same.		
05/30/12	JLF	(NO CHARGE) Analyze testimony of Ken Altman from parallel lawsuit brought by Maurice Sapp to assess testimony and areas of inquiry for his upcoming deposition.	1.00 hrs \$0.00
05/30/12	JLF	(NO CHARGE) Analyze materials and outline from expert Terry Williams to assist with preparations for the deposition of Ken Altman.	0.40 hrs \$0.00
05/30/12	JLF	Pursuant to instructions from Mr. Joel W. Collins, Jr., prepare for and attend meeting with financial and tax expert Terry Williams to assist with preparations for the deposition of Ken Altman.	2.80 hrs \$490.00
05/31/12	JWC	Review voice mail from Bill Otis. Prepare notes to file. Revise and review draft Motions in Limine and Memorandum of Law in Support. Review reply to Defendant's Requests to Admit. Review message from Bill Otis. Telephone call to Attorney David DuRant, left voice mail. Prepare memorandum to file regarding Bill Otis.	1.80 hrs \$540.00
05/31/12	JLF	(NO CHARGE) Receipt and review correspondence and accompanying responses to Request to Admit from Opposing Counsel.	0.20 hrs \$0.00
05/31/12	JLF	Receipt and review report on status of case on the trial roster.	0.10 hrs \$0.00
05/31/12	VLB	Review of documents produced to date and identify all tax returns for Peggy Wheeler-Cribb and Will D. Wheeler for 2000-2010 for use in preparation for depositions and for trial exhibits.	1.80 hrs \$243.00
05/31/12	VLB	Access Georgetown County Pending Cases and Record of Deeds for all current active matters relating to Will Darwin Wheeler and Peggy Wheeler-Cribb to determine strategy needs for the continuing preparation for trial.	0.70 hrs \$94.50
Total fees for this matter			\$23,006.50

DISBURSEMENTS

		Units	
05/02/12	RICOH USA, INC.; Invoice # L0712040114; Outside Copies		\$100.05
05/03/12	PACER SERVICE CENTER; Invoice # CL0448-Q12012; Outside Copies		\$0.08
05/03/12	PACER SERVICE CENTER; Invoice # CL0448-Q12012; Outside Copies		\$2.40
05/11/12	MATT BOWERS; Invoice # 1500-102 5/3; Mileage - 1.5 miles @ .555 ea. to First South Bank for hand delivery.		\$0.83
05/17/12	JENNIFER HATCHER; Invoice # 1500-102 5/3; Mileage - 36.22 miles @ .555 ea. for pick up and delivery of boxes to Earthworks.		\$20.10

001500

00102

16

05/22/12	FEDERAL EXPRESS; Invoice # 7-888-58936; Federal Express Charge dated 5/8/12		\$18.25
05/24/12	WEST PAYMENT CENTER; Invoice # 824931912; Research		\$1.67
05/31/12	Inhouse Copies	393	\$39.30
05/31/12	Postage		\$60.70
05/31/12	Prints	63	\$6.30

Total disbursements for this matter

\$249.68

TIMEKEEPER SUMMARY

Jr., Joel W. Collins	SENIOR SHAREHOLDER	33.90 hrs	300.00 /hr	\$10,170.00
Floyd, Lee	SENIOR ASSOCIATE	5.80 hrs	0.00 /hr	\$0.00
Floyd, Lee	SENIOR ASSOCIATE	55.20 hrs	175.00 /hr	\$9,660.00
Baker, Vickie L.	SENIOR PARALEGAL	2.20 hrs	0.00 /hr	\$0.00
Baker, Vickie L.	SENIOR PARALEGAL	23.40 hrs	135.00 /hr	\$3,159.00
Baker, Vickie L.	SENIOR PARALEGAL	0.10 hrs	175.00 /hr	\$17.50

TOTAL FEES

\$23,006.50

TOTAL DISBURSEMENTS

\$249.68

TOTAL AMOUNT OF CURRENT BILL

\$23,256.18

Please remit all payments to the following address:

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

PLEASE REFERENCE OUR 16 DIGIT BILL NUMBER LOCATED AT THE TOP OF THIS BILL.

001500

00102

17



July 10, 2012

Billed through 06/30/12

Bill Number 001500 00102 63744 JWC

Federal Tax ID: 57-0989944

W. C. Lyerly, III
President
First South Bank
1330 Main Street., Suite 220
Columbia, SC 29211

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

REGARDING: First South Bank vs. South Causeway, LLC

Balance carried forward from last bill date	\$23,256.18
Payments received since last bill	\$23,256.18
Net Balance Forward	\$0.00

FOR PROFESSIONAL SERVICES RENDERED

05/21/12	JLF	Receipt and review e-mail from Chip Lyerly regarding deposition of Don Thomas and potential information from the auctioneer Truit Owens	0.10 hrs	\$17.50
05/21/12	JLF	Prepare the updated list of activities for trial preparations	0.30 hrs	\$52.50
05/21/12	JLF	Review status of case on the trial roster.	0.20 hrs	\$35.00
05/21/12	JLF	Continue to analyze materials and document production to draft the memorandum in support of the motion in limine to exclude any parole evidence or extrinsic evidence beyond the terms of the agreements between the parties.	1.20 hrs	\$210.00
06/01/12	JWC	(NO CHARGE) Review email from Chip Lyerly. Office conference with Lee Floyd regarding service of deposition subpoena. Telephone conference with Chip Lyerly.	0.30 hrs	\$0.00
06/01/12	MLNI	Identify the addresses used by witness Ken Altman.	0.40 hrs	\$68.00
06/01/12	MLNI	Identify process servers in Georgetown and Horry Counties to serve trial subpoena on witness Ken Altman.	0.30 hrs	\$51.00
06/01/12	MLNI	Draft correspondence to Tim Hecker to serve subpoena on Ken Altman.	0.30 hrs	\$51.00
06/01/12	JLF	(NO CHARGE) Telephone calls to and correspondence to process servers and Ken Altman regarding service of Deposition Notice upon Ken Altman and telephone calls to former wife identified in background report.	2.80 hrs	\$0.00

001500	00102		2
06/01/12	JLF	Draft letter to Opposing Counsel regarding status of subpoena responses by her clients.	0.20 hrs \$35.00
06/01/12	JLF	(NO CHARGE) Correspondence concerning the subpoena and notice for the deposition of Ken Altman and issues surrounding the same.	0.50 hrs \$0.00
06/01/12	JLF	Receipt and review listing of pleadings in parallel actions against Defendants to assess pleadings that require certified copies from Georgetown County.	0.30 hrs \$52.50
06/01/12	VLB	Receipt and review of Responses to Plaintiff's (2nd) Request to Admit on Behalf of Defendant South Causeway and analyse to determine strategy for authenticating First Palmetto Savings Bank documents for trial.	0.10 hrs \$13.50
06/01/12	VLB	(NO CHARGE) Research internet social networking sites to research information regarding Kenneth Altman.	2.60 hrs \$0.00
06/01/12	VLB	Receipt and review of Responses to Plaintiff's (1st) Request to Admit on Behalf of Defendant South Causeway and analyse to determine strategy for authenticating documents for trial.	0.10 hrs \$13.50
06/01/12	CAB	Travel to Georgetown, SC to attempt service of subpoena on Ken Altman and to obtain copies of pleadings filed in other Georgetown County Circuit Court cases involving Mr. and Mrs. Wheeler.	0.70 hrs \$94.50
06/01/12	CAB	Return to Collins & Lacy from Georgetown County Circuit Court.	0.70 hrs \$94.50
06/01/12	CAB	Review pleadings filed in other Georgetown County Court of Common Pleas actions against Mr. and Mrs. Wheeler to verify and document identical defenses claimed by the Wheelers in other debt cases.	0.80 hrs \$108.00
06/02/12	JLF	(NO CHARGE) E-mail to Ken Altman regarding receipt of the subpoena and deposition notice	0.30 hrs \$0.00
06/02/12	JLF	(NO CHARGE) Telephone calls and messages with process servers and e-mail receipt response from Ken Altman	0.60 hrs \$0.00
06/02/12	JLF	(NO CHARGE) Telephone call from Chip Lyerly regarding status of service of subpoena on Ken Altman	0.30 hrs \$0.00
06/03/12	JWC	Exchange emails regarding docket. Telephone conference with David DuRant, Attorney Jack Scoville, Mayor of Georgetown. Exchange Emails regarding Ken Altman. Telephone call to Attorney Fayrell Furr - left message. Telephone call to Attorney Jack Scoville, Attorney Jim Stuckey.	1.30 hrs \$390.00
06/03/12	JLF	(NO CHARGE) Receipt and review e-mails from Audra Byrd regarding cancellation of the deposition tomorrow and rescheduling the same.	0.30 hrs \$0.00
06/03/12	JLF	Analyze pleadings and materials from other actions against Darwin Wheeler to prepare timeline and other	1.50 hrs \$262.50

001500	00102		3
		documentary evidence for use at trial.	
06/03/12	JLF	(NO CHARGE) Telephone calls and e-mails to Audra Byrd regarding cancellation of the deposition tomorrow and rescheduling the same.	0.30 hrs \$0.00
06/03/12	JLF	(NO CHARGE) E-mail to Ken Altman responding to his e-mail and notifying him of an amended deposition notice.	0.30 hrs \$0.00
06/03/12	JLF	Receipt and review e-mail from Robert Todd, process server, concerning potential affidavit to confirm efforts to serve Ken Altman	0.10 hrs \$17.50
06/03/12	JLF	(NO CHARGE) Receipt and review e-mails from Ken Altman responding to e-mail about deposition notice and subpoena	0.40 hrs \$0.00
06/03/12	JLF	Receipt and review proposed pre-trial motion on mode of trial prepared by DJ Tyler.	0.20 hrs \$35.00
06/03/12	JLF	(NO CHARGE) Telephone call to Ken Altman's Office regarding cancellation of the deposition tomorrow and rescheduling the same.	0.10 hrs \$0.00
06/03/12	JLF	(NO CHARGE) E-mail to Terry Williams regarding cancellation of the deposition of Ken Altman.	0.20 hrs \$0.00
06/03/12	JLF	(NO CHARGE) E-mail to Terry Williams regarding date for amended deposition notice of Ken Altman.	0.10 hrs \$0.00
06/04/12	JLF	Internet research on Peggy Wheeler-Cribb and Darwin Wheeler for additional background information for use at trial.	0.70 hrs \$122.50
06/04/12	JLF	(NO CHARGE) Telephone calls, e-mails and messages with process servers and e-mail receipt response from Ken Altman.	0.70 hrs \$0.00
06/04/12	JLF	Revise letter to opposing counsel regarding status of document production from Darwin Wheeler and Peggy Wheeler-Cribb.	0.10 hrs \$17.50
06/04/12	JLF	Telephone call from Chip Lyerly regarding amended deposition notice to Ken Altman and status of case on the trial roster.	0.10 hrs \$17.50
06/04/12	JLF	Review and execute letter to Opposing Counsel regarding responses to subpoenas to Darwin Wheeler and Peggy Wheeler-Cribb.	0.10 hrs \$17.50
06/04/12	JLF	Review and execute letter to Audra Byrd accompanying the amended deposition notice and subpoena to Ken Altman.	0.10 hrs \$17.50
06/04/12	JLF	E-mail to Audra Byrd responding to issues and objections to scheduling of Altman's deposition on June 14, 2012.	0.30 hrs \$52.50
06/04/12	JLF	(NO CHARGE) Correspondence and calls with process servers regarding amended deposition notice for Ken Altman.	0.20 hrs \$0.00
06/04/12	JLF	E-mail to Audra Byrd regarding amended deposition	0.10 hrs \$17.50

001500	00102		4
		notice for Ken Altman setting his deposition for June 14.	
06/04/12	JLF	Receipt and review e-mail from Audra Byrd attempting to cancel the deposition of Ken Altman on June 14, 2012.	0.10 hrs \$17.50
06/04/12	JLF	Receipt and review e-mails from Audra Byrd regarding notice from Court in parallel action and raising objection to scheduling of Altman's deposition on June 14, 2012	0.40 hrs \$70.00
06/04/12	JLF	Correspondence with clients regarding amended deposition notice for Ken Altman.	0.10 hrs \$17.50
06/04/12	JLF	(NO CHARGE) Telephone calls with and e-mails with Process Servers regarding potential need for surveillance in order to effect service of amended deposition notice and subpoena upon Ken Altman.	0.60 hrs \$0.00
06/04/12	JLF	(NO CHARGE) Telephone call from DJ Tyler regarding status of Ken Altman Deposition and trial preparations.	0.20 hrs \$0.00
06/04/12	JLF	Review and revise Second Amended Deposition Notice and Subpoena to Ken Altman and accompanying correspondence.	0.10 hrs \$17.50
06/04/12	JLF	Continue to analyze pleadings and materials from other actions against Darwin Wheeler to prepare timeline and other documentary evidence for use at trial.	1.30 hrs \$227.50
06/04/12	JLF	E-mail to clients responding to question about priority of different cases pending during the same term of court in two different venues as potential basis for case to be continued beyond June 18 term of Court.	0.10 hrs \$17.50
06/04/12	VLB	(NO CHARGE) Continue investigation and research for service upon Kenneth Altman. Conduct telephone communication with Georgetown County Sheriff for service upon Kenneth Altman. Continue review of county rosters for status of case for trial.	2.30 hrs \$0.00
06/04/12	VLB	Drafted Amended Notice of Deposition of Kenneth Altman and Second Amended Deposition Subpoena Duces Tecum for service.	0.30 hrs \$40.50
06/04/12	CAB	Travel to Georgetown County Sheriff's Office to deliver subpoena for service on Ken Altman for his appearance and production of documents at deposition.	0.70 hrs \$94.50
06/04/12	CAB	Return from Georgetown County Sheriff's Office to Collins & Lacy.	0.70 hrs \$94.50
06/05/12	JWC	Meet with Lee Floyd and Vickie Baker. Prepare list of tasks to prepare for trial. Exchange emails with D.J. Tyler, Lee Floyd and Chip Lyerly.	2.20 hrs \$660.00
06/05/12	JWC	Review Defendant's Motion to Exclude Witnesses. Exchange emails regarding the list of witnesses.	0.10 hrs \$30.00
06/05/12	JLF	(NO CHARGE) Telephone calls from and correspondence with process server regarding attempts to serve Mr. Ken Altman with amended subpoena and deposition notice.	0.70 hrs \$0.00

001500	00102			5
06/05/12	JLF	(NO CHARGE) Review and respond to e-mail from Chip Lyerly regarding service of amended deposition notice and subpoena on Ken Altman.	0.10 hrs	\$0.00
06/05/12	JLF	Receipt and review initial witness list from DJ Tyler.	0.10 hrs	\$17.50
06/05/12	JLF	Receipt and review correspondence among Chip Lyerly, DJ Tyler, and Mr. Joel W. Collins, Jr. regarding proposed witnesses for trial and strategy for the same.	0.20 hrs	\$35.00
06/05/12	JLF	Analyze and assess status of case, documents produced, and witnesses to determine necessary activities for trial preparation.	1.50 hrs	\$262.50
06/05/12	VLB	Meeting with Mr. Joel W. Collins, Jr., and Mr. Lee Floyd for trial preparation strategy; identify direct and cross materials, exhibits for power point presentation to jury and for visual blow ups; Voir Dire issues, jury profiling needs and trial subpoenas to issue and other pre-trial and trial needs.	1.60 hrs	\$216.00
06/06/12	JWC	Telephone conference with Lee Floyd regarding Memorandum of Law. Discuss South Carolina case law regarding late named witnesses. Review emails related to Ken Altman. Send email to Chip Lyerly.	0.30 hrs	\$90.00
06/06/12	JLF	Receipt and review motion to exclude expert witnesses due to time identified.	0.20 hrs	\$35.00
06/06/12	JLF	E-mail to Ken Altman responding to his e-mail about service of deposition notice and refusal to attend the same.	0.20 hrs	\$35.00
06/06/12	JLF	Research for preparing the Reply to Defendants' Motion to Exclude witnesses for late disclosure, pursuant to instructions from Mr. Joel W. Collins, Jr. and Chip Lyerly.	0.60 hrs	\$105.00
06/06/12	JLF	Telephone call from DJ Tyler regarding status of case and witness examinations and necessary activities moving forward.	0.70 hrs	\$122.50
06/06/12	JLF	E-mail regarding need to compile documents for response to Motion to exclude and evidentiary issues surrounding Sapp trial transcript	0.20 hrs	\$35.00
06/06/12	JLF	Draft Reply to Defendants' Motion to Exclude witnesses for late disclosure, pursuant to instructions from Mr. Joel W. Collins, Jr. and Chip Lyerly.	1.00 hrs	\$175.00
06/06/12	JLF	Receipt and review e-mails from Ken Altman regarding service of deposition notice and refusal to attend the same.	0.20 hrs	\$35.00
06/07/12	JWC	Confer with Lee Floyd. Review and revise draft, return to Defendants' Motion to Exclude Witnesses. Review email from Chip Lyerly. Conference call with Chip Lyerly, D.J. Tyler and Terry Williams regarding deposition of Ken Altman.	1.90 hrs	\$570.00
06/07/12	JWC	Prepare letter to Audra Byrd cancelling Altman	0.40 hrs	\$120.00

001500	00102		6
		deposition, offering depositions of Mr. Ashburne or Mr. Williams. Office conference with Vickie Baker regarding the jury list.	
06/07/12	JLF	Draft the Motion in Limine seeking to exclude any evidence or testimony concerning damages to Peggy Wheeler-Cribb or Darwin Wheeler in their individual capacity.	0.50 hrs \$87.50
06/07/12	JLF	Pursuant to instructions from Mr. Joel W. Collins, Jr., revise and prepare additional portions of the Motions and Memorandum in Support of the Motions in Limine.	0.50 hrs \$87.50
06/07/12	JLF	Continue to prepare the Reply to Defendants' Motion to Exclude witnesses for late disclosure, pursuant to instructions from Mr. Joel W. Collins, Jr. and Chip Lyerly.	0.70 hrs \$122.50
06/07/12	JLF	Additional research for the Reply to Defendants' Motion to Exclude witnesses for late disclosure, pursuant to instructions from Mr. Joel W. Collins, Jr. and Chip Lyerly.	0.50 hrs \$87.50
06/07/12	MLN	(NO CHARGE) Obtain trial strategy and partial trial preparation assignments from Vickie Baker.	0.10 hrs \$0.00
06/07/12	VLB	Preparation of Trial Subpoenas to Terry Williams, Don Thomas, Charles McCallum, Chuck Cooper, and Stan Ashburne.	0.50 hrs \$67.50
06/07/12	VLB	Continue identifying documents for cross-examination of Peggy Wheeler-Cribb and Will Darwin Wheeler and email documents for blow up and/or power point exhibits.	2.10 hrs \$283.50
06/08/12	JWC	Revise and finalize motions in limine and memorandum of law. Office conference with Lee Floyd. Prepare letter to Audra Byrd. Telephone call to Audra Byrd. Telephone conference with Stan Ashburne, our banking expert.	0.70 hrs \$210.00
06/08/12	JWC	Telephone conference with Chip Lyerly (2 calls) regarding possible new witness. Telephone conference with Ms. Tami Maro. Prepare notes to file. Prepare supplemental answer to interrogatories, naming Ms. Maro as a witness. Prepare letter to Ms. Byrd. Office conference with Lee Floyd regarding time line, emails, impeachment documents.	1.20 hrs \$360.00
06/08/12	JWC	Telephone conference with Ms. Maro regarding change of plans. Telephone conference with Chip Lyerly regarding Godbolt's work at the site. Telephone conference with Julie Cason regarding error in Plaintiff's Supplemental Answer (Lewis v. Cribb). Send email to Ms. Maro.	0.40 hrs \$120.00
06/08/12	JLF	(NO CHARGE) Receipt and review invoice/estimate from Curtis Godbolt regarding work at South Causeway property.	0.10 hrs \$0.00
06/08/12	JLF	Return call to DJ Tyler pursuant to his request regarding issues surrounding damages expert and potential	0.40 hrs \$70.00

001500	00102			7
	recovery.			
06/08/12	JLF	Research for supplementing motion in limine to exclude personal damages to Darwin Wheeler and Peggy Wheeler-Cribb.	0.20 hrs	\$35.00
06/08/12	JLF	Revise and prepare additional portions of pre-trial motion on mode of trial.	0.30 hrs	\$52.50
06/08/12	JLF	(NO CHARGE) Pursuant to request from Chip Lyerly, telephone call to Curtis Godbolt to interview him about work on South Causeway Property; left message requesting a return call and explaining reason for phone call.	0.10 hrs	\$0.00
06/08/12	JLF	Telephone call to Steve Strickland to follow-up on potential use as a witness at trial and obtain additional information on dealings with Wheeler-Cribb and Darwin Wheeler.	0.50 hrs	\$87.50
06/08/12	JLF	(NO CHARGE) Analyze and Compile documents for Cross-Examinations and case-in chief and to prepare witness examinations.	3.80 hrs	\$0.00
06/08/12	JLF	Assess a potential Motion in Limine to preclude Peggy Wheeler-Cribb from testifying in regard to bank procedures or policies based prior statements in e-mails.	0.10 hrs	\$17.50
06/08/12	JLF	Telephone call from Chip Lyerly regarding invoice from Curtis Godbolt and request that I call Mr. Godbolt and interview him about work on South Causeway Property.	0.20 hrs	\$35.00
06/08/12	JLF	(NO CHARGE) Receipt and review e-mail from Opposing Counsel's Office regarding status of the subpoena responses from Peggy Wheeler-Cribb and Darwin Wheeler.	0.10 hrs	\$0.00
06/08/12	MLN	Review trial exhibits for "blow-up" foam board exhibits. Confirm proposed witnesses for trial. Identify possible documents to be disclosed. Confirm Jury list and Jury slips for trial preparation.	0.80 hrs	\$108.00
06/08/12	VLB	Continue identifying documents and exhibits for cross examination of , witnesses identify documents for use in direct examination of witnesses. Continue evaluation of documents to be used as trial exhibits in blow up and/or power point.	1.30 hrs	\$175.50
06/08/12	VLB	Review and finalize with exhibits and attachments the Motions in Limine and Reply to Defendant's Motion to Exclude Plaintiff's Witnesses.	0.80 hrs	\$108.00
06/08/12	VLB	Receipt from Georgetown County Jury List and begin evaluation for profile information for use in striking jury.	1.90 hrs	\$256.50
06/08/12	VLB	Prepared Plaintiff's 5th Supplemental Answers to Defendant's First Set Interrogatories identifying additional character witness.	0.30 hrs	\$40.50
06/08/12	VLB	Prepared Plaintiff's Voir Dire.	0.80 hrs	\$108.00
06/09/12	JLF	(NO CHARGE) Review and respond to e-mail from Ken	0.10 hrs	\$0.00

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00102

8

Altman regarding deposition and cancelling the same.

06/09/12	VLB	Review and identification of documents for direct of client, witnesses and experts and as direct defense of counter claims and continue preparation of exhibits for use in trial.	1.60 hrs	\$216.00
06/10/12	JWC	Review file material. Prepare outline of opening statement. Exchange emails with Chip Lyerly and Lee Floyd.	1.00 hrs	\$300.00
06/10/12	JLF	Draft the mandatory pre-trial brief for submission to the Court.	0.80 hrs	\$140.00
06/10/12	JLF	Receipt and review information on new fact witness Tammy Coleman-Marro and her anticipated testimony	0.10 hrs	\$17.50
06/10/12	JLF	Continue to analyze and compile documents for Cross-Examinations and case-in chief and to prepare witness examinations.	4.50 hrs	\$787.50
06/11/12	JWC	Telephone conference with Chip Lyerly (2 calls). Telephone conference with D.J. Tyler. Review material received from Tami Marro. Review emails and correspondence to be used in Cribb examination. Telephone conference with Tami Marro.	2.00 hrs	\$600.00
06/11/12	JWC	Meet with Lee Floyd. Telephone conference with DJ Tyler. Meet with Chip Lyerly and Wayne Lovelace.	2.50 hrs	\$750.00
06/11/12	JWC	(NO CHARGE) Review file folders of offers submitted to buy assets. Telephone conference with Lee Floyd.	0.20 hrs	\$0.00
06/11/12	JLF	Continue to analyze materials and compile documents for preparing power point presentation to the jury.	1.10 hrs	\$192.50
06/11/12	JLF	(NO CHARGE) Return call to Chip Lyerly regarding conversation with Katherine Godbolt and status of preparations for trial; left message to call.	0.10 hrs	\$0.00
06/11/12	JLF	Telephone call from Katherine Godbolt regarding work performed at property and dealings with Peggy Wheeler-Cribb and Darwin Wheeler.	0.20 hrs	\$35.00
06/11/12	JLF	Receipt and review updated payoff letters on loan for producing the same and use at trial.	0.10 hrs	\$17.50
06/11/12	JLF	Receipt and review e-mail from Audra Byrd regarding subpoenas for documents from Peggy Wheeler-Cribb and Will Darwin Wheeler and objections to the same; forward proposed response on to clients for their review.	0.20 hrs	\$35.00
06/11/12	JLF	E-mail to clients regarding documents from Tammi Coleman-Marro and production of the same.	0.20 hrs	\$35.00
06/11/12	JLF	(NO CHARGE) E-mail to Chip Lyerly regarding plat of 334 Myrtle for use as an exhibit at trial.	0.10 hrs	\$0.00
06/11/12	JLF	Telephone call from Chip Lyerly regarding documents for timeline and meeting to go through proposed exhibits to cross-examinations of Peggy Cribbs and Darwin Wheeler.	0.50 hrs	\$87.50
06/11/12	JLF	Draft and revise the proposed timeline of events and	1.10 hrs	\$192.50

001500	00102			9
		parallel actions for use at trial.		
06/11/12	JLF	Continue to analyze and compile documents for Cross-Examinations and case-in chief and to prepare witness examinations.	5.00 hrs	\$875.00
06/11/12	JLF	Receipt and review documents from character witness Tammy Coleman-Maró and assess additional documents and activities needed.	0.90 hrs	\$157.50
06/11/12	JLF	(NO CHARGE) Continue to draft the mandatory pre-trial brief for submission to the Court.	0.10 hrs	\$0.00
06/11/12	MLN	Identify discovery and pleadings to be included and the trial pleadings binder.	1.20 hrs	\$162.00
06/11/12	MLN	Confirm trial witnesses and prepare trial subpoenas for service.	1.40 hrs	\$189.00
06/11/12	MLN	Discuss trial witness Tami Maró's documents and identify the need for the deposition transcript of trial defendant Peggy Wheeler Cribb for our trial. Call to Tami Maró's attorney, Natasha Hanna, to request a copy of Peggy Wheeler Cribb's deposition transcript concerning an unrelated case.	0.70 hrs	\$94.50
06/11/12	MLN	Review pleadings and discovery for data to include in pre-trial brief.	1.50 hrs	\$202.50
06/11/12	MLN	Contact Robert Todd and Capital City Investigations for trial subpoena service. Draft correspondence to Robert Todd regarding subpoena service.	0.30 hrs	\$40.50
06/11/12	MLN	Second call to Attorney Natasha Hanna to request a copy of Peggy Wheeler Cribb's deposition transcript. Review portion of Tami Maró's documents and evaluate specific documents not related to this case or issues related to this trial to prepare for disclosure of Maró documents.	0.60 hrs	\$81.00
06/11/12	MLN	Identify additional Wheeler lawsuit documents to be produced. Identify 6/11/12 payoff documents to be produced. Identify Myrtle Avenue subdivision plat to be produced. Draft 9th Supplemental Responses to Defendant's Request to Produce and prepare documents for disclosure.	1.90 hrs	\$256.50
06/12/12	JLF	(NO CHARGE) Analyze and prepare documents for case-in-chief and power point presentation and blow-up exhibits for use at trial.	1.40 hrs	\$0.00
06/12/12	JLF	Telephone call from attorney for Tammi Coleman-Maró regarding trial transcripts and deposition transcript from prior lawsuit involving Peggy Wheeler-Cribb.	0.50 hrs	\$87.50
06/12/12	JLF	Identify and confirm additional document production and disclosures to be sent to opposing Counsel for use at trial.	0.30 hrs	\$52.50
06/12/12	JLF	Revise and execute FSB's Ninth Supplemental Responses to Defendant's Requests for Production.	0.30 hrs	\$52.50
06/12/12	JLF	Continue to analyze and compile documents for Cross-Examinations and case-in chief and to prepare	3.40 hrs	\$595.00

001500	00102		10
		witness examinations.	
06/12/12	JLF	Telephone call from Charles McCallum regarding expected date of testimony at trial.	0.10 hrs \$17.50
06/12/12	JLF	Initial review documents FSB provided to Stan Ashburne to ensure documents have been produced and to disclose them to opposing counsel.	0.90 hrs \$157.50
06/12/12	JLF	Telephone call from Damion Larrabee regarding status of his mother and request for power of attorney.	0.10 hrs \$17.50
06/12/12	JLF	Telephone call to Judge Hyman's Chambers regarding status of case and preferences for trial next week; left message requesting additional information and a return phone call.	0.10 hrs \$17.50
06/12/12	JLF	Updated internet research on Peggy Wheeler-Cribb.	0.20 hrs \$35.00
06/12/12	JLF	Meeting with Chip Lyerly and Wayne Lovelace regarding documents for cross-examinations and status of trial preparations.	0.70 hrs \$122.50
06/12/12	JLF	Telephone call to Stan Ashburne regarding teleconference to discuss his opinions and prepare him for his testimony at trial; left message to call.	0.10 hrs \$17.50
06/12/12	JLF	Receipt and review e-mails from Chip Lyerly and DJ Tyler regarding additional document production and activities to prepare for trial.	0.20 hrs \$35.00
06/12/12	MLN	Continue to identify documents to be used as trial exhibits and prepare them for trial.	3.10 hrs \$418.50
06/12/12	MLN	(NO CHARGE) Continue to identify discovery documents and photographs to disclose to Defendants and prepare documents for disclosure.	2.50 hrs \$0.00
06/12/12	MLN	Continue to identify and add documents to be included in trial binders.	1.60 hrs \$216.00
06/12/12	MLN	Research on-line websites for better quality photographs of the house at 334 Myrtle Avenue, Pawleys Island, South Carolina. Obtain 54 photos from Mr. Lyerly regarding house at 334 Myrtle Avenue, Pawleys Island, South Carolina. Prepare photos for disclosure and trial exhibits.	0.60 hrs \$81.00
06/13/12	JWC	(NO CHARGE) Prepare outline of closing argument. Telephone conference with Lee Floyd. Review emails from Lee Floyd and Chip Lyerly. Review additional emails regarding Peggy Wheeler Cribb.	1.50 hrs \$0.00
06/13/12	JWC	Exchange emails with Lee Floyd. Two lengthy conversations with Lee Floyd. Emails with Chip Lyerly.	1.00 hrs \$300.00
06/13/12	CDM	Receipt and review of Plaintiff's Notice of Motion as to Presentation of Attorneys' Fees and Costs for scope of argument and to determine any immediate response needs.	0.20 hrs \$24.00
06/13/12	JLF	(NO CHARGE) Track down case law for potential evidentiary issues pursuant to instruction from Mr. Joel	0.10 hrs \$0.00

001500	00102			11
	W. Collins, Jr.			
06/13/12	JLF	(NO CHARGE) Continue to work on power point exhibits and presentation for use at trial.	2.60 hrs	\$0.00
06/13/12	JLF	Receipt and review revised Proposed Permanency Planning Order for submission to the Court.	0.20 hrs	\$35.00
06/13/12	JLF	(NO CHARGE) Receipt and review report on status of serving the trial subpoenas.	0.10 hrs	\$0.00
06/13/12	JLF	Return call to Stan Ashburne regarding documents provided and conference to prepare for trial; left message to call.	0.20 hrs	\$35.00
06/13/12	JLF	Continue to draft and revise the timeline and create separate second timeline for documents surrounding the foreclosure proceedings against Peggy Wheeler-Cribb and Will Darwin Wheeler.	1.50 hrs	\$262.50
06/13/12	JLF	Review and revise the mandatory pre-trial brief for filing with the Court.	1.40 hrs	\$245.00
06/13/12	JLF	Return call to Tami Maro regarding anticipated trial testimony and attendance at trial.	0.30 hrs	\$52.50
06/13/12	JLF	E-mail to Stan Ashburne accompanying loan documents for his review and instructions for reviewing the same	0.20 hrs	\$35.00
06/13/12	JLF	E-mail to Terry Williams regarding additional documents for his review and to request a brief teleconference.	0.20 hrs	\$35.00
06/13/12	JLF	Voice mail from Stan Ashburne regarding documents provided and conference to prepare for trial and requesting a return call.	0.10 hrs	\$17.50
06/13/12	JLF	Telephone call from Chip Lyerly regarding documents from First Palmetto Savings Bank.	0.10 hrs	\$17.50
06/13/12	JLF	Analyze additional documents from First Palmetto Savings and documents from Chip Lyerly regarding First Palmetto Bank Loans relating to the property.	1.20 hrs	\$210.00
06/13/12	JLF	Continue to analyze and compile documents for Cross-Examinations and case-in chief and to prepare witness examinations.	1.80 hrs	\$315.00
06/13/12	MLN	Continue to identify and add documents to trial binders.	2.30 hrs	\$310.50
06/13/12	MLN	Continue to identify and prepare documents for trial exhibits.	5.50 hrs	\$742.50
06/13/12	MLN	Confirm witness order and identify all contact data for witnesses.	0.30 hrs	\$40.50
06/13/12	MLN	(NO CHARGE) Confirm subpoena service and proof of service for the trial subpoena of Charles McCallum.	0.10 hrs	\$0.00
06/13/12	MLN	Call to Georgetown Clerk Brittany Gibson @843-545-3215 regarding jury list.	0.20 hrs	\$27.00
06/14/12	PPC	(NO CHARGE) Follow-up call to Brittany Gibson at Georgetown Clerk's office regarding complete jury list, leave message. Return call of Ms. Gibson.	0.20 hrs	\$0.00

001500	00102			12
06/14/12	CDM	Review of trial transcript of Sapp v. Wheeler, et al, CA#2008-CP-22-1345 for specific testimony by Will Darwin Wheeler to be used in the trial of this matter.	1.00 hrs	\$120.00
06/14/12	CDM	Review of recent pleadings to ensure proper recording in preparation for trial.	0.40 hrs	\$48.00
06/14/12	JLF	Review and revise Deposition Designations for Doug Hinds, Robert Gwin, and Don Thomas.	0.70 hrs	\$122.50
06/14/12	JLF	Review and execute the supplemental and amended responses to Defendant's Interrogatories identifying Tami Maro as a witness and describing anticipated testimony.	0.10 hrs	\$17.50
06/14/12	JLF	Review and revise updated version of Mandatory Pre-Trial Brief from DJ Tyler.	0.20 hrs	\$35.00
06/14/12	JLF	(NO CHARGE) Receipt and review the Answer and Counter claim of Darwin Wheeler filed on June 11, 2012 to supplement timelines.	0.20 hrs	\$0.00
06/14/12	JLF	Continue to draft and revise the timeline and create separate timelines for documents surrounding the foreclosure proceedings against Peggy Wheeler-Cribb and Will Darwin Wheeler.	1.00 hrs	\$175.00
06/14/12	JLF	Telephone call to Judge Hyman's law clerk regarding pre-trial brief and pre-trial motions.	0.20 hrs	\$35.00
06/14/12	JLF	Telephone conference with Stan Ashburne regarding review of documents and basic opinions to prepare for direct examination at trial.	0.70 hrs	\$122.50
06/14/12	JLF	Analyze new Court of Appeals Opinion addressing the right to a jury trial in foreclosure cases and assess potential pre-trial motion.	2.00 hrs	\$350.00
06/14/12	JLF	Telephone call to Attorney for Tami Moro in prior action involving Peggy Wheeler-Cribb about deposition transcript and transcript of trial testimony.	0.20 hrs	\$35.00
06/14/12	JLF	Pursuant to instructions from Mr. Joel W. Collins, Jr., Correspondence to Bob Wood regarding recent Court of Appeals case on right to a jury trial in foreclosure actions and pre-trial motion.	0.10 hrs	\$17.50
06/14/12	JLF	Continue to analyze and compile documents for Cross-Examinations and case-in chief and to prepare witness examinations.	4.50 hrs	\$787.50
06/14/12	JLF	Review and revise slide show and power point presentation for case in chief of foreclosure action.	1.00 hrs	\$175.00
06/14/12	MLN	Call to Brittany Gibson at Georgetown Clerk's office regarding jury list. Distribute jury list.	0.20 hrs	\$27.00
06/14/12	MLN	Continue to identify trial exhibits and prepare exhibits for trial. Confirm all blow-up trial exhibits have been produced. Continue to identify and add documents to trial binders.	6.80 hrs	\$918.00
06/14/12	MLN	Confirm production of documents to Defendants. Prepare	1.50 hrs	\$202.50

001500	00102		13
	the 10 box file for trial. Confirm equipment for trial.		
06/15/12	JWC	Telephone conference with Lee Floyd. Telephone conference with Chip Lyerly. Telephone conference with Larry Nelson. Exchange emails with Attorney Natasha Hanna.	0.70 hrs \$210.00
06/15/12	PPC	Call to Georgetown Clerk Brittany Gibson @843-545-3215 regarding jury list, left voice mail. Second call to Ms. Gibson and obtained information regarding jury list.	0.20 hrs \$24.00
06/15/12	JLF	Analyze and prepare a motion to have the court hear the counterclaims based on the decision in Wells Fargo v. Smith.	1.10 hrs \$192.50
06/15/12	JLF	Continue to analyze and compile documents for Cross-Examinations and case-in chief and to prepare witness examinations and other activities to finalize preparations for trial.	2.10 hrs \$367.50
06/15/12	JLF	Telephone call to Attorney for Tami Maro's office to follow-up on the trial transcript and deposition transcript of Peggy Wheeler Cribb.	0.10 hrs \$17.50
06/15/12	JLF	(NO CHARGE) Telephone call to Judge Hyman's Chambers regarding pre-trial brief and requests to charge to the jury.	0.10 hrs \$0.00
06/15/12	JLF	Telephone calls with Chip Lyerly and DJ Tyler regarding pleadings and timeline for prior foreclosure action involving the residence at 652 Spring Street owned by Peggy Wheeler-Cribb.	0.50 hrs \$87.50
06/15/12	MLN	Prepare Plaintiff and Defendant exhibit binder. Prepare pleadings and discovery binder. Continue to identify and add documents to trial binders.	3.50 hrs \$472.50
06/15/12	MLN	(NO CHARGE) Prepare jury list for jury selection. Obtain information related to strike certain jurors from Collins and Lacy staff. Review jury list of proposed jurors (300 names).	0.40 hrs \$0.00
06/15/12	MLN	(NO CHARGE) Continue to identify and prepare trial exhibits regarding foreclosure, cross claims, Peggy Wheeler and Darwin Wheeler and prepare exhibits for trial.	3.50 hrs \$0.00
06/15/12	MLN	Research non jury case and trial roster status in Georgetown County related to final preparation of final preparation of file for trial.	0.50 hrs \$67.50
06/15/12	MLN	(NO CHARGE) Final preparation of file for trial.	1.00 hrs \$0.00
06/16/12	JWC	Telephone conference with Natasha Hanna (2 calls) regarding Tami Maro. Review time line. Review draft Rule 39 Motion. Send emails to Chip Lyerly and D.J. Tyler.	0.70 hrs \$210.00
06/16/12	JLF	(NO CHARGE) E-mail to Gary Chase regarding additional draft letters requested.	0.10 hrs \$0.00

001500	00102			14
06/16/12	JLF	Receipt and review e-mails regarding trial testimony of Peggy Wheeler-Cribb at second trial of action involving Tami Maro.	0.30 hrs	\$52.50
06/16/12	JLF	Analyze materials and prepare timeline for prior foreclosure action involving the residence at 652 Spring Street owned by Peggy Wheeler-Cribb.	0.50 hrs	\$87.50
06/17/12	JWC	(NO CHARGE) Travel from Washington, DC and Myrtle Beach, SC.	3.00 hrs	\$900.00
06/17/12	JWC	Meet with Lee Floyd at Myrtle Beach Airport. Travel to Pawleys Island. View the 19 acre tract and 334 Myrtle Avenue. View the property at 334 Myrtle Avenue. Review memo prepared by D.J. Tyler. Discuss the Rule 39 Motion to be filed 6/18/12. Prepare outline of opening statement. Review pending motions and memos of law. Prepare to argue motions. Meet with Chip Lyerly, Wayne Lovelace, D.J. Tyler and Lee Floyd. Telephone call to Audra Byrd, left voice mail. Telephone call to Wayne Byrd, left voice mail. Continue trial preparation.	6.00 hrs	\$1,800.00
06/17/12	JLF	Travel to Georgetown Court of Common Pleas from Murrells Inlet for roster meeting and jury selection; appear for and attend roster meeting and test presentation materials with Julie Cason in court room.	3.50 hrs	\$612.50
06/17/12	JLF	Meeting with Mr. Joel W. Collins, Jr., DJ Tyler, Wayne Lovelace, and Chip Lyerly to discuss trial strategy, pre-trial motions witness examinations, and exhibits for trial; additional work on motions and exhibits for use at trial and additional work on witness outlines	4.20 hrs	\$735.00
06/17/12	JLF	Return travel to Columbia from Murrells Inlet for roster meeting and jury selection; trial continued due to opposing counsel.	3.50 hrs	\$612.50
06/17/12	JLF	Revise pre-trial motion under Wells Fargo v. Smith, requesting claims be transferred to the non-jury roster and the requested voir dire.	0.70 hrs	\$122.50
06/17/12	JLF	Additional work on motions and exhibits for use at trial and additional work on witness outlines.	0.40 hrs	\$70.00
06/17/12	JLF	Travel to Myrtle Beach, South Carolina and Murrells Inlet, South Carolina to inspect property and to complete final trial preparations and to attend trial.	4.50 hrs	\$787.50
06/18/12	JWC	Telephone call to Audra Byrd, left voice mail. Telephone conference with Audra Byrd. Travel to Georgetown, SC from Murrells Inlet. Attend roster meeting. Attend conference in Chambers with Judge Larry Hyman. Travel to Conway. Confer with representatives of the Horry County Court of Common Pleas, prepare notes to file. Travel to Columbia, SC with Chip Lyerly. Office conference with Christian Stegmaier regarding sanctions. Telephone conference with Attorney Moss, prepare notes to file. Prepare memo to file. Telephone conference with Larry Nelson regarding notification of witnesses.	8.30 hrs	\$2,490.00

001500	00102			15
		Telephone conference with Chip Lyerly regarding ordering transcripts. Telephone conference with Larry Nelson. Conference with Lee Floyd regarding next steps and possible Motion for Sanctions.		
06/18/12	MLN	Call to trial witnesses Tami Maro, Chuck Cooper, Don Thomas, Charles McCallum, Stah Ashburne, and Terry Williams advising case continued.	0.30 hrs	\$40.50
06/19/12	JWC	Revise memo to file. Telephone conference with Chip Lyerly. Office conference with Lee Floyd. Telephone call to Attorney Paul Young (843-249-9999), left voice mail. Review Rules 3.1 and 3.3 of Professional Conduct and Rule 11, SC Rules of Civil Procedure. Telephone conference with D.J. Tyler.	1.50 hrs	\$450.00
06/19/12	JLF	E-mail to Opposing Counsel regarding proposed consent scheduling order and requesting a conference to discuss the same	0.20 hrs	\$35.00
06/19/12	JLF	Review and revise the proposed consent scheduling order and proposing the same and pre-trial motions.	0.20 hrs	\$35.00
06/19/12	JLF	Correspondence with Julie Cason regarding Georgetown County Sherrif and potential relation to Peggy Wheeler-Cribb.	0.10 hrs	\$17.50
06/19/12	JLF	Telephone conference with Chip Lyerly regarding jury roster in Horry County and continuance granted in other case handled by Audra Byrd and contact attorneys on roster about continuance that was granted to assess and prepare a motion for sanctions.	0.20 hrs	\$35.00
06/19/12	JLF	Telephone call from Chip Lyerly regarding consent scheduling order and proposing the same and pre-trial motions.	0.50 hrs	\$87.50
06/19/12	JLF	Receipt and review e-mails from Opposing Counsel regarding proposed consent scheduling order and conference to discuss the same.	0.10 hrs	\$17.50
06/19/12	JLF	Receipt and review e-mail from Attorney Mark Goddard regarding proposed consent scheduling order and review proposed consent scheduling order.	0.30 hrs	\$52.50
06/20/12	JWC	Telephone conference with Chip Lyerly and D.J. Tyler. Office conference with Lee Floyd regarding Scheduling Order. Review proposed Consent Scheduling Order. Telephone call to Eddie Laney, left voice mail regarding Motion for Sanctions. Telephone conference with Attorney Paul Young. Prepare notes to file. Telephone conference with Chip Lyerly.	1.20 hrs	\$360.00
06/20/12	JLF	Telephone call to Chip Lyerly regarding proposed consent scheduling order and agreed to changes with Opposing Counsel.	0.20 hrs	\$35.00
06/20/12	JLF	E-mail to Opposing Counsel regarding characterization of agreement about producing descriptions of expert opinions and issue with deadline concerning the	0.10 hrs	\$17.50

001500	00102		16
		identification of any other experts.	
06/20/12	JLF	Receipt and review e-mail from Mark Goddard regarding agreement about disclosing expert witness opinions and supplemental responses to Defendant's Interrogatories.	0.10 hrs \$17.50
06/20/12	JLF	Receipt and review Second Revised Proposed Consent Scheduling Order from Opposing Counsel and accompanying correspondence and make revisions to proposed Order.	0.30 hrs \$52.50
06/20/12	JLF	Review and revise the proposed consent scheduling order to include changes requested by Chip Lyerly and correspondence to opposing counsel regarding the same.	0.40 hrs \$70.00
06/20/12	JLF	Telephone conference with Attorneys for Defendants regarding proposed consent scheduling order and dates for the same.	0.70 hrs \$122.50
06/21/12	JWC	Telephone call to Eddie Laney. Telephone conference with Amy Neuschafer regarding Audra Byrd. Prepare notes to file. Telephone conference with Eddie Laney regarding the Motion for Sanctions. Telephone conference with Chip Lyerly.	0.80 hrs \$240.00
06/21/12	JLF	E-mail to Audra Byrd regarding objection to subpoenas for documents to Peggy Wheeler-Cribb and Darwin Wheeler to comply with Rule 11 as a precursor to a Motion to Compel.	0.40 hrs \$70.00
06/21/12	JLF	Review and respond to e-mail from Opposing Counsel regarding depositions of experts for First South Bank.	0.10 hrs \$17.50
06/21/12	JLF	(NO CHARGE) Telephone conference with Eddie Laney and Mr. Joel W. Collins, Jr. regarding events surrounding continuance of case and potential motion for sanctions.	0.30 hrs \$0.00
06/21/12	JLF	Revise and finalize the motion and exhibits to have counterclaims heard non-jury under recent decision in Wells Fargo v. Smith	0.60 hrs \$105.00
06/21/12	JLF	Review and revise proposed consent scheduling to include changes requested by Chip Lyerly and Mr. Joel W. Collins, Jr.	0.20 hrs \$35.00
06/21/12	JLF	Analyze and assess issue surrounding production of documents obtained from Earthworks and necessary activities moving forward.	0.30 hrs \$52.50
06/21/12	JLF	E-mail to clients and co-counsel regarding proposed consent scheduling order and identifying expert opinions.	0.20 hrs \$35.00
06/21/12	VLB	(NO CHARGE) Analysis of Earthworks records in file to determine records produced to date reflect the entire records received and make adjustments as needed.	1.60 hrs \$0.00
06/22/12	JWC	Review email from Chip Lyerly. Telephone conference with Chip Lyerly regarding my conversation with Eddie Laney. Discuss Motion for Sanctions. Retrieve cell phone records.	0.30 hrs \$90.00
06/25/12	JWC	Gather documents, review phone records. Prepare draft	1.50 hrs \$450.00

001500	00102			17
		Motion for Sanctions. Prepare draft Affidavit to support Motion for Sanctions. Office conference with Lee Floyd.		
06/25/12	JLF	Telephone call to Terry Williams regarding dates for deposition and detailed response to Interrogatories requesting his expert opinions; left detailed message about information needed and requesting a return call.	0.10 hrs	\$17.50
06/25/12	JLF	Review and assess potential terms of court in September pursuant to request from Mr. Joel W. Collins, Jr.	0.20 hrs	\$35.00
06/25/12	JLF	Assist Mr. Joel W. Collins, Jr. with locating materials and preparing a motion for sanctions based on continuance of trial by Opposing Counsel.	1.30 hrs	\$227.50
06/25/12	JLF	Telephone call to Judge John's chambers to obtain additional information about the continuance granted in the parallel lawsuit that Opposing Counsel is involved in Horry County; left message to call.	0.10 hrs	\$17.50
06/25/12	JLF	E-mail to Opposing Counsel regarding compromised consent scheduling order and revisions to last proposed Order for Defendant's approval.	0.20 hrs	\$35.00
06/25/12	JLF	Analyze and assess potential Motion to Compel responses to the subpoenas to Will Darwin Wheeler and Peggy Wheeler-Cribb.	0.70 hrs	\$122.50
06/25/12	JLF	Telephone call from Terry Williams regarding deposition and his specific opinions to identify in response to Interrogatories from South Causeway.	0.20 hrs	\$35.00
06/25/12	JLF	(NO CHARGE) Draft the Motion to Compel responses to the subpoenas to Will Darwin Wheeler and Peggy Wheeler-Cribb and compile supporting exhibits for the Motion to Compel.	1.10 hrs	\$0.00
06/25/12	JLF	Telephone call to Stan Ashburne regarding dates for deposition and detailed response to Interrogatories requesting his expert opinions.	0.20 hrs	\$35.00
06/26/12	JWC	Revise draft Motion for Sanctions. Revise draft Affidavit. Telephone conference with Chip Lyerly. Revise Affidavit.	1.20 hrs	\$360.00
06/26/12	JLF	Review and respond to e-mail from Opposing Counsel regarding the depositions of Terry Williams and Stan Ashburne and the service of subpoenas for the same.	0.20 hrs	\$35.00
06/26/12	JLF	E-mail to Audra Byrd regarding the proposed compromised consent scheduling order and dates for expert depositions.	0.20 hrs	\$35.00
06/26/12	JLF	Receipt and review e-mail from Terry Williams regarding his deposition.	0.10 hrs	\$17.50
06/26/12	JLF	Review and execute proposed consent scheduling order and accompanying correspondence to Opposing Counsel for execution and filing with the Court.	0.10 hrs	\$17.50
06/26/12	JLF	Receipt and review e-mail from Audra Byrd regarding the proposed compromised consent scheduling order and	0.20 hrs	\$35.00

001500	00102		18
		depositions of Terry Williams and Stan Ashburne.	
06/26/12	JLF	E-mail to Stan Ashburne and Terry Williams confirming tentative date and location for depositions.	0.10 hrs \$17.50
06/26/12	JLF	Receipt and review voice mail and e-mails from DJ Tyler regarding motion for sanctions based on continuance of trial on June 18.	0.10 hrs \$17.50
06/27/12	JWC	Revise draft Motion for Sanctions. Revise affidavit in support of Motion for Sanctions. Office conference with Lee Floyd.	0.50 hrs \$150.00
06/27/12	JWC	Revise draft Motion to Compel. Revise Affidavit in support of Motion for Sanctions. Office conference with Lee Floyd.	0.50 hrs \$150.00
06/27/12	JLF	(NO CHARGE) Review the Motion for Sanctions and Supporting Affidavit to finish preparations for filing with the court.	0.40 hrs \$0.00
06/27/12	VLB	Preparation of Plaintiff's Tenth (10th) Supplemental Responses to Defendant's First Requests for Production serving additional Earthworks documents.	0.20 hrs \$27.00
06/27/12	VLB	(NO CHARGE) Review of Form 4 Order of Judge Hyman forwarded by Georgetown County Clerk continuing the case until the July 30th Term of Court.	0.10 hrs \$0.00
06/27/12	VLB	Draft and review letter to Brenda R. Babb, court reporter for Civil Trial Roster matters Horry County for the term of court beginning June 18, 2012 requesting a portion of the transcript of record relating to the matter of Big Daddy Boom Fireworks v. Sky King et al (2009-CP-26-8617).	0.20 hrs \$27.00
06/27/12	VLB	Draft and review letter to Henry Young, court reporter for Civil Trial Roster matters Georgetown County for the term of court beginning June 18, 2012 requesting a portion of the transcript of record relating to the case.	0.10 hrs \$13.50
06/28/12	JLF	Receipt and review correspondence and deposition notices and subpoenas to expert witnesses Terry Williams and Stan Ashburne.	0.20 hrs \$35.00
06/28/12	JLF	Review written discovery requests from South Causeway and materials from Terry Williams to prepare responses setting forth expert opinions pursuant to agreement relating to Consent Scheduling Order.	1.10 hrs \$192.50
06/28/12	JLF	E-mails to experts and clients regarding deposition notices and subpoenas to expert witnesses Terry Williams and Stan Ashburne.	0.10 hrs \$17.50
06/28/12	JLF	Prepare responses setting forth expert opinions pursuant to agreement relating to Consent Scheduling Order.	0.80 hrs \$140.00
06/29/12	JWC	Review and revise draft Sixth Supplemental Answers to Interrogatories with expert witness. Receipt and review draft Motion for Sanctions and Affidavit. Office conference with Henry McKellar regarding the	1.50 hrs \$450.00

001500

00102

19

appropriateness and advisability of seeking sanctions.
Receipt and review Motion to Compel records
subpoenaed from Darwin Wheeler and Peggy Cribb.

06/29/12	JLF	(NO CHARGE) Travel to Saluda, South Carolina from Prosperity, South Carolina, for meeting with Stan Ashburne regarding preliminary draft of the written discovery responses identifying and setting forth his expert opinions.	0.60 hrs	\$0.00
06/29/12	JLF	(NO CHARGE) Revise the responses setting forth expert opinions pursuant to agreement relating to Consent Scheduling Order and review and highlight Amended Answer to Complaint and Counterclaims for Stan Ashburne's review.	1.20 hrs	\$0.00
06/29/12	JLF	(NO CHARGE) Voice mail from DJ Tyler about draft descriptions of expert opinions of Stan Ashburne and Terry Williams.	0.10 hrs	\$0.00
06/29/12	JLF	(NO CHARGE) Return travel from Saluda, South Carolina to Prosperity, South Carolina, for meeting with Stan Ashburne regarding preliminary draft of the written discovery responses identifying and setting forth his expert opinions.	0.60 hrs	\$0.00
06/29/12	JLF	Telephone call to Stan Ashburne regarding reviewing the drafts of his formal expert opinions and the defense of his depositions and preparing him for the same.	0.20 hrs	\$35.00
06/29/12	JLF	Telephone call to Terry Williams regarding responses identifying expert opinions and his deposition; left message to call.	0.10 hrs	\$17.50
06/29/12	JLF	Meeting with Terry Williams to discuss and review proposed written discovery responses identifying his expert opinions.	0.50 hrs	\$87.50
06/29/12	JLF	Telephone call from DJ Tyler regarding proposed responses identifying expert opinions and proposed changes to the same.	0.30 hrs	\$52.50
06/29/12	JLF	(NO CHARGE) Telephone call to DJ Tyler regarding formal expert opinions of Terry Williams and Stan Ashburne and the defense of their depositions; left message to call.	0.10 hrs	\$0.00
06/29/12	JLF	Meeting with Stan Ashburne regarding preliminary draft of the written discovery responses identifying and setting forth his expert opinions.	0.50 hrs	\$87.50
06/29/12	JLF	(NO CHARGE) Assess potential motion to strike or motion for directed verdict based on Rule 56 and argument that affidavit of Peggy Wheeler-Cribb is a sham affidavit.	0.30 hrs	\$0.00

Total fees for this matter

 \$35,806.50

DISBURSEMENTS

001500	00102	Units	20
06/04/12	GEORGETOWN CO. SHERIFF; Invoice # 1500-102; Process Server		\$15.00
06/04/12	WINSTON KENNETH ALTMAN, II; Invoice # 1500-102; Witness Fee & Mileage.		\$31.20
06/07/12	CATHY BURTON; Invoice # 1500-102 6/4; Mileage - 48.5 miles @ .555 ea. to Georgetown Co. Sheriff's office to deliver subpoena for service.		\$26.92
06/07/12	CATHY BURTON; Invoice # 1500-102 6/1; Mileage - 49.5 miles @ .555 ea. to Georgetown, SC to serve subpoena & review pleadings filed at courthouse.		\$27.47
06/07/12	CATHY BURTON; Invoice # 1500-102 6/1; Outside Copies - Certified copies from Courthouse.		\$75.00
06/11/12	DON THOMAS; Invoice # 1500-102; Witness Fee & Mileage.		\$57.44
06/11/12	CHARLES MCCALLUM; Invoice # 1500-102; Witness Fee & Mileage.		\$166.38
06/11/12	TAMMY COLEMAN-MARO; Invoice # 1500-102; Witness Fee & Mileage.		\$54.22
06/11/12	CHUCK COOPER; Invoice # 1500-102; Witness Fee & Mileage.		\$57.44
06/13/12	CLERK OF COURT; Invoice # 1500-102; Filing Fees		\$25.00
06/14/12	HOOD DAWSON; Invoice # 1500-102 5/31; Mileage - 3 miles @ .555 ea. to Tyler Cassell office.		\$1.67
06/15/12	PROFESSIONAL PROCESS SERVICES; Invoice # FIRST SOUTH BANK; Process Server		\$85.00
06/15/12	EXCALIBUR SECURITY & INVESTIGATIONS; Invoice # 23440; Professional Fees		\$180.00
06/21/12	CLERK OF COURT; Invoice # 1500-102; Filing Fees		\$25.00
06/21/12	LEE FLOYD; Invoice # 1500-102; Meals - Georgetown, SC for trial.		\$39.06
06/26/12	CAPITOL CITY INVESTIGATIONS & PROCESS SER., LLC; Invoice # 738; Depositions		\$50.00
06/26/12	RICOH USA, INC.; Invoice # L07120600654; Outside Copies		\$148.17
06/26/12	EXCALIBUR SECURITY & INVESTIGATIONS; Invoice # 23482; Professional Fees		\$125.00
06/27/12	DEBBIE RAYL; Invoice # 12-131; Depositions		\$50.00

001500	00102		21
06/27/12	WILLIAMS REPORTING; Invoice # 12-098;		\$356.00
	Depositions		
06/27/12	FEDERAL EXPRESS; Invoice # 7-925-23661;		\$18.25
	Federal Express Charge dated June 11, 2012.		
06/27/12	FEDERAL EXPRESS; Invoice # 7-925-23661;		\$18.25
	Federal Express Charge dated June 09, 2012.		
06/27/12	WEST PAYMENT CENTER; Invoice #		\$126.81
	825096322; Research		
06/28/12	CAR RENTAL for JOEL COLLINS, JR. AND		\$511.40
	LEE FLOYD FOR TRIAL IN CHARLESTON		
06/28/12	CLERK OF COURT; Invoice # 1500-102;		\$100.00
	Filing Fees		
06/29/12	CLERK OF COURT; Invoice # 1500-102;		\$25.00
	Filing Fees		
06/29/12	CLERK OF COURT; Invoice # 1500-102;		\$25.00
	Filing Fees		
06/30/12	Inhouse Copies	4220	\$422.00
06/30/12	Postage		\$39.15
06/30/12	Prints	112	\$11.20
06/30/12	Long Distance Telephone		\$4.90

Total disbursements for this matter

\$2,897.93

TIMEKEEPER SUMMARY

Jr., Joel W. Collins	SENIOR SHAREHOLDER	2.00 hrs	0.00 /hr	\$0.00
Jr., Joel W. Collins	SENIOR SHAREHOLDER	42.70 hrs	300.00 /hr	\$12,810.00
Nelson, Larry - Investigator	INVESTIGATOR	1.00 hrs	170.00 /hr	\$170.00
Cavanaugh, Patty	PARALEGAL	0.20 hrs	0.00 /hr	\$0.00
Cavanaugh, Patty	PARALEGAL	0.20 hrs	120.00 /hr	\$24.00
Miller, Cynthia D.	PARALEGAL	1.60 hrs	120.00 /hr	\$192.00
Floyd, Lee	SENIOR ASSOCIATE	22.50 hrs	0.00 /hr	\$0.00
Floyd, Lee	SENIOR ASSOCIATE	90.40 hrs	175.00 /hr	\$15,820.00
Baker, Vickie L.	SENIOR PARALEGAL	6.60 hrs	0.00 /hr	\$0.00
Baker, Vickie L.	SENIOR PARALEGAL	11.90 hrs	135.00 /hr	\$1,606.50
Burton, Cathy A.	SENIOR PARALEGAL	3.60 hrs	135.00 /hr	\$486.00
Nelson, M. Larry	SENIOR PARALEGAL	7.60 hrs	0.00 /hr	\$0.00
Nelson, M. Larry	SENIOR PARALEGAL	34.80 hrs	135.00 /hr	\$4,698.00

TOTAL FEES

\$35,806.50

TOTAL DISBURSEMENTS

\$2,897.93

TOTAL AMOUNT OF CURRENT BILL

\$38,704.43

Please remit all payments to the following address:

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211

001500

00102

(803)256-2660

22

PLEASE REFERENCE OUR 16 DIGIT BILL NUMBER LOCATED AT THE TOP OF THIS BILL.

Collins & LacySM

ATTORNEYS AT LAW

August 10, 2012

Billed through 07/31/12

Bill Number 001500 00102 64229 JWC

Federal Tax ID: 57-0989944

W. C. Lyerly, III
President
First South Bank
1330 Main Street., Suite 220
Columbia, SC 29211

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

REGARDING: First South Bank vs. South Causeway, LLC

Balance carried forward from last bill date	\$38,704.43
Payments received since last bill	\$38,704.43
Net Balance Forward	\$0.00

FOR PROFESSIONAL SERVICES RENDERED

07/02/12	JWC	Review email from Georgetown County Clerk of Court. Office conference with Lee Floyd regarding the Scheduling Order. Review case law regarding impeaching witness with false and fraudulent tax returns. Confer with Lee Floyd regarding Memorandum of Law in Support of First South Bank's Motion to Strike the jury trial request. Telephone conference with Lee Floyd.	0.90 hrs	\$270.00
07/02/12	JLF	(NO CHARGE) Receipt and review e-mail from correspondence from the Georgetown Clerk of Court regarding placement of the case on the jury trial roster.	0.10 hrs	\$0.00
07/02/12	JLF	Review and respond to e-mail from Mark Goddard regarding discovery responses identifying expert disclosure.	0.20 hrs	\$35.00
07/02/12	JLF	Review status of case and determine necessary activities for immediate future.	0.30 hrs	\$52.50
07/02/12	JLF	(NO CHARGE) Receipt and review e-mail from Opposing Counsel concerning proposed consent scheduling order and placement of case on jury roster for July 30 term of court.	0.10 hrs	\$0.00
07/02/12	JLF	Revisions to the written discovery responses identifying the expert opinions of Terry Williams and Stan Ashburne based on requests from Terry Williams and Stan Ashburne.	0.10 hrs	\$17.50

001500	00102		2
07/02/12	JLF	Telephone call to Stan Ashburne to follow-up on his review of the draft responses setting forth his expert opinions; left message to call.	0.10 hrs \$17.50
07/02/12	JLF	Return call to Chip Lyerly regarding issues surrounding Proposed Consent Scheduling Order.	0.10 hrs \$17.50
07/02/12	JLF	Receipt and review Form 4 Order from Court signed by Judge Hyman continuing case until July 30 term of court.	0.10 hrs \$17.50
07/02/12	JLF	Review and revise the Tenth Supplemental Responses to South Causeway's Request for Production.	0.30 hrs \$52.50
07/02/12	JLF	E-mail to Audra Byrd responding to questions about Proposed Consent Scheduling Order and potential motion for a continuance.	0.20 hrs \$35.00
07/02/12	JLF	Telephone call from Chip Lyerly regarding responding to correspondence from Opposing Counsel about proposed Consent Scheduling Order or filing a Motion to Continue the case.	0.20 hrs \$35.00
07/02/12	JLF	E-mail to Opposing Counsel regarding correspondence from the Georgetown Clerk of Court regarding placement of the case on the jury trial roster for July 30 and requesting update on status of proposed Consent Scheduling Order.	0.10 hrs \$17.50
07/02/12	JLF	Receipt and review e-mail from Terry Williams regarding written discovery responses identifying his expert opinions.	0.10 hrs \$17.50
07/02/12	JLF	Voice mail from Stan Ashburne approving draft discovery responses identifying expert opinions to provide to Opposing Counsel.	0.10 hrs \$17.50
07/02/12	JLF	Review and execute acceptance of service certificates for the subpoenas and deposition notices to Terry Williams and Stan Ashburne.	0.10 hrs \$17.50
07/02/12	JLF	Review and execute the Sixth Supplemental Responses to Defendant's Interrogatories and the Tenth Supplemental Responses to Defendant's Request for Production and accompanying correspondence to Opposing Counsel.	0.10 hrs \$17.50
07/03/12	JWC	Review Wells Fargo v. Smith for detailed analysis. Review emails regarding documents and entry of Scheduling Order. Office conference with Lee Floyd regarding Rule 12 Motion and Memorandum of Law.	0.50 hrs \$150.00
07/03/12	JLF	Correspondence regarding planning meeting to determine status of discovery responses and ensuring document production is complete to preclude any issues from arising at trial.	0.20 hrs \$35.00
07/03/12	JLF	Receipt and review executed Consent Scheduling Order from Opposing Counsel.	0.10 hrs \$17.50
07/03/12	JLF	Telephone call from Stan Ashburne regarding expert opinions and scheduling meeting to prepare him for his deposition.	0.20 hrs \$35.00

001500	00102			3
07/03/12	JLF	Return call to Stan Ashburne regarding meeting to prepare for deposition and expert opinions; left message to call.	0.10 hrs	\$17.50
07/03/12	JLF	Receipt and review e-mails from Opposing Counsel regarding issue with the Consent Scheduling Order.	0.10 hrs	\$17.50
07/03/12	JLF	Preliminary assessment of strategy for memorandum in support of the Motion under Wells Fargo v. Smith.	0.40 hrs	\$70.00
07/03/12	JLF	Telephone call to Judge John's Law Clerk regarding Consent Scheduling Order and roster meeting in Horry County on June 18, 2012; left detailed message and requested a return call.	0.20 hrs	\$35.00
07/05/12	JLF	Return calls to Judge John's law clerk regarding consent scheduling order and roster meeting in Horry County on 6/18/12; left message about issues and requesting a return call.	0.10 hrs	\$17.50
07/05/12	JLF	Voice mail from Judge John's law clerk regarding proposed Consent Scheduling Order and roster meeting in Horry County on 6/18/12.	0.10 hrs	\$17.50
07/06/12	JWC	Office conference with Lee Floyd regarding his telephone conversation with Abby Cain, Judge Hyman's Law Clerk. Review draft Scheduling Order.	0.40 hrs	\$120.00
07/06/12	JLF	Telephone calls to Judge John's law clerk regarding Consent Scheduling Order and roster meeting in Horry County on 6/18/12; prepare letters for presenting and filing the proposed Consent Scheduling Order to Judge John pursuant to instructions from the Court.	1.80 hrs	\$315.00
07/06/12	VLB	[NO CHARGE] Review on-line jury, non-jury and motions docket for Georgetown County to determine status of case and any immediate calendar preparation needs.	0.10 hrs	\$0.00
07/09/12	JWC	Conference with Eddie Laney regarding plans to file a Motion for Sanctions (as per Rule 11). Conference with Tommy Lydon regarding need for application for loan from Wells Fargo. Telephone conference with Chip Lyerly. Telephone conference with Tommy Lydon regarding process of loan modification. (Citibank is named Plaintiff). Office conference with Lee Floyd regarding preparation of our experts. Telephone conference with Terry Williams.	0.80 hrs	\$240.00
07/09/12	JLF	Pursuant to request from Mr. Joel W. Collins, Jr., telephone call to Terry Williams regarding upcoming deposition and preparations for the same; left message to call.	0.10 hrs	\$17.50
07/09/12	JLF	Telephone call from Terry Williams regarding deposition and preparations for the same.	0.20 hrs	\$35.00
07/10/12	JLF	Telephone conference with Stan Ashburne to prepare him for his deposition by opposing counsel.	1.00 hrs	\$175.00
07/10/12	JLF	Plan and prepare for teleconference with Stan Ashburne	0.20 hrs	\$35.00

001500	00102		4
		to prepare him for his deposition.	
07/10/12	JLF	Meeting with DJ Tyler, Jamie Weller, and Mrs. Vickie Baker regarding status of document production, discovery responses, and strategy for memorandums in support of Motions to Compel, Motion for Sanctions, and motion under Wells Fargo v. Smith.	0.50 hrs \$87.50
07/10/12	JLF	Telephone call from Terry Williams regarding additional documents for production at deposition and additional revisions to question outline for direct examination at trial.	0.10 hrs \$17.50
07/10/12	VLB	Detailed analysis of discovery answers and document production to date and meet with Attorney Tyler and Attorney Floyd to determine strategy and issues in continuing preparation for motions hearings and trial.	1.10 hrs \$148.50
07/11/12	JLF	Prepare for and meet with Stan Ashburne to complete final preparations for his deposition; lunch meeting with Stan Ashburne and Chip Lyerly regarding deposition and status of case.	1.00 hrs \$175.00
07/11/12	JLF	E-mail to Judge John's law clerk regarding the status of the Proposed Consent Scheduling Order.	0.30 hrs \$52.50
07/12/12	JWC	Telephone conference with Chip Lyerly regarding Stan Ashburne. Prepare notes to file.	0.30 hrs \$90.00
07/13/12	JWC	Office conference with Vickie Baker regarding chart needed.	0.30 hrs \$90.00
07/13/12	PPC	Office conference with Lee Floyd regarding the Scheduling Order and expert witness depositions.	0.30 hrs \$36.00
07/13/12	JLF	Voice mail and return call to the Georgetown County Clerk of Court's Office regarding proposed consent scheduling order and letter sent to the Clerk's Office and call to Judge John's Law Clerk to follow-up on status of the Proposed Consent Scheduling Order.	0.50 hrs \$87.50
07/13/12	VLB	[NO CHARGE] Review on-line jury, non-jury and motions docket for Georgetown County to determine status of case and any immediate calendar preparation needs.	0.10 hrs \$0.00
07/16/12	JWC	Review email from Chip Lyerly regarding banking regulations; send reply email; review notes from Stan Ashburne's deposition	0.30 hrs \$90.00
07/17/12	JLF	Receipt and review e-mails from Georgetown Clerk of Court's Office regarding Proposed Consent Scheduling Order.	0.10 hrs \$17.50
07/18/12	JWC	Review supplemental request to produce for defendants; Telephone call to Chip Lyerly; office conference with Mr. Lee Floyd regarding research needed.	0.30 hrs \$90.00
07/18/12	JLF	Telephone call from Georgetown Clerk of Court's Office regarding additional information for filing the Consent Amended Scheduling Order.	0.10 hrs \$17.50

001500	00102			
07/18/12	JLF	Receipt and review e-mails from Chip Lyerly and Stan Ashburne regarding research on procedures for commercial development loans and any applicable privacy regulations	0.20 hrs	5 \$35.00
07/18/12	VLB	Receipt and assess South Causeway, LLC's Second Set of Requirements for Production of Documents to the Plaintiff to determine deadline issues and identify all response needs.	0.10 hrs	\$13.50
07/20/12	VLB	[NO CHARGE] Review on-line jury, non-jury and motions docket for Georgetown County to determine status of case and any immediate calendar preparation needs.	0.10 hrs	\$0.00
07/24/12	JLF	Receipt and review e-mail from Georgetown County Clerk of Court regarding Consent Scheduling Order and e-mails to counsel of record regarding the same.	0.20 hrs	\$35.00
07/24/12	JLF	Analyze First South Bank's privacy policies and procedures from Chip Lyerly in order to work on updated expert opinions for supplementing interrogatory responses, pursuant to instructions from Mr. Joel W. Collins, Jr.	1.20 hrs	\$210.00
07/24/12	JLF	Receipt and review the executed Consent Scheduling Order issued by Judge John.	0.10 hrs	\$17.50
07/24/12	VLB	Receipt and review of Scheduling Order approved by Judge John and filed with Georgetown County for deadlines for discovery and pre-trial issues.	0.20 hrs	\$27.00
07/25/12	JLF	Analyze and assess need for filing any potential motions before August 1, 2012, pursuant to deadline in Consent Scheduling Order.	0.10 hrs	\$17.50
07/26/12	JWC	Office conference with Lee Floyd regarding Defendants Motion to Produce. Telephone call to Chip Lyerly, left message.	0.30 hrs	\$90.00
07/26/12	JLF	Receipt and review notices from Georgetown Clerk of Court concerning scheduling of pending motions and discuss any other potential motions to file with Mr. Joel W. Collins, Jr. given deadline in the Scheduling Order.	0.50 hrs	\$87.50
07/26/12	VLB	Review email notification by Georgetown County of hearing on all outstanding motions by Plaintiff and Defendant to be heard by Judge Hyman.	0.10 hrs	\$13.50
07/27/12	JWC	Exchange emails relating to obtaining loan applications submitted by Darwin Wheeler.	0.30 hrs	\$90.00
07/27/12	JLF	Correspondence with counsel and clients concerning hearing on South Causeway's Motion to Quash the subpoenas to counsel involved in other foreclosure actions involving Peggy Wheeler-Cribb and Darwin Wheeler and telephone call from Chip Lyerly regarding pending Motions and Hearings on the same.	0.70 hrs	\$122.50
07/27/12	JLF	Telephone call to counsel representing bank in parallel foreclosure action involving Darwin Wheeler regarding	0.40 hrs	\$70.00

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6

subpoena issued for financial information and production
of the same in light of Motion to Quash.

07/27/12	VLB	[NO CHARGE] Review on-line jury, non-jury and motions docket for Georgetown County to determine status of case and any immediate calendar preparation needs.	0.10 hrs	\$0.00
07/30/12	JLF	Voice mail Chip Lyerly regarding South Causeway's Second Request for Production and responses to the same and requesting a return call; return call to Chip Lyerly.	0.30 hrs	\$52.50
07/31/12	JLF	Correspondence with Chip Lyerly and Joel Collins regarding transcripts of roster meetings and obtaining the same.	0.20 hrs	\$35.00
07/31/12	JLF	Voice mail from DJ Tyler regarding hearings and preparing for the same and requesting a return call.	0.10 hrs	\$17.50

Total fees for this matter

 \$3,921.00

DISBURSEMENTS

		Units	
06/13/12	CLERK OF COURT; Invoice # 1500-102; Filing Fees		-\$25.00
07/03/12	RICOH USA, INC.; Invoice # L0712060071; Outside Copies		\$497.55
07/05/12	LEE FLOYD; Invoice # 150-102 7/3; Mileage - 55 miles @ .555 ea. to meet with Stan Ashburne.		\$30.53
07/05/12	WEST PAYMENT CENTER; Invoice # 825265263; Research		\$51.95
07/06/12	CLERK OF COURT; Invoice # 1500-102; Filing Fees		\$25.00
07/12/12	LEE FLOYD; Invoice # 1500-102; Meals during meeting with Chip Lyerly and Stan Ashburne.		\$31.00
07/25/12	TLO LLC; Invoice # TLO; Research		\$4.00
07/31/12	Inhouse Copies	16	\$1.60
07/31/12	Postage		\$38.15
07/31/12	Prints	23	\$2.30
07/31/12	Long Distance Telephone		\$11.85

Total disbursements for this matter

 \$668.93

TIMEKEEPER SUMMARY

Jr., Joel W. Collins	SENIOR SHAREHOLDER	4.40 hrs	300.00 /hr	\$1,320.00
Cavanaugh, Patty	PARALEGAL	0.30 hrs	120.00 /hr	\$36.00
Floyd, Lee	SENIOR ASSOCIATE	0.20 hrs	0.00 /hr	\$0.00
Floyd, Lee	SENIOR ASSOCIATE	13.50 hrs	175.00 /hr	\$2,362.50
Baker, Vickie L.	SENIOR PARALEGAL	0.40 hrs	0.00 /hr	\$0.00
Baker, Vickie L.	SENIOR PARALEGAL	1.50 hrs	135.00 /hr	\$202.50

001500

00102

7

TOTAL FEES

\$3,921.00

TOTAL DISBURSEMENTS

\$668.93

TOTAL AMOUNT OF CURRENT BILL

\$4,589.93

Please remit all payments to the following address:

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

PLEASE REFERENCE OUR 16 DIGIT BILL NUMBER LOCATED AT THE TOP OF THIS BILL.



October 5, 2012

Billed through 09/30/12

Bill Number 001500 00102 64987 JWC

Federal Tax ID: 57-0989944

W. C. Lyerly, III
President
First South Bank
1330 Main Street., Suite 220
Columbia, SC 29211

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

REGARDING: First South Bank vs. South Causeway, LLC

Balance carried forward from last bill date \$18,898.25

FOR PROFESSIONAL SERVICES RENDERED

08/14/12	JLF	Review and revise and execute my affidavit to file with court in support of motion for sanctions.	0.20 hrs	\$35.00
08/14/12	JLF	Voice mail and telephone calls from Attorney Audra Byrd regarding upcoming Motions Hearing and affidavits in Support of Motion for Sanctions.	0.30 hrs	\$52.50
08/21/12	JLF	Telephone call to Judge Hyman's law clerk regarding clarification as to Orders from Hearing and telephone call to Opposing Counsel regarding the same.	0.20 hrs	\$35.00
09/03/12	JLF	Review and respond to e-mails from Don Tyler concerning response to claims by Counsel for South Causeway that access has already been provided to the financial statements and HUD Documents for Peggy Wheeler-Cribb and Darwin Wheeler.	0.50 hrs	\$87.50
09/03/12	JLF	Review and assess need to respond to e-mail from Audra Byrd regarding order from Judge Hyman commanding Peggy Wheeler-Cribb and Darwin Wheeler to produce certain tax returns and HUD settlement statements and personal financial statements.	0.20 hrs	\$35.00
09/04/12	LHM	Review deposition and exhibits of Wayne Lovelace to help prepare for deposition of Barksdale.	2.00 hrs	\$600.00
09/04/12	JLF	Continue to review materials and prior testimony of William Barksdale to assess his opinions and prepare for deposition and correspondence to clients concerning the same.	1.30 hrs	\$227.50
09/04/12	JLF	Review and respond to e-mail from Chip Lyerly regarding	0.20 hrs	\$35.00

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2

tax returns received for Darwin Wheeler and Peggy Wheeler -Cribb and meeting he requested to discuss case and trial strategy.

09/04/12	JLF	Voice mail and return call to Wayne Lovelace regarding Judge Hyman's Order and position South Causeway is taking on compliance with the Order to produce additional documents and questions about expert opinions of William Barksdale.	0.40 hrs	\$70.00
09/04/12	JLF	Receipt and review e-mail from Stan Ashburne regarding expert opinions of William Barksdale.	0.10 hrs	\$17.50
09/04/12	VLB	Receipt and evaluate Kennedy Funding documents produced by Nelson Mullins to analyze and determine relevant information for use in determining strategy needs in preparation for trial.	2.10 hrs	\$283.50
09/05/12	JWC	Meet with Lee Floyd and Vickie Baker--gather file material. Prepare for the deposition of Bill Barksdale. Review emails regarding tax returns for Peggy Wheeler Cribb. Telephone call to Tom Lydon. Meet with Chip Lyerly, Wayne Lovelace, Don Tyler and Lee Floyd. Prepare notes to file.	1.50 hrs	\$450.00
09/05/12	JLF	Analyze the Credit Manual from Credit Risk Management LLC and assist with preparing outline for the deposition of South Causeway's Expert William Barksdale.	0.40 hrs	\$70.00
09/05/12	JLF	Telephone calls and e-mails with Opposing Counsel regarding status of the document production and financial information from Peggy Wheeler-Cribb and Darwin Wheeler and the status of subpoena response and document production from William Barksdale.	0.30 hrs	\$52.50
09/05/12	JLF	Review 2010 Tax Returns for Peggy Wheeler-Cribb and correspondence to clients forwarding the same.	0.30 hrs	\$52.50
09/05/12	JLF	Telephone call from Attorney Tommy Lydon regarding production of loan files for parallel foreclosure actions.	0.30 hrs	\$52.50
09/05/12	JLF	Analyze deposition transcript of Stan Ashburne to assess potential themes of South Causeway and prepare strategy for the deposition of William Barksdale.	0.50 hrs	\$87.50
09/05/12	JLF	Meeting with Chip Lyerly and Don Tyler regarding deposition of William Barksdale and strategy for proceeding.	3.00 hrs	\$525.00
09/05/12	JLF	Voice mail from Stan Ashburne regarding conference call to discuss preparation and strategy for the deposition of William Barksdale.	0.10 hrs	\$17.50
09/05/12	JLF	Continue to review materials and prior testimony of William Barksdale to assess his opinions and preparing for deposition and research on Barksdale to locate additional prior testimony or scholarly works; research SC statutes and regulations for provisions contradicting Barksdale's expert opinions.	2.70 hrs	\$472.50
09/05/12	JLF	Receipt and review Notice from Court concerning status	0.10 hrs	\$17.50

001500	00102		3
		of case on jury roster.	
09/05/12	JLF	Analyze prior publication by William Barksdale, "How to Borrow Money" for potential information to use during deposition and cross-examination at trial.	1.50 hrs \$262.50
09/05/12	VLB	Telephone calls to counsel in other cases on trail roster to determine status of cases preceding us on Georgetown County Roster to determine trial placement.	0.30 hrs \$40.50
09/05/12	VLB	Meet with Mr. Joel W. Collins, Jr. and Mr. Lee Floyd and identify strategy needs for the deposition of Defendant's Expert William Barksdale.	0.80 hrs \$108.00
09/06/12	JWC	Telephone conference with Chip Lyerly - office conference with Mrs. Vickie Baker and Attorney Lee Floyd regarding Barksdale deposition - prepare notes to file - telephone call to Tommy Lydon.	0.60 hrs \$180.00
09/06/12	JLF	Receipt and review e-mail from Opposing Counsel concerning subpoena response from William Barksdale and review documents underlying his opinions.	2.00 hrs \$350.00
09/06/12	JLF	Telephone call from Chip Lyerly regarding issue with document production from Tommy Lydon and ordering book authored by William Barksdale; E-mails and telephone call to Tommy Lydon about issue with obtaining both loan files.	0.50 hrs \$87.50
09/06/12	JLF	Analyze document production from attorneys representing banks in parallel foreclosure actions.	0.40 hrs \$70.00
09/06/12	JLF	Review and revise supplemental discovery responses to produce copies of documents received from lenders in other foreclosure law suits.	0.40 hrs \$70.00
09/06/12	JLF	E-mails and teleconference with Stan Ashburne to discuss opinions of William Barksdale and assist with preparations for the same.	1.00 hrs \$175.00
09/06/12	JLF	Analyze document production and other materials identified in timeline to prepare index of documents and events not included as a basis for Barksdale's opinions, pursuant to request from Mr. Joel W. Collins, Jr.	3.30 hrs \$577.50
09/06/12	JLF	Research and review treasury, OCC, and FDIC regulations on commercial real estate loans and risk management association principles on the exchange of credit information to prepare for the deposition of William Barksdale	0.80 hrs \$140.00
09/06/12	JLF	Prepare basic outline for deposition of William Barksdale for Mr. Joel W. Collins, Jr.	0.30 hrs \$52.50
09/06/12	VLB	Prepare Timeline Spreadsheet of all the offers to purchase for the South Causeway property and the disposition of each offer for use at Barksdale deposition and trial.	2.30 hrs \$310.50
09/06/12	VLB	Review of file materials, identify and prepare documents to be used in examination of William Barksdale at his deposition.	1.70 hrs \$229.50

001500	00102		4
09/07/12	JWC	Travel to Charleston - attend and depose Bill Barksdale. Conference with clients - Return to Columbia	9.40 hrs \$2,820.00
09/07/12	JLF	Travel to, appear for, and return travel from the deposition of William Barksdale.	9.40 hrs \$1,645.00
09/07/12	VLB	Prepare Trial Subpoena directed to Charles McCallum for the September 17th Term of Court.	0.10 hrs \$13.50
09/07/12	VLB	Prepare Trial Subpoena directed to Don Thomas for the September 17th Term of Court.	0.10 hrs \$13.50
09/07/12	VLB	Prepare Trial Subpoena directed to Tammy Coleman-Marro for the September 17th Term of Court.	0.10 hrs \$13.50
09/07/12	VLB	Telephone call to Georgetown County Jury Coordinator requesting status of email of jury list for September term of Court.	0.10 hrs \$13.50
09/10/12	JWC	Review memo for Mr. L. Henry McKellar regarding Bill Barksdale - office conference with Attorney Mr. Lee Floyd. Review email from Mrs. Vickie Baker regarding our position on the Georgetown trial roster. Telephone conference with Chip Lyerly regarding response to settlement	1.50 hrs \$450.00
09/10/12	JLF	Revise and execute trial subpoenas to Charles McCallum, Don Thomas, and Tammy Marro and accompanying correspondence.	0.30 hrs \$52.50
09/10/12	JLF	Voice mail and return call to D.J. Tyler regarding deposition of William Barksdale and activities necessary to prepare for upcoming trial.	0.50 hrs \$87.50
09/10/12	JLF	Voice mail and correspondence from Chip Lyerly setting forth total amount outstanding for the loan to use in a settlement proposal and at trial.	0.10 hrs \$17.50
09/10/12	JLF	Draft letter to Opposing Counsel providing an initial settlement offer and setting forth the terms and conditions for the same.	1.00 hrs \$175.00
09/10/12	JLF	Initial receipt and review of Defendant's Motions in Limine and correspondence to clients concerning the same.	0.20 hrs \$35.00
09/10/12	VLB	Receipt and begin initial evaluation of Jury List to analyze individual jurors and identify relevant information for use in determining jury pool selection needs.	1.90 hrs \$256.50
09/10/12	VLB	Telephone call to Attorney Charles Fulton regarding status of case (Gettmann v. Ziske) preceding us on the Georgetown County Roster to determine trial placement for the term of Court beginning September 17th - Case being moved to non-jury roster.	0.10 hrs \$13.50
09/10/12	VLB	Telephone call to Finola at the offices of Charles Baker regarding status of case (Smith v. Garner) preceding us on the Georgetown County Roster to determine trial placement for the term of Court beginning September	0.10 hrs \$13.50

001500		00102		4
09/07/12	JWC	Travel to Charleston - attend and depose Bill Barksdale. Conference with clients - Return to Columbia	9.40 hrs	\$2,820.00
09/07/12	JLF	Travel to, appear for, and return travel from the deposition of William Barksdale.	9.40 hrs	\$1,645.00
09/07/12	VLB	Prepare Trial Subpoena directed to Charles McCallum for the September 17th Term of Court.	0.10 hrs	\$13.50
09/07/12	VLB	Prepare Trial Subpoena directed to Don Thomas for the September 17th Term of Court.	0.10 hrs	\$13.50
09/07/12	VLB	Prepare Trial Subpoena directed to Tammy Coleman-Marro for the September 17th Term of Court.	0.10 hrs	\$13.50
09/07/12	VLB	Telephone call to Georgetown County Jury Coordinator requesting status of email of jury list for September term of Court.	0.10 hrs	\$13.50
09/10/12	JWC	Review memo for Mr. L. Henry McKellar regarding Bill Barksdale - office conference with Attorney Mr. Lee Floyd. Review email from Mrs. Vickie Baker regarding our position on the Georgetown trial roster. Telephone conference with Chip Lyerly regarding response to settlement	1.50 hrs	\$450.00
09/10/12	JLF	Revise and execute trial subpoenas to Charles McCallum, Don Thomas, and Tammy Marro and accompanying correspondence.	0.30 hrs	\$52.50
09/10/12	JLF	Voice mail and return call to D.J. Tyler regarding deposition of William Barksdale and activities necessary to prepare for upcoming trial.	0.50 hrs	\$87.50
09/10/12	JLF	Voice mail and correspondence from Chip Lyerly setting forth total amount outstanding for the loan to use in a settlement proposal and at trial.	0.10 hrs	\$17.50
09/10/12	JLF	Draft letter to Opposing Counsel providing an initial settlement offer and setting forth the terms and conditions for the same.	1.00 hrs	\$175.00
09/10/12	JLF	Initial receipt and review of Defendant's Motions in Limine and correspondence to clients concerning the same.	0.20 hrs	\$35.00
09/10/12	VLB	Receipt and begin initial evaluation of Jury List to analyze individual jurors and identify relevant information for use in determining jury pool selection needs.	1.90 hrs	\$256.50
09/10/12	VLB	Telephone call to Attorney Charles Fulton regarding status of case (Gettmann v. Ziske) preceding us on the Georgetown County Roster to determine trial placement for the term of Court beginning September 17th - Case being moved to non-jury roster.	0.10 hrs	\$13.50
09/10/12	VLB	Telephone call to Finola at the offices of Charles Baker regarding status of case (Smith v. Garner) preceding us on the Georgetown County Roster to determine trial placement for the term of Court beginning September	0.10 hrs	\$13.50

001500	00102		5
		17th. - Case is being 40(j)'d and Order is pending.	
09/10/12	VLB	Telephone call to Attorney Mark Buyck Jr. regarding status of case (Fabian v. Fabian) preceding us on the Georgetown County Roster to determine trial placement for the term of Court beginning September 17th - Case being moved to non-jury roster.	0.10 hrs \$13.50
09/11/12	JWC	Revise draft letter to Mark Goddard - office conference with Chip Lyerly and Wayne Lovelace regarding offer to settle and Motions in Limine - conference with Don Tyler regarding need to subpoena Attorney Doug Hinds for trial.	1.50 hrs \$450.00
09/11/12	JLF	Assess and prepare an updated list of activities needed to prepare for trial and carry out activities.	1.70 hrs \$297.50
09/11/12	JLF	Receipt and review correspondence from Mark Goddard regarding Settlement Offer and refusal to negotiate further and return call concerning the same.	0.20 hrs \$35.00
09/11/12	JLF	Receipt and review e-mail from Georgetown County Clerk of Court regarding jury roster and the term of Court next Tuesday.	0.10 hrs \$17.50
09/11/12	JLF	Meeting with Mr. Joel W. Collins, Jr. to discuss and assess necessary exhibits for witness examinations, pre-trial motions, and strategy for trial; correspondence with clients and DJ Tyler regarding additional trial preparation activities.	0.70 hrs \$122.50
09/11/12	JLF	Review and execute trial subpoenas to Doug Hinds, Bob Gwin, and Chuck Cooper.	0.20 hrs \$35.00
09/11/12	JLF	Revise and execute the Third and Fourth Supplemental Request to Admit to South Causeway concerning the authenticity of the documents from the attorneys in the parallel foreclosure actions and accompanying correspondence.	0.30 hrs \$52.50
09/11/12	JLF	Telephone call from Mark Goddard regarding settlement offer from First South and potential issue with trial next week; e-mail to clients informing them of the same.	0.90 hrs \$157.50
09/11/12	JLF	Analyze and assess responses to South Causeway's Motions in Limine to exclude Terry Williams and to exclude evidence of the parallel foreclosure actions and personal financial information from use at trial.	0.50 hrs \$87.50
09/11/12	VLB	Continue preparation for trial, update trial pleadings notebooks, prepare party and witnesses index and designate folders for examination and cross-examinations.	3.50 hrs \$472.50
09/11/12	VLB	Preparation and serve Subpoenas for appearance and testimony at trial for Chuck Cooper, Doug Hinds and Robert Gwin for the term of Court beginning September 17th.	0.50 hrs \$67.50
09/11/12	VLB	Prepare Plaintiff's Third Requests to Admit to Defendant as to the authenticity of Kennedy Funding documents produced by Nelson Mullins Riley and Scarborough and	0.30 hrs \$40.50

001500

00102

6

documents relating to Darwin Wheeler Pawley's Island transaction documents from McAngus, Goudelock and Courie.

09/12/12	JLF	Telephone call from Mark Goddard regarding issues with term of Court next week and correspondence with Judge Russo regarding the same.	0.30 hrs	\$52.50
09/12/12	JLF	Correspondence with Court, Opposing Counsel, and clients regarding issues surrounding jury trial roster next week and trial preparations.	0.30 hrs	\$52.50
09/12/12	JLF	Telephone conference with DJ Tyler and Mrs. Vickie Baker about updated strategy and activities necessary for finalizing trial preparations.	0.70 hrs	\$122.50
09/12/12	JLF	Telephone calls to Doug Hinds, Bob Gwin, and Chuck Cooper regarding trial subpoenas for court next week.	0.10 hrs	\$17.50
09/12/12	MLN	Review 300 juror names for potential jury members for trial on 9/17/12.	0.20 hrs	\$27.00
09/12/12	VLB	Meeting with clients, Mr. Joel W. Collins, Jr., and Mr. Donald W. Tyler, Jr., for trial preparation coordination, outstanding preparation needs and trial strategy for the examination of witnesses.	1.30 hrs	\$175.50
09/13/12	JWC	Telephone call with Chip Lylerly and Charles McCallum.	0.40 hrs	\$120.00
09/13/12	JWC	Review jury list.	0.20 hrs	\$60.00
09/13/12	JWC	Telephone conference with Chip Lylerly - review jury list, telephone conference with Tim Krsue and Travelers - call to Mr. Krsue regarding trial strategy.	3.50 hrs	\$1,050.00
09/13/12	JLF	Analyze list of jurors for September 17 term of Court.	0.50 hrs	\$87.50
09/13/12	JLF	Analyze trial transcript of Will Darwin Wheeler's testimony in the Sapp Matter to designate portions for potential use at trial for impeachment.	1.10 hrs	\$192.50
09/13/12	JLF	Correspondence and phone calls with Chip Lyerly and DJ Tyler regarding meeting with Charles McCallum and preparing him for direct examination at trial.	0.50 hrs	\$87.50
09/13/12	JLF	Analyze documents and materials involving Charles McCallum and Lincoln Harris to prepare for call to prepare him for his direct examination at trial; Telephone call to Charles McCallum.	0.60 hrs	\$105.00
09/13/12	JLF	Receipt and review updated jury list with information from Julie Cason on each juror.	0.10 hrs	\$17.50
09/13/12	JLF	Telephone call from Tammy Maro regarding trial subpoena and potential testimony at trial.	0.30 hrs	\$52.50
09/13/12	JLF	Receipt and review correspondence and trial subpoena from South Causeway to Ken Altman.	0.10 hrs	\$17.50
09/13/12	JLF	E-mail and return call to Travelers Insurance Company regarding question about motion to exclude lay testimony about value of property; telephone call from Chip Lyerly regarding the same.	0.30 hrs	\$52.50

001500	00102		7
09/13/12	JLF	Telephone call and e-mail to Terry Williams regarding identification of Ken Altman as a witness for South Causeway.	0.10 hrs \$17.50
09/13/12	JLF	Receipt and review trial subpoenas from South Causeway to Chip Lyerly and Wayne Lovelace and execute acceptance of service to return the same.	0.20 hrs \$35.00
09/13/12	JLF	Telephone call from Charles McCallum regarding trial testimony and meeting to discuss the same.	0.20 hrs \$35.00
09/13/12	JLF	Correspondence with Court regarding motions in limine and pull necessary cases and authority to submit to Court.	1.40 hrs \$245.00
09/13/12	JLF	Research case law on lay witness testimony on property value to support objection at trial and respond to Traveler's inquiry regarding the same.	0.50 hrs \$87.50
09/13/12	VLB	Continue assembly of documents and exhibits and assist with preparation for trial.	1.60 hrs \$216.00
09/14/12	JWC	Prepare for trial and telephone conference with Chip Lyerly.	3.00 hrs \$900.00
09/14/12	JLF	E-mail to Audra Byrd sending the acceptance of service certificates for the trial subpoenas to Chip Lyerly and Wayne Lovelace.	0.10 hrs \$17.50
09/14/12	JLF	Voice mail from Terry Williams regarding identification of Ken Altman as a witness for South Causeway at trial.	0.10 hrs \$17.50
09/14/12	JLF	Voice mail and return call to Bob Gwinn regarding trial subpoena and trial next week.	0.20 hrs \$35.00
09/14/12	JLF	Meeting with Charles McCallum to discuss and prepare him for direct examination at trial and prepare outline for his direct examination.	1.60 hrs \$280.00
09/14/12	JLF	Review and prepare exhibits, deposition designations, and other motions and submissions for trial.	7.00 hrs \$1,225.00
09/14/12	VLB	Revise and add documents to the Power Point Binders for use in authenticating loan documents by Julie Cason, records custodian for First South Bank.	1.30 hrs \$175.50
09/14/12	VLB	Meeting with Julie Cason and review the jury trial list and to go over the documents for authenticating at trial and to discuss her trial testimony in general.	0.80 hrs \$108.00
09/14/12	VLB	Continue evaluation and assign rating to jurors contained on Jury List to determine jury selection to include relevant information for jury strike.	1.70 hrs \$229.50
09/14/12	VLB	Continue to identify documents to be used as cross examination and for impeachment purposes for Peggy Wheeler-Cribb and Darwin Wheeler.	2.90 hrs \$391.50
09/14/12	VLB	Continue identification and preparation of documents to use at trial.	1.80 hrs \$243.00
09/15/12	JLF	Continue to review and prepare exhibits, deposition designations, and other motions and submissions for trial.	5.60 hrs \$980.00

001500	00102		8
09/15/12	VLB	Evaluation of emails, correspondence, transcripts and other documentation to update and prepare Cross-Examination Index relating to Peggy Wheeler-Cribb	3.00 hrs \$405.00
09/15/12	VLB	Update and finalize Trial Exhibits binder, pleadings and discovery binders and identify additional documents for trial binders.	2.80 hrs \$378.00
09/16/12	JLF	Continue to review and prepare exhibits, deposition designations, and other motions and submissions for trial.	9.00 hrs \$1,575.00
09/16/12	VLB	Evaluate emails, correspondences, transcripts and other documentation to update and preparator of Cross-Examination Index relating to Will Darwin Wheeler.	2.00 hrs \$270.00
09/16/12	VLB	Evaluation of emails, correspondence, tax returns of South Causeway, Peggy Wheeler-Cribb and Darwin Wheeler and other documentation for preparation of Cross-Examination needs for Ken Altman	1.10 hrs \$148.50
09/16/12	VLB	Evaluation of transcripts, deposition designations, and other documentation for preparation of direct and cross-examination exhibits for Tammy Coleman-Maró, Chuck Cooper, Don Thomas, Doug Hines, Robert Gwin, Charles McCallum, Terry Williams, Wayne Lovelace, and Chip Lyerly.	1.60 hrs \$216.00
09/16/12	VLB	Continue and finalize documents for trial binders, finalize Case In Chief and cross exam materials, and identify additional exhibits for trial, and remainder of trial preparation strategy needs.	1.30 hrs \$175.50
09/16/12	VLB	Telephone conversation with Tammy Coleman-Maró regarding trial and issues for testimony.	0.20 hrs \$27.00
09/17/12	JLF	Travel to Georgetown, SC, for jury roll call and juror qualification.	3.00 hrs \$525.00
09/17/12	JWC	Travel to Georgetown to attend jury qualificaiton and attend trial preparation and confer with client.	10.00 hrs \$3,000.00
09/17/12	JLF	Appear for and attend jury roll call and qualification and travel to Murrells Inlet.	2.50 hrs \$437.50
09/17/12	JLF	Additional trial preparation activities and correspondence with Court and opposing counsel.	7.00 hrs \$1,225.00
09/17/12	JLF	Analyze documents received from Nelson Mullins in response to subpoena for documents on Kennedy Funding Foreclosure.	2.50 hrs \$437.50
09/17/12	VLB	Upload original Mortgage Note for revision of sections of Power Point presentation and Power Point Notebooks to be used in direct examination of Julie Cason.	2.10 hrs \$283.50
09/17/12	VLB	Finalize additional trial exhibits and final revisions to Pleadings and Discovery notebook to include Motions In Limine and trial Subpoenas by Defendant and prepare final submissions for trial.	4.20 hrs \$567.00

001500	00102		9
09/17/12	VLB	Prepare Plaintiff's Twelfth Supplemental Responses to Defendant's First Requests for Production.	0.20 hrs \$27.00
09/17/12	VLB	Drafted correspondence to Audra Byrd and Wayne Byrd and Mark Goddard serving Plaintiff's Twelfth Supplemental Responses to Defendant's First Request for Production.	0.10 hrs \$13.50
09/17/12	VLB	Prepare Subpoena Duces Tecum for service upon Will Darwin Wheeler for appearance at Trial along with Acceptance Of Service for Audra Byrd to accept the trial subpoena on behalf of Mr. Wheeler.	0.20 hrs \$27.00
09/18/12	JLF	Appear for and attend trial in Georgetown.	10.50 hrs \$1,837.50
09/18/12	JWC	Attend and participate in trial.	10.50 hrs \$3,150.00
09/18/12	JLF	Prepare deposition designations and cross-examination outline for William C. Barksdale.	0.80 hrs \$140.00
09/18/12	JLF	Meeting with Chip Lyerly to prepare potential settlement offer and discuss additional strategy for trial.	1.20 hrs \$210.00
09/19/12	JWC	Attend trial and prepare for next day - review documents - confer with client about potential settlement offer.	12.00 hrs \$3,600.00
09/19/12	JLF	Additional preparations for trial and for meeting with opposing counsel to discuss potential settlement.	0.60 hrs \$105.00
09/19/12	JLF	Appear for and attend second day of trial.	10.00 hrs \$1,750.00
09/19/12	JLF	Meeting with clients and additional trial and witness examinations preparations for third day of trial.	3.00 hrs \$525.00
09/19/12	JLF	Telephone call to Charles McCallum regarding progress of trial and potential testimony.	0.10 hrs \$17.50
09/19/12	VLB	Prepare draft Jury Charges for Breach of Contract, Breach of Contract Accompanied by Fraudulent Acts, Constructive Fraud, Contract-Bank's Duty regarding Reading Documents; Contract - Duty to Read and Contract-Subject to Existing Law.	1.50 hrs \$202.50
09/19/12	VLB	Prepare draft Jury Charges, Creditor-debtor relationships, Default, Duress, Fiduciary, Fraud-Defined, Fraud-Elements, Fraud-Misrepresentation Tortious Interference with Contract, Tortious Interference with Prospect Contract, Unfair Trade Practices - Elements and Unfair Trade Practices - when act is unfair).	2.10 hrs \$283.50
09/20/12	JWC	Appear for and attend trial.	10.00 hrs \$3,000.00
09/20/12	JLF	Telephone call from Charles McCallum regarding potential trial testimony and appearance for the same.	0.20 hrs \$35.00
09/20/12	JLF	Appear for and attend trial and meeting with Judge Russo and Opposing counsel.	10.00 hrs \$1,750.00
09/20/12	JLF	Return call to Charles McCallum regarding anticipated testimony at trial.	0.10 hrs \$17.50
09/20/12	JLF	Research, analyze and prepare directed verdict motion and proposed jury charges.	1.50 hrs \$262.50

001500	00102		10
09/20/12	JLF	Review and analyze deposition transcripts and documents to prepare direct examination of Stan Ashburne and finalize cross-examination of Peggy Wheeler-Cribb.	2.00 hrs \$350.00
09/21/12	JWC	Appear for and attend trial.	12.00 hrs \$3,600.00
09/21/12	JLF	Continue to research, analyze and prepare directed verdict motion and proposed jury charges.	1.50 hrs \$262.50
09/21/12	JLF	Appear for and attend trial and return travel from Georgetown, SC.	12.00 hrs \$2,100.00
09/22/12	JWC	Prepare for closing argument.	2.00 hrs \$600.00
09/23/12	JWC	Travel to Georgetown - meeting with Chip Lyerly regarding trial.	8.00 hrs \$2,400.00
09/23/12	JWC	Trial preparation.	7.00 hrs \$2,100.00
09/23/12	JLF	Review and respond to e-mail from Heather Carson regarding additional activities for trial preparations and remaining causes of action.	0.30 hrs \$52.50
09/23/12	JLF	Research for jury charges and special interrogatories to accompany special verdict form.	0.50 hrs \$87.50
09/23/12	JLF	Travel to Georgetown SC for additional trial preparation and to attend trial.	3.50 hrs \$612.50
09/23/12	JLF	Draft proposed jury charges and special interrogatories for verdict form.	3.00 hrs \$525.00
09/23/12	JLF	Telephone call to Charles McCallum regarding progress of trial and potential testimony.	0.10 hrs \$17.50
09/24/12	JWC	Attend trial and prepare outline for closing arguments and review trial notes.	6.00 hrs \$1,800.00
09/24/12	JLF	Continue to draft proposed jury charges and special interrogatories for verdict form and accompanying correspondence to Court.	1.50 hrs \$262.50
09/24/12	JLF	Appear for and attend trial and charge conference with Judge Russo and Opposing Counsel.	10.00 hrs \$1,750.00
09/24/12	JLF	Draft and revise proposed special verdict form based on charge conference with Judge Russo and discussions with opposing counsel.	0.70 hrs \$122.50
09/24/12	JLF	Receipt and review proposed special verdict form from opposing counsel and draft special verdict form incorporating both versions.	1.00 hrs \$175.00
09/25/12	JWC	Attend trial; deliver closing arguments, await verdict, return to Columbia.	12.00 hrs \$3,600.00
09/25/12	JLF	Research for additional argument to Court that breach of loan documents is not grounds to invalidate mortgage and loan documents.	1.30 hrs \$227.50
09/25/12	JLF	Appear for and attend trial.	8.30 hrs \$1,452.50
09/25/12	JLF	Return travel from Georgetown, SC after trial.	3.00 hrs \$525.00
09/25/12	JLF	Telephone call to Charles McCallum to release him from	0.10 hrs \$17.50

001500	00102			11
		the trial subpoena and update him on status of case.		
09/26/12	JLF	Draft affidavit in support of proposed order of foreclosure and review supporting documentation for the same.	0.30 hrs	\$52.50
09/26/12	JLF	Finalize trial materials and organize them for response to potential appeal.	1.20 hrs	\$210.00
09/26/12	JLF	Telephone call from Mark Goddard regarding post-trial motions and JNOV Motion South Causeway may be filing.	0.10 hrs	\$17.50
09/26/12	JLF	Pursuant to instructions from Mr. Joel W. Collins, Jr., research decisions regarding attorneys fees awards to assess potential recoverable costs and prepare affidavit of attorneys fees and costs.	1.80 hrs	\$315.00
09/27/12	JWC	Review Chip Lyerly's draft letter to the Jury Forman, telephone conference with Chip Lyerly, office conference with Mr. Lee Floyd regarding petition and affidavit for attorney fees and the foreclosure.	1.00 hrs	\$300.00
09/27/12	JLF	Receipt and review e-mail from Georgetown County Clerk of Court regarding filed Orders issued by Judge Hyman.	0.10 hrs	\$17.50
09/27/12	JLF	Continue to draft Affidavit of Attorneys Fees and compile materials in support of the same.	0.30 hrs	\$52.50
09/27/12	JLF	Receipt and review proposed Order of Foreclosure for submission to Court and make suggested revisions to the same.	0.40 hrs	\$70.00
09/28/12	JWC	Review email from DJ Tyler, prepare reply email, and conference with Wayne Lovelace.	0.40 hrs	\$120.00
09/28/12	JLF	Prepare and revise supporting documentation for affidavit of attorneys fees for submission to Court.	1.00 hrs	\$175.00
		Total fees for this matter		\$71,521.00

DISBURSEMENTS

		Units	
09/05/12	FEDERAL EXPRESS; Invoice # 7-999-17624; Federal Express Charge dated 08/20/2012.		\$25.59
09/06/12	LEE FLOYD; Invoice # 1500-102; Miscellaneous BOOK PURCHASE FOR DEPOSITION		\$8.22
09/13/12	TIM THORNTON; Invoice # 1500-1002 9/10 & 9/11; Mileage - 21.7 miles @ .555 ea. to 4875 Forest Dr. re: hand deliveries.		\$12.04
09/18/12	FEDERAL EXPRESS; Invoice # 2-012-98490; Federal Express Charge dated 9/8/12.		\$114.01
09/20/12	TIM THORNTON; Invoice # 1500-102 9/17; Meals in Myrtle Beach, SC.		\$8.45
09/20/12	MATT BOWERS; Invoice # 1500-102 8/30; Mileage - 2.5 miles @ .555 ea. to Williams Gee & Co. for hand delivery.		\$1.39

001500	00102		12
09/20/12	TIM THORNTON; Invoice # 1500-102 9/17; Mileage - 312.9 miles @ .555 ea. to Courthouse in Myrtle Beach, SC for trial.		\$173.66
09/25/12	FEDERAL EXPRESS; Invoice # 2-02058725; Federal Express Charge dated 9/11/2012.		\$26.63
09/27/12	LEE FLOYD; Invoice # 1500-102; Meals - trial in Georgetown, SC.		\$7.29
09/27/12	LEE FLOYD; Invoice # 1500-102; Transportation Costs during trial to Georgetown, SC		\$220.15
09/30/12	Inhouse Copies	1207	\$120.70
09/30/12	Postage		\$0.65
09/30/12	Prints	361	\$36.10
09/30/12	Long Distance Telephone		\$6.20

Total disbursements for this matter

\$761.08

TIMEKEEPER SUMMARY

Jr., Joel W. Collins	SENIOR SHAREHOLDER	112.50 hrs	300.00 /hr	\$33,750.00
McKellar, L. Henry	OF COUNSEL	2.00 hrs	300.00 /hr	\$600.00
Floyd, Lee	SENIOR ASSOCIATE	175.30 hrs	175.00 /hr	\$30,677.50
Baker, Vickie L.	SENIOR PARALEGAL	47.90 hrs	135.00 /hr	\$6,466.50
Nelson, M. Larry	SENIOR PARALEGAL	0.20 hrs	135.00 /hr	\$27.00

TOTAL FEES

\$71,521.00

TOTAL DISBURSEMENTS

\$761.08

TOTAL AMOUNT OF CURRENT BILL

\$72,282.08

PREVIOUS BALANCE BROUGHT FORWARD

\$18,898.25

TOTAL CHARGES FOR THIS BILL

\$91,180.33

Please remit all payments to the following address:

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

PLEASE REFERENCE OUR 16 DIGIT BILL NUMBER LOCATED AT THE TOP OF THIS BILL.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
FIRST SOUTH BANK,	)	CIVIL ACTION NUMBER:
	)	2010-CP-22-01233
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF FIRST SOUTH BANK'S
	)	OPPOSITION TO DEFENDANT'S POST-
SOUTH CAUSEWAY, LLC,	)	TRIAL MOTIONS
	)	
Defendant.	)	

FILED
GEORGETOWN COUNTY, S.C.
2010 OCT 23 PM 4:38
ALMA Y. WHITE
CLERK OF COURT

Plaintiff First South Bank ("First South") herein opposes Defendant South Causeway, LLC's ("South Causeway") Post-Trial Motions. South Causeway has moved for judgment notwithstanding the verdict ("JNOV") or for a new trial on its counterclaims and for an amendment of this Court's judgment on First South's foreclosure claim. First South submits this Memorandum in response to South Causeway's post-trial motions.

I. South Causeway's Motion for Judgment Notwithstanding the Verdict¹ should be denied as the evidence supports the jury's unanimous verdict for First South on each counterclaim.

South Causeway has moved for JNOV on the three counterclaims that the jury unanimously decided in favor of First South: breach of contract, tortious interference with contract, and violation of the South Carolina Unfair Trade Practices Act. In considering a motion for JNOV, the Court must view the evidence in the light most favorable to First South and draw all reasonable inferences in its favor. Strange v. S.C. Dep't of Highways & Public Transp., 314 S.C. 427, 445 S.E.2d 439 (1994). A motion for JNOV must be denied if "either the evidence yields more than one inference or its inference is in doubt." Id.

¹ First South objects and reserves its right to object to the consideration of any arguments presented in South Causeway's Post-Trial Motion that were not raised in its motion for directed verdict at trial. For purposes of this response, First South addresses the substance of South Causeway's arguments as none support granting South Causeway's post-trial motions.

A. The evidence at trial supports the jury's unanimous verdict that First South did not breach any contract with South Causeway and should be upheld.

- 1. The evidence supports the jury's finding that First South did not have an obligation to make a subsequent advance of \$550,000 into the interest reserve account after the initial closing in June 2008.**

The Commitment Letter provides for the deposit of an additional \$550,000 of proceeds into the interest reserve account "upon the earlier to occur of completion of the Infrastructure and six (6) months from the date of Loan Closing." Pl.'s Trial Ex. 1, p. 2, ¶ F (a copy of the portions referred to herein is attached hereto). South Causeway has asserted that the foregoing provision is ambiguous as to the funding date, that the jury had to construe this ambiguity against First South, and if construed against First South Bank then the jury could have only concluded that First South breached the loan agreement. This argument ignores the other language encompassed within the parties' agreement and the evidence of the parties' intent introduced at trial. When viewed as a whole, the evidence clearly permitted a reasonable interpretation of the entire agreement between the parties which supports the jury's unanimous verdict.

The Loan Agreement provides that it governs over any provision of the Commitment Letter. Pl.'s Trial Ex. 2, p. 18, §9.10 (a copy of the portions referred to herein is attached hereto). The Loan Agreement divides the funding between an initial advance at closing and subsequent advances that will only take place upon the completion of certain events. See id. at p. 3, §4.1, p. 6, §4.2, & pp. 7-8, §4.4. Part of the initial advance included funding \$300,000.00 into the interest reserve account, which took place at closing and is undisputed. Id. at p. 7, §4.4. The \$550,000 referenced in the Commitment Letter was not part of the initial advance and was not part of the Loan Agreement. As a subsequent advance, this additional funding was not required by the Loan Agreement. Even if required, any such advance was subject to the conditions precedent applicable to other subsequent advances. "Advances subsequent to the Initial Advance

shall be made from time to time as construction of the Improvements progresses, but not more frequently than once each month, in a sum equal to (a) the total expenditures incurred by the Borrower and approved by the Bank for fees and costs incurred in connection with the Loan, funding the Interest Reserve Account . . . through the end of the period covered by the Request for Advance . . . subject, in each case, however, to the further provisions of this Article IV.” Id. p.8, §4.4. Section 4.2 of the Loan Agreement (contained within Article IV), sets forth a list of conditions precedent that must be satisfied prior to “each subsequent advance.” Id. p. 6, §4.2. South Causeway offered no evidence that the conditions contained in section 4.2 were satisfied. In fact, the evidence clearly showed that South Causeway did not meet the conditions precedent and abandoned developing the property. The unrefuted evidence is that South Causeway abandoned its initial plan to develop the property. Def.’s Trial Ex. 13 (a copy is attached hereto) Therefore, the evidence supports finding First South never had a duty to make any subsequent advance of the \$550,000 into the interest reserve account.

Witnesses also testified to the interpretation and intent of the \$550,000 funding referenced in the Loan Commitment. Consistent with the terms of the Loan Agreement, testimony, including that of South Causeway’s own expert, provided that the advancement of \$550,000 into the interest reserve account was contingent on South Causeway achieving certain milestones associated with construction upon the property. As South Causeway never met those milestones and informed First South it was abandoning its plan to develop the property, the evidence clearly supports the jury’s finding that First South had no duty to deposit an additional \$550,000 into the interest reserve account. Id.

The Release contained in the April 10, 2009 Agreement between the parties further supports the jury’s unanimous verdict that First South did not breach the contract. This release is

additional grounds to deny South Causeway's motion for JNOV. First South's alleged failure to fund the interest reserve account with an additional \$550,000 would have occurred prior to April 10, 2009. The Agreement entered into on April 10, 2009, broadly released First South from any claim that arose prior to April 10, 2009. Pl.'s Trial Ex. 11, pp. 2-3, ¶3 (a copy of the portions referred to herein is attached hereto). The release barred South Causeway's claim for breach of contract on this basis.

2. The evidence supports the jury's finding that First South did not breach the contract based on any alleged "Termination" of the Loan.

South Causeway also seeks JNOV on its breach of contract claim on the ground that First South "terminated" the loan "by reducing the amount of available principal." Witnesses, such as Wayne Lovelace, testified that the loan was not terminated. There was evidence clearly showing that South Causeway abandoned its construction plans. Def.'s Trial Exhibit 13 ("About two weeks ago we decided with the economy as it we would like to sell it" "If you want or need to do away with the construction part of the loan that is fine") Once South Causeway abandoned its plan to develop the property, First South was under no obligation to make any "subsequent advances." The Loan Agreement provides that South Causeway's abandonment of construction with the intent not to resume for a period of 5 consecutive days was an event of default and terminated any further funding obligation of First South. Pl.'s Trial Ex. 2, p. 13 §7.1 & p. 15, §§7.1(13) & 7.2. The Release would also bar the breach of contract claim on this basis as any purported termination of the loan took place before April 10, 2009.

3. The evidence supports the jury's finding that First South did not breach the implied covenant of good faith and fair dealing.

South Causeway also seeks JNOV on the jury's unanimous finding that First South fulfilled the implied covenant of good faith and fair dealing. South Causeway bases its motion on

First South's disclosure of information to Vintage Estates Realty, LLC ("the auction company") and Lincoln Harris, a Charlotte based development company. With regard to the disclosure to the auction company, there was expert testimony that the information should have been disclosed to the auction company. With regard to the disclosure to Lincoln Harris, testimony was offered that First South had the right to sell the loan and would need to disclose the information it provided to Lincoln Harris in order to exercise that right. Therefore, the evidence easily supports the finding that First South did not breach the covenant of good faith and fair dealing.

Further, to prevail on its breach of contract claim South Causeway had to prove by a preponderance of the evidence that it sustained some damage due to the alleged breach. Branche Builders, Inc. v. Coggins, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). The possibility of damages alone is not enough. The evidence at trial supported a finding that South Causeway did not sustain any damages due to First South's disclosure to either the auction company or to Lincoln Harris. This alone is sufficient to uphold the jury's unanimous verdict in favor of First South and deny South Causeway's Motion for JNOV.

B. The evidence at trial supports the jury's unanimous verdict that First South did not tortiously interfere with the contract between South Causeway and the auction company.

To prevail on its claim for tortious interference with contract South Causeway had to prove, among other elements, that there was an intentional procurement of a breach, absence of justification, and resulting damages. DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293 (1981). Testimony of the representative of the auction company supported finding that the auction company did not breach its contract with South Causeway (in fact, no evidence was presented that the auction company breached the contract). The evidence at trial also supported finding that First South was justified in disclosing the information, as the auction company needed the

information in order to effectively conduct the auction. Further, evidence was presented that South Causeway was not damaged, as no one entered any bid at the auction at any price. Viewing the evidence in a light most favorable to First South, South Causeway is not entitled to JNOV, and therefore its motion must be denied.

C. The evidence supports the jury's unanimous finding in favor of First South on the action for violation of the South Carolina Unfair Trade Practices Act.

South Causeway has also moved for JNOV on the jury's unanimous verdict that First South did not violate the South Carolina Unfair Trade Practices Act ("UTPA") when First South disclosed information to the auction company and to Lincoln Harris. The testimony supported a finding that the auction company needed the information provided by First South to effectively conduct the auction. Therefore, the evidence supports a finding that the disclosure was not an unfair or deceptive act and supports the jury's unanimous verdict. As noted above, there was evidence that South Causeway did not sustain any damage due to the disclosure of any information, and therefore, South Causeway could not prevail on its UTPA claim. See Fields v. Yarborough Ford, Inc., 307 S.C. 207 210 S.E.2d 166 (1992) (holding a plaintiff could not prevail on a UTPA claim where there was no evidence of damages due to a violation of the UTPA).

As to the disclosure to Lincoln Harris, the evidence at trial supported the jury's unanimous verdict in favor of First South on the UTPA claim. Testimony established that banks sell troubled loans during the normal course of business. To sell loans, banks must disclose information of the type that First South disclosed to Lincoln Harris. The evidence also established that this case involved a transaction that presented a unique set of circumstances, negating the potential for repetition or the potential impact on the public interest. The evidence, including the testimony of South Causeway's expert, supported finding that the disclosure to Lincoln Harris did not cause any actual damages to South Causeway. Instead, the testimony

supported finding any loss in value of the property was caused by the downturn of the economy during this time period. The jury was free to reject South Causeway's claim of damages of \$8 million (the difference between Lincoln Harris's first offer and their last offer) as total speculation or not caused by any act of First South. Each of these grounds is sufficient to support the jury's unanimous verdict in favor of First South and require denying South Causeway's Post-Trial Motion for JNOV.

II. South Causeway's Motion for a New Trial should be denied as the facts support the jury's unanimous verdict and finding that justice was done.

South Causeway has also moved for a new trial on each of the claims discussed above based on the "thirteenth juror doctrine." A new trial is only appropriate when the judge "finds the evidence does not justify the verdict." Lane v. Gilbert Constr. Co., LTD., 383 S.C. 590, 681 S.E.2d 879 (2009). A decision under the thirteenth juror doctrine is premised on a trial judge's "duty of seeing that justice is done" and requires the trial judge to be "*convinced* that a new trial is *necessitated* on the basis of the facts in the case." Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996) (emphasis added). Here the evidence supports the jury's findings and justice was done, and therefore, this Court should decline the invitation to overturn the verdict under the thirteenth juror doctrine.

As discussed above, the evidence supports the jury's unanimous verdict in favor of First South on each of the causes of action. South Causeway's reliance on the testimony of Ms. Peggy Wheeler-Cribb in support of its Motion for a New Trial does not warrant invading the province of the jury as the finder of fact on these claims. There was conflicting testimony and evidence on the issues presented. The jury was free to find that Ms. Wheeler-Cribb was not credible and to not accept all or part of her testimony. Resolving disputes over the conflicting versions of the facts and the correct inferences to draw from those facts falls squarely within the jury's role as

finder of fact. Therefore, the verdict is justified and this Court should deny South Causeway's Motion for a new trial on any of South Causeway's claims.

South Causeway also requests this Court to reconsider its rulings directing verdicts in favor of First South on the counterclaims for fraud, breach of fiduciary duty, and breach of contract accompanied by fraudulent action. First South reincorporates its arguments at trial and requests that the Court deny South Causeway's request for a new trial on these claims.

III. This Court Should Deny South Causeway's Motion to Have It Amend Its Judgment on First South's Foreclosure Claim.

South Causeway has also requested that the Court reconsider its decision on First South's foreclosure claim, pursuant to Rule 59, SCRPC.² South Causeway disputes the following findings by this Court: (a) South Causeway was not under duress, and (b) First South established the debt owed on the loan. This Motion should be denied.

A. The Court correctly found that South Causeway did not establish its affirmative defense of Duress.

South Causeway asserts that it was under duress when it signed the original loan documents and when it signed the April 10, 2009 Agreement. South Carolina law requires evidence establishing "a condition of mind produced by improper external pressure or influence that practically destroys the free agency of a party and causes him to do an act or form a contract not of his own volition." Phillips v. Baker, 284 S.C. 134, 136, 325 S.E.2d 533 (1985) (quoting Cherry v. Shelby Mut. Plate Glass & Cas. Co., 191 S.C. 177, 4 S.E.2d 123 (1939)). This Court correctly found no duress and should not alter its judgment.

² While First South opposes any amendment to the judgment, if the Court should determine that an amendment would be appropriate, First South would respectfully request that the Court permit the parties to present additional testimony and evidence on the specific aspect of the Court's judgment to be amended, pursuant to Rule 59(a), SCRPC.

South Causeway bases its request that this Court alter its judgment on the testimony of Ms. Wheeler-Cribb, which was contradicted and uncorroborated at trial, and its claim that she “is an elderly woman.” However, sitting as the finder of fact, this Court was free to give little or no weight to Ms. Wheeler-Cribb’s testimony. Her testimony was discredited and totally uncorroborated. South Causeway’s claim of duress was unfounded. Ms. Wheeler-Cribb previously signed an affidavit, which was submitted to the Court to avoid summary judgment, which set forth the alleged duress. Aff. of Peggy Wheeler-Cribb, Pl.’s Trial Ex. 20 (a copy is attached hereto). In paragraph 16 of her affidavit, Ms. Wheeler-Cribb addressed the original loan closing:

16. During the closing on June 25, 2008, my son and I discovered that Lovelace had not corrected the Note, and that in order to close, my son had to agree to mortgage his individual property as security for the loan. At that point, we felt that we had no other choice since the First Palmetto loan was coming due, and Lovelace assured us that First South Bank would see the development through its conclusion. Reluctantly, we agreed to close.

At trial, Ms. Cribb was confronted with correspondence, parts of which she authored, which established that First South clearly explained to her well before the closing that it would require Lot 4, owned by her son, to be additional collateral. It became clear that her affidavit was not true. See Pl.’s Trial Ex. 24 (a copy is attached hereto).

Presumably because Ms. Wheeler-Cribb’s statement in her affidavit was shown to be false, she now claims that “she felt she was forced by Wayne Lovelace to move forward with the closing of the loan despite her request to postpone the closing.” This claim ignores the fact she was represented by counsel and had no obligation to move forward with the closing. There was no evidence that South Causeway would have lost any deposit, as none existed. Ms. Wheeler-

Cribb's loan with First Palmetto Bank was not due for another two months. Ms. Wheeler-Cribb and South Causeway's Counsel executed letters confirming the closing was performed properly. See Pl.'s Trial Ex. 9 at p. 3 ¶7 & Ex. 10 (copies are attached hereto). This alone is sufficient to support this Court's finding that there was no duress and to deny South Causeway's Motion to Amend the Judgment on this ground.

Paragraphs 21 and 22 of Ms. Cribb's Affidavit relate to the April 10, 2009 Agreement:

21. Lovelace agreed to release the lot owned by my son, but to do so, we had to pay First South Bank \$300,000. In addition, Kennedy Funding required a \$50,000 non-refundable deposit.

22. At closing, after the \$50,000 had been paid, *we discovered* that in addition to the \$300,000 payment, First South Bank was taking back a year from the South Causeway, LLC Promissory Note and demanding an acceleration of the maturity date. The Bank demanded a new maturity date of July 5, 2010. I was taken completely off-guard, and if I refused to close on the loan, I would be forced to forfeit the \$50,000 deposit. Additionally, if I did not close, the lot would remain subject to First South Bank's mortgage, preventing us from closing with Kennedy Funding. Faced with no other option, I executed the closing document; I would have never voluntarily signed the purported loan agreement, but felt I had no reasonable alternative.

(emphasis added) Emails offered at trial make it clear that First South clearly informed Ms. Wheeler-Cribb long before the April 10 closing that the maturity date would be shortened and that Ms. Wheeler-Cribb chose the proposal that resulted in the shortened maturity date. Pl.'s Trial Exs. 18, 19, & 27 (copies are attached hereto). Therefore, to the extent that South Causeway's duress argument is based on Ms. Cribb's testimony, South Causeway failed to establish a basis to support duress and the Court's should not amend its judgment on duress.

South Causeway's assertion that Ms. Wheeler-Cribb's elderly age contributed to the purported duress is also insufficient to justify amending this Court's judgment. The evidence

showed that Ms. Wheeler-Cribb served on a bank board and that that South Causeway was represented by counsel at both closings. Cox & Floyd Grading, Inc., v. Kajima Constr. Servs., Inc., 356 S.C. 512, 589 S.E.2d 789 (Ct. App. 2003)(finding a party represented by an attorney in the execution of documents was bound by terms therein); Hyman v. Ford Motor Co., 142 F. Supp. 2d 735 (D.S.C. 2001)(finding that a duress argument is substantially undermined where a party was represented by counsel). Duress is not implied merely from a hard bargain which required that a release be given in adverse business conditions. Id. The party claiming duress must also establish the lack of a reasonable alternative to signing the contract and those circumstances were caused by the opposing party. Id. at 746. As this Court noted at trial, South Causeway had every right to not sign the loan agreement or the subsequent agreement. Therefore, this Court should deny South Causeway's motion to amend the judgment as the evidence at trial does not support the affirmative defense of duress.

B. First South offered sufficient evidence of its damages to support this Court's Judgment as to the proof of the debt owed by South Causeway.

In First South's case-in-chief, its custodian of records took the stand and testified to the contents of the loan documents and those documents were entered into evidence. These documents included a June 11, 2012 payoff statement. Pl.'s Trial Ex. 13 (a copy is attached hereto). Counsel for South Causeway cross-examined the custodian of records regarding how the numbers in the payoff statement were derived. The custodian of records testified the figures were the product of First South's computer system. South Causeway did not object to the payoff statement and has not otherwise offered evidence that the numbers reflected on the payoff statement were incorrect. Instead, South Causeway is asking the Court to amend its Judgment that First South established its damages based on its argument that First South did not offer

testimony as to how the computer system operated and how the system precisely calculated the interest and principal amounts.

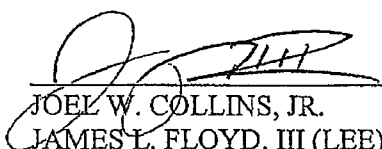
The business records rules were put in place because business records are trustworthy and “it was utter[ly] impossible . . . that any man could keep in his memory, even with the aid of memoranda, the minute, varied and complicated transactions of even an ordinary mercantile or other trading concern, hence the necessity of substituting the book entries for the memory of the witness.” Thyer v. Deen, 20 S.C.L. (2 Hill) 677, 678 (1835). The payoff statement is presumed trustworthy as a business record and it was admitted into evidence without objection from South Causeway. By allowing the payoff statement to be admitted into evidence without objection, South Causeway waived any right to later question the fact First South failed to offer technical testimony regarding the underlying computer methodology that was used to determine the payoff figures. This Court found the payoff statement credible based on the evidence at trial and that conclusion should not be amended.

At best, South Causeway’s challenge is to the ultimate amount reached, not to whether there was sufficient evidence of the payoff amount to support First South’s foreclosure action. This argument goes to the weight of the evidence, and South Causeway offered no evidence or testimony showing the computer system was untrustworthy or that the amounts reflected on the payoff were incorrect. The bank’s president, Mr. W.C. “Chip” Lyerly, III, testified to the calculation of the daily per diem and the fact that referenced interest rates had not changed since the loan matured for payment. Therefore, South Causeway’s motion to amend the judgment as to its finding that First South established its damages should be denied.

Conclusion

For the foregoing reasons, this Honorable Court should deny South Causeway's Post-Trial Motions and uphold the jury's unanimous verdict and this Court's judgment in favor of First South.

Respectfully submitted,
COLLINS & LACY, P.C.

By: 

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FIRST SOUTH BANK

Columbia, South Carolina

October 19, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

FIRST SOUTH BANK,)

Plaintiff,)

vs.)

SOUTH CAUSEWAY, LLC,)

Defendant.)

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER:

2010-CP-22-01233

CERTIFICATE OF SERVICE

The undersigned employee of Collins & Lacy, P.C., Attorneys at Law, 1330 Lady Street, Sixth Floor, Post Office Box 12487, Columbia, South Carolina, 29211, does hereby certify that the following named individual(s) were served with a copy of the pleading(s) indicated below by U.S. Mail and E-Mail:

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-AND-

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PLEADING: PLAINTIFF FIRST SOUTH BANK'S OPPOSITION TO DEFENDANT'S
POST-TRIAL MOTIONS

Shawn S. Wingo

Columbia, South Carolina

October 19, 2012

FILED
GEORGETOWN COUNTY, S.C.
2012 OCT 23 PM 4:38
ALMA Y. WHITE
CLERK OF COURT



May 30, 2008

Ms. Peggy Wheeler-Cribb
Mr. Wil Darwin Wheeler
Post Office Box 3727
Pawleys Island, South Carolina 29585

Dear Peggy and Darwin:

This letter constitutes the commitment of First South Bank (the "Bank"), in reliance upon the financial information provided by you, to make a loan (the "Loan") in principal amount not to exceed \$6,500,000.00, to an entity (herein referred to as the "Borrower") to be formed by the two of you and of which you will be the sole owners and principals, under the terms and conditions generally described below. The terms and conditions contained in this letter are not intended to be exhaustive. Final documentation of, with respect to and supporting the Loan will require approval of the Bank and its counsel.

Borrower: An entity formed under the laws of and resident in South Carolina, by and having as its principals, Peggy Wheeler-Cribb and Wil Darwin Wheeler, the organizational and constituent documents of which shall be reasonably acceptable in form and substance to Bank and its counsel.

Principal Amount of Loan: \$6,500,000.00 (maximum), the proceeds of which shall be advanced and used solely in the amounts and for the purposes set forth in the Loan Purpose section of this letter.

Term: Thirty Six (36) months the first eight (8) months of which (the "Construction Period") shall be for construction of the Infrastructure (hereafter defined).

Loan Interest Rate: The interest rate on the principal balance of the Loan outstanding shall be a floating rate equal to Wall Street Journal Prime Rate as determined by Bank (the "Prime Rate") plus one hundred basis points (1.0%), changing concurrently with each change in the Prime Rate. The interest rate will be computed on the basis of a 360 day year and on the actual number of days elapsed in each period of interest.



1333 Main Street ■ Suite 100 ■ Columbia, South Carolina 29201 ■ (803) 343-3436 ■ Fax (803) 343-3477

FSB-SC 02059

Ms. Peggy Wheeler-Cribb
Mr. Wil Darwin Wheeler
May 30, 2008
Page 2

In the event of a default or event of default, the Interest rate shall immediately change to the "Default Rate". The Default Rate shall be the rate which is 4% per annum above the rate otherwise payable. Documentation of the Loan shall also require in the event any monthly payment due upon the Loan is not received within ten (10) days of the date due, a late charge of five (5%) percent of the payment due shall be added to the payment due.

Loan Purpose: The proceeds of the Loan shall be used solely to:

A. Up to \$3,600,000.00 of the proceeds shall be disbursed at closing to satisfy existing indebtedness encumbering undeveloped real property (the "Project Property") owned by Peggy Wheeler-Cribb and Wil Darwin Wheeler (fee simple title to which Project Property shall be conveyed to the Borrower on or prior to closing of the Loan) consisting of two tracts located at the intersection of South Causeway Road and Highway 17 South in Georgetown County, South Carolina, the first having TMS Nos. 04-164-30 and 04-169-1 and containing approximately 17.54 acres and the second having TMS No. 04-169-03 and containing approximately 1.68 acres, comprising a total approximately 19.22 acres.

B. Up to \$550,000.00 of the proceeds shall be disbursed at closing to satisfy existing indebtedness (owed to Bank and after application by Bank upon such indebtedness of funds on deposit with Bank as an interest reserve for said existing indebtedness) encumbering the real property and improvements (the "Beach Property") owned by Peggy Wheeler-Cribb and Wil Darwin Wheeler, having an address of 334 Myrtle Avenue, Pawleys Island, Georgetown County, South Carolina, having TMS No. 42-1670-42.3 and designated as Lot 4 on a plat prepared by The Earthworks Group dated July 9, 2006.

C. Up to \$100,000.00 of the proceeds shall be disbursed at closing to pay costs associated with closing of the Loan, approved by Bank.

D. \$300,000.00 of the proceeds shall be disbursed at closing into a restricted access demand deposit account (the "Interest Reserve Account") maintained with Bank, funds from which shall be disbursed by Bank monthly to make required interest payments due by Borrower upon the Loan.

E. Disbursement of funds for the categories set forth in A through D above shall not exceed the sums set forth with respect to the respective categories without written approval of the Bank. If less than \$4,550,000.00 is disbursed at closing of the Loan, the difference between \$4,550,000.00 and the amount disbursed shall not be advanced at closing of the Loan, but shall be held as an undisbursed contingency reserve and advanced for only such purposes as shall be expressly approved by Bank in writing.

F. An additional \$550,000.00 of the proceeds of the Loan shall be disbursed by Bank into the Account to fund monthly interest payments due upon the Loan upon the earlier to occur of completion of the Infrastructure and six (6) months from the date of Loan closing.

FSB-SC 02060

LOAN AGREEMENT

This Loan Agreement (this "Agreement") dated June 25th, 2008, made by and between FIRST SOUTH BANK, ("Bank"), and SOUTH CAUSEWAY, LLC, a South Carolina limited liability company ("Borrower").

WITNESSETH:

That for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual promises herein made, Bank and Borrower, intending to be legally bound, agree as follows:

ARTICLE I - THE LOAN

Section 1.1. Bank hereby agrees to lend up to the principal sum of Six Million Five hundred Thousand and No/100 (\$6,500,000.00) Dollars (the "Loan") the amount of which Loan or such part thereof as shall be made, shall be advanced to Borrower in installments ("Advances") within Bank's reasonable discretion, as and for the purposes hereinafter provided. Borrower's obligations to repay the Loan and the interest thereon shall be evidenced by a Promissory Note (the "Note") in form and substance satisfactory to Bank.

Section 1.2. Borrower agrees to pay interest on the Loan at the rate(s), on the date(s), and calculated by the method, set forth in the Note. Interest shall be calculated on the basis of a three hundred sixty (360) day year.

Section 1.3. Borrower shall make to Bank such payments of principal and interest on the Loan as are required by the terms of the Note.

Section 1.4. Borrower may prepay the Loan in whole or in part as provided in the Note. Any prepayment upon the Loan may not be re-borrowed and will be applied to payment installments due in their inverse order of maturity.

ARTICLE II - COLLATERAL

Section 2.1. The repayment by Borrower of its indebtedness under the Loan and the Note, and the performance by Borrower of all obligations under this Agreement, shall be secured by every mortgage, every security agreement, every assignment and every agreement (collectively the "Security Documents" and individually each a "Security Document") which secures or guarantees payment and/or performance of obligations so defined as to include the Loan or the Note, and by all property of Borrower in, or coming into, the possession, control or custody of Bank, or in which Bank has or hereafter acquires a lien, security interest, or other right (individually and collectively the "Collateral") including, without limitation, the following:

- (1) Security Documents listed in Schedule 1.

PLAINTIFF'S
EXHIBIT

2

Section 3.7. The obligations of Borrower under this Agreement, the Note and each of the Security Documents are not subordinated in right of payment to any other obligation of Borrower.

Section 3.8. Borrower possesses all permits, contracts, licenses, trademark rights, trade names, patents, and other authorizations necessary to enable it to conduct its business operations as now conducted, and no filing with, and no consent, permission, authorization, order or license of, any individual, entity, or governmental authority is necessary in connection with the execution, delivery, performance or enforcement of this Agreement or the Note.

Section 3.9. No event has occurred and is continuing which is, or which with the giving of notice or lapse of time or both would be an Event of Default (as hereafter defined) of this Agreement.

Section 3.10. Borrower has good and marketable title to all of its properties and assets including, without limitation, the Collateral and the properties and assets reflected in the above-described financial statements of Borrower.

Section 3.11. The minimum funding standards of Section 302 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") have been met at all times with respect to all "plans" (if any) of Borrower to which such standards apply; Borrower has not made a "partial withdrawal" or a "complete withdrawal" from any "multiemployer plan"; and no "reportable event" or "prohibited transaction" has occurred with respect to any such "plan" (as all of the quoted terms are defined in ERISA).

Section 3.12. Except as otherwise expressly disclosed by Borrower to Bank in writing on or before the date of this Agreement: No "hazardous substance" (as that term is defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA")) has been released, discharged, disposed of, or stored on any of Borrower's owned or leased real or personal property by Borrower, or to Borrower's knowledge after due inquiry by any third party or by any predecessor in interest or title to Borrower; Borrower and all of Borrower's properties are in compliance with all applicable local, state and federal environmental laws and regulations relating to the environment; no notice has been served on Borrower by any Governmental Authority or by any individual or entity claiming violation of any environmental protection law or regulation, or demanding compliance with any environmental protection law or regulation, or demanding payment, indemnity, or contribution for any environmental damage or injury to natural resources; no "hazardous substance" (as defined in CERCLA) is produced or used in Borrower's business; and no improvement on any real property owned or leased by Borrower contains to Borrower's knowledge after inquiry any asbestos, including, without limitation, asbestos insulation on ceilings, piping or structural members or supports.

ARTICLE IV - CONDITIONS PRECEDENT TO AND USE OF ADVANCES

The obligation of Bank to make the Loan and Advances thereunder is subject to compliance by Borrower with all of the conditions set forth in the Commitment (hereafter defined), and with the following conditions precedent:

Section 4.1. Bank shall have received on or prior to the date of the first Advance upon the Loan (the "Initial Advance") hereunder:

- (d) A certificate of the Member of Borrower as to the incumbency of the Member of Borrower who will sign this Agreement, the Note, the Security Documents, and requests for Advances upon the Loan, and to the effect that no amendment or modification to its Articles of Organization, Operating Agreement (written or oral, as the case may be) or registration in South Carolina have occurred since the date the same were certified as aforesaid.

(13) An opinion of counsel in form and substance satisfactory to counsel for Bank as to such matters as Bank may reasonably request.

Section 4.2. In addition to the foregoing it shall be a condition precedent of each subsequent Advance that:

(1) Borrower shall have provided to Bank an executed counterpart of Borrower's contract with Borrower's architect and/or engineer (in either case the "Engineer") the assignment whereof having been acknowledged by the Engineer, in order to assure Bank of the continued performance of the Engineer without any cost increases which result solely by reason of Bank or its designee taking possession of the Project Property or taking over the construction of the Improvements and of the general construction contract (the "Construction Contract") with the general or prime contractor (the "Contractor") for construction and installation of the Improvements, the fixed price amount or guaranteed maximum amount of which (as the case may be) shall not exceed One Million Four Hundred Thousand and No/100ths (\$1,400,000.00) Dollars.

(2) Borrower shall have provided to Bank the executed Construction Contract Assignment (defined in Schedule 1) acknowledged by the Contractor, assuring Bank of the continued performance of the Contractor without any cost increases which result solely by reason of Bank or its designee taking possession of the Project Property or taking over the construction of the Improvements. The Construction Contract shall provide for retainage from each draw request of Ten (10.0%) percent prior to completion of the Improvements (the "Retainage").

(3) Borrower shall have provided to Bank labor and materials payment bond and performance bond issued by surety acceptable to Bank, naming Contractor as obligor in the full amount of the Construction Contract, in form and substance acceptable to Bank, together with dual-obligee rider(s) thereto naming Borrower as obligee and Bank as co-obligee (collectively the "Bonds").

(4) Borrower shall have provided to Bank a set of the final plans and specifications (the "Plans") for the construction and installation of the roads, drives, parking areas, exterior free-standing lighting and utilities (and installation thereof) and other infrastructure improvements for and to service the retail shopping areas of the Project the costs of which are to be defrayed with proceeds of the Loan (the "Improvements") (including, without limitation, a site plan showing the proposed locations thereof) signed as approved by the Engineer, the Contractor and the Borrower.

(5) Borrower shall have provided to Bank a breakdown by cost category of Project Costs (hereafter defined, which shall thereupon be attached hereto as Exhibit 1).

(6) All required permits, licenses and approvals of Governmental Authorities necessary to construct and use the Improvements (except those which are normally obtained during

the course of construction or which are not available until completion of construction of the Improvements, and, as to each such permit, license or approval, as soon as the same is reasonably obtainable or required) have been issued.

(7) The representations and warranties of Borrower in Article III shall be true and correct on and as of the date of each Advance with the same force and effect as if made on such date, and no Event of Default nor any event which, with notice or the lapse of time or both, would constitute an Event of Default, shall have occurred.

(8) As of the date of each Advance, the Improvements (constructed and under construction) shall not have been materially damaged or destroyed by casualty, unless there shall have been deposited with Bank monies in an amount sufficient in the judgment of Bank to permit restoration of the Improvements so damaged or destroyed in accordance with the Plans.

(9) Neither Bank nor Borrower shall have received notice that any of the Construction Contract, the Bonds, or all required licences and permits, is not in full force and effect.

(10) Borrower shall have furnished to Bank the Request for Advance (hereafter defined) and where required, the contractor's certificate and the other certificates and material referred to in Section 4.4.

(11) If requested by Bank Borrower shall furnish to Bank an additional opinion of counsel in form and substance satisfactory to Bank as to such additional matters as Bank may reasonably request.

(12) If requested by Bank or required by the Title Insurer Borrower shall cause to be furnished an endorsement to the Title Policy or other instrument signed by the Title Insurer indicating that since the date of the Title Policy, there has been no change in the state of title, which endorsement or instrument shall have the effect of changing the effective date of the Title Policy to the date of such Advance.

(13) Insurance as required hereunder and in the Security Documents shall continue in full force and effect.

(14) Sufficient undisbursed funds remain in the Loan and in each cost category with respect to which the Advance is sought, to fully fund the Advance sought.

Section 4.3. In addition to the foregoing it shall be a condition precedent with respect to the Final Advance that the Bank shall have received:

(1) Evidence acceptable to Bank that the Improvements have been fully completed.

(2) All requirements and conditions for the Final Advance must be satisfied in full in order for the Final Advance to be made not later than March 1, 2009 (the "Completion Date").

Section 4.4. Subject to the terms of this Agreement, Bank shall make Advances to Borrower on account of the Loan in an aggregate principal amount of up to, but not more than, \$6,500,000.00. The Initial Advance shall be made upon accomplishment as determined by Bank with the conditions precedent set forth in Section 4.1 hereof, and shall be used for the purposes of

satisfying existing indebtedness encumbering the Project Property and the Beach Property (i.e., the Mortgaged Property), funding Three Hundred Thousand and No/100ths (\$300,000.00) Dollars into a restricted access (limited to Bank only until the Loan has been repaid and satisfied in full) demand deposit account (the "Interest Reserve Account") of Borrower maintained by and with Bank to be used to make monthly interest payments due upon the Loan, and paying costs of closing and otherwise incurred in connection with the Loan, as approved by Bank. Except for the Final Advance (hereafter defined), Advances subsequent to the Initial Advance shall be made from time to time as construction of the improvements progresses, but not more frequently than once each month, in a sum equal to (a) the total expenditures incurred by the Borrower and approved by the Bank for fees and costs incurred in connection with the Loan, funding the Interest Reserve Account, the satisfaction of existing indebtedness encumbering the Mortgaged Property, interest payments upon the Loan, and the construction of the improvements (such total expenditures incurred by Borrower being referred to as the "Project Costs") less Retainage, through the end of the period covered by the Request for Advance, less (b) the aggregate amount of all Advances theretofore made on account of the Loan and the amount, if any, by which the Project Costs of any category exceed the amounts allocated thereto, subject, in each case, however, to the further provisions of this Article IV. Anything to the contrary herein notwithstanding Advances for Project Costs shall not exceed the sum of \$6,500,000.00 in the aggregate. After the Initial Advance Advances shall be based upon percentage of completion of the improvements, subject, in each case, however, to the provisions of this Article IV. The Final Advance (the "Final Advance") shall be made only upon completion in full of the improvements and, in applicable cases approval or acceptance for service by appropriate Governmental Authorities. The Final Advance may include, to the extent of funds available, Retainage then due.

Section 4.5.

(1) Not less than seven (7) business days prior to the making of each Advance:

- (a) Borrower shall submit to Bank a request for such Advance in such form as Bank may require (the "Request for Advance") setting forth the total amount for which such Advance is requested broken down by categories, and, if requested by Bank, an Request for Advance shall be accompanied by receipted bills, paid invoices, payroll records or other evidence satisfactory to Bank supporting each item covered by such Request for Advance; or
- (b) In the case of an Request for Advance for or including construction costs, Bank shall have received as to each such Request for Advance a fully completed Application and Certificate for Payment (AIA Document G 702) executed and acknowledged by the Contractor and certified by the Architect.

(2) Prior to the making of any Advance, Bank and its agents shall have the opportunity to verify the facts certified to by Borrower and the Contractor which shall be accomplished as expeditiously as is reasonable under the circumstances. If requested by Bank, Bank shall also have received a report addressed to Bank of a construction engineer or architect designated by Bank (all costs of which shall be borne by Borrower) certifying such matters with respect to manner and quality of construction of the improvements and percentage of completion as Bank may deem reasonably necessary.

transfer or otherwise dispose of all or any substantial portion of its assets, except for cash in the ordinary course of business.

Section 6.4. Guarantee or become contingently liable for any obligation or indebtedness of any other person or entity, except that Borrower may endorse negotiable instruments for collection in the ordinary course of business.

Section 6.5. Make any loans, advances or extensions of credit to any person or entity.

Section 6.6. Pay, declare or disburse any dividend or profit or redeem or purchase any Member's interest in whole or in part, provided, however, that if Borrower has elected partnership or Subchapter S status for income tax purposes Borrower may pay distributions not to exceed the amount of income taxes payable by its Member(s) solely attributable to Borrower's income.

Section 6.7. Grant any lien on or security interest in, or otherwise encumber, any of its properties or assets including, without limitation, the Collateral, and, except for liens for taxes not yet due and payable or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves are being maintained by Borrower, Borrower shall not permit to exist any lien, security interest or other encumbrance (other than easements, such as for utilities, which solely service the Project) on any of its properties or assets.

Section 6.8. Take, or fail to take, any act if such act or failure to act results in the imposition of withdrawal liability under Title IV of ERISA.

Section 6.9. Release, discharge, dispose of, store, accept or receive for storage or disposal, or allow to be stored or disposed of, any "hazardous substance" (as defined in CERCLA) on or in any real or personal property owned or leased by Borrower, except as otherwise expressly consented to by Bank in writing; or release, discharge, use, transport, or dispose of any "hazardous substance" in an unlawful manner.

Section 6.10. Change from the current fiscal year for financial and accounting purposes.

Section 6.11. Change the general character of the presently intended business of Borrower.

ARTICLE VII - EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Any one or more of the following shall constitute an event of default (an "Event of Default") hereunder by Borrower:

- (1) Failure to pay any payment of principal or interest due on the Note or any other sum due hereunder when due; or
- (2) Failure to pay when due any payment of principal or interest due on any other obligation for money borrowed on for the deferred purchase price of goods or services; or
- (3) Default under the Note, any Security Document, any Guaranty or any other document, note, agreement, mortgage, security agreement, instrument, or understanding with, held by, or executed in favor of Bank with respect to the Loan, not cured within the cure period therein granted, if any; or

of the Note or of any Security Document and such proceedings are not discontinued or such order or decree is not vacated within 30 days; or

- (12) Borrower shall neglect, refuse or fail to keep in full force and effect any permit or approval required to be kept in effect by any Governmental Authority in connection with the construction of the Improvements; or
- (13) Borrower shall abandon construction of the Improvements with the intent not to resume construction for a period of 5 consecutive days; or
- (14) The Mortgaged Property or any material part thereof shall be condemned or the Improvements or any material part thereof shall be substantially damaged by fire or other casualty in such manner as to preclude, in Bank's sole judgment, the timely completion of construction of the Improvements in accordance with the Plans on or prior to the Completion Date; or
- (15) A survey at any time shall show an encroachment upon any street, easement, right-of-way or adjoining property or violate any setback requirement, or shall show that any structure on adjoining property encroaches on the Project Property and Borrower does not begin to diligently begin to cure the same within 30 days after Borrower becomes aware of same; or
- (16) Any of the materials used in connection with the construction or operation of the Improvements shall not be in accordance with the Plans.

Section 7.2. Upon the occurrence and continuation of an Event of Default, Bank may (i) terminate all obligations of Bank to Borrower, including, without limitation, all obligations to lend money under this Agreement, (ii) declare immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are expressly waived, the Note and any other note or obligation of Borrower held by Bank, including, without limitation, principal, accrued interest and costs of collection (including, without limitation, attorneys' fee if collected by or through an attorney, in bankruptcy or in other judicial proceedings) and (iii) pursue any remedy available to it under this Agreement, under the Note, under any Security Document, under any other note of Borrower held by Bank, or available at law or in equity.

Bank shall have the further right, upon the happening of any Event of Default, in addition to any rights or remedies available to the foregoing, to enter into and take possession of the Mortgaged Property (and any materials acquired or furnished in connection with the construction of, but not incorporated into, the Improvements) and perform any and all work and labor necessary to complete the Improvements substantially in accordance with the Plans, and employ security personnel to protect the Mortgaged Property (and all materials); and all sums so expended by Bank shall be deemed to have been advanced to Borrower hereunder on account of the Loan. For this purpose, Borrower hereby irrevocably constitutes and appoints Bank its true and lawful attorney-in-fact, coupled with an interest, with full power of substitution (1) to complete, or cause to be completed, the Improvements in the name of Borrower in the manner called for by the Plans; (2) to make such additions and changes to and corrections of the Plans as may be necessary or desirable to complete the Improvements substantially in the manner contemplated by the Plans; (3) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes; (4) to pay, settle or compromise all existing bills and claims which are or may be liens against the Mortgaged Property or any part thereof, or may be necessary or desirable for the completion of the work or the clearance of title; (5) to execute all applications and certificates in the name of Borrower which may be required by any construction or other contract; (6) to prosecute and defend all actions

Section 9.6. All proceedings taken in connection with the transactions provided for herein, including without limitation the surveys, appraisals and documents required or contemplated by this Agreement, the persons responsible for the execution and preparation thereof, all contractors, all sureties, all insurers and the forms of construction contracts, bonds, guaranties and policies of insurance required hereby, shall be satisfactory in form, scope and content to Bank.

Section 9.7. Borrower shall receive Advances hereunder and shall hold the same as a trust fund for the sole purpose of paying the costs for which such Advance was made.

Section 9.8. Nothing in this Agreement, whether express or implied, shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

Section 9.9. Neither this Agreement nor any provision hereof may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

Section 9.10. The terms, conditions and provisions of the Commitment are incorporated herein and made a part hereof by reference. To the extent that any specific inconsistencies exist between the Commitment, and this Agreement, the Note or any of the Security Documents, the provisions of this Agreement, the Note or such Security Document, respectively, shall govern; to the extent that any specific inconsistencies exist between this Agreement, and the Note or any of the Security Documents, the provisions of this Agreement shall govern.

Section 9.11. Notwithstanding anything to the contrary contained in any of this Agreement, the Commitment, the Note or the Security Documents, the obligations of Borrower to Bank under this Agreement, the Note and the Security Documents are subject to the limitation that payments of interest to Bank shall not be required to the extent that receipt of any such payment by Bank would be contrary to provisions of law applicable to Bank which limit the maximum rate of interest which may be charged or collected by Bank.

Section 9.12. This Agreement, the Commitment, the Note and the Security Documents shall be governed by and construed and enforced in accordance with the substantive laws of the United States and the State of South Carolina, without regard to that state's rules governing conflicts of law.

Section 9.13. All representations and warranties contained in this Agreement or made or furnished on behalf of Borrower in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loan and shall continue in effect until the Note and the interest thereon are paid in full.

Section 9.14. This Agreement shall bind and inure to the benefit of Borrower and Bank, and their respective successors and assigns; provided, however, Borrower shall have no right to assign its rights or obligations hereunder to any person or entity.

Section 9.15. Time is of the essence in the payment and performance of every term and covenant of this Agreement, the Note and each of the Security Documents.

Section 9.16. This Agreement may be amended or modified, and Borrower may take any action herein prohibited, or omit to perform any action required to be performed, only if Borrower shall obtain the prior written consent of Bank to such amendment, modification, action or omission to act, and no course of dealing between Borrower and Bank shall operate as a waiver of any right,

From: WheelerCribb@aol.com [mailto:WheelerCribb@aol.com]
Sent: Tuesday, September 30, 2008 10:28 PM
To: Lovelace, Wayne
Cc: wwheeler2@sc.rr.com
Subject: South Causeway, LLC

Wayne, Darwin is in Florida and if we can work through this without going to Columbia we would certainly prefer not to.

Is there anything we aren't doing in compliance with our loan agreement? If so please advise us immediately. When you came and solicited us you knew we had gone through a million in interest with the other loans we had with you. When you came to us you were offering to finance the entire project including interest payments up to March 2010 and said you could find us an insurance company for our permanent financing. We knew and talked about having never done a lease ourselves there would be some muddling through. We sat down with Steve Strickland, Doug Hinds and George Geer and struck a lot of things and they have sent back for us to go through again. We fully expect to work together with Lowe's to get a workable lease. We feel it would be easier to sell the property with a Lowe's lease in place and Lowe's said they had no problem with that.

We have sent a final contract to CVS and Rite Aid has made an offer last week, but we opted to go with CVS.

About two weeks ago we decided with the economy as it we would like to sell it and we have John Drawn with Chicora quietly trying to sell it (We offered to sell it with us keeping two or three out parcels). We don't feel anything will move before the first of the year and it may take until June. If we don't have anything by January we are considering listing it with an auction company to sell at auction in April.

We certainly expect you to honor the interest commitment you have made to us and we may need up to a year to sell and close. We fully expect you to fund our interest to give us time to dispose of this asset. You not only have this asset you have the deed to Darwin's lot.

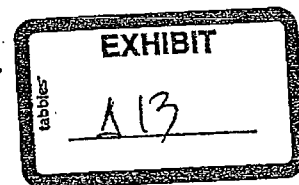
If you want or need to do away with the construction part of the loan that is fine but we fully expect you to honor your commitment you made to us at the restaurant at Pawleys.

We are open to suggestions and if we aren't complying we would appreciate knowing so we can.

I will not be on line tomorrow. Wednesday's I spend the day in town. I have Bible Study from 9:30 to 12:00. Then I have prayer time from 12:00 to 1:00. I will check my phone messages before going to pray. I will be available by phone from 1:00 until 3:30 when I do activities with my special needs students until 6:00.

Thanks, Peggy 

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AGREEMENT

This Agreement (this "Agreement") made and entered into as of the 10th day of April, 2009 (the "Effective Date"), by First South Bank ("Bank") on the one hand, and South Causeway, LLC ("Borrower"), Peggy Wheeler-Cribb and Will Darwin Wheeler (individually each a "Guarantor" and collectively "Guarantors") on the other hand.

PRELIMINARY STATEMENT

HERETOFORE on or about June 25, 2008, Bank made a loan (the "Loan") unto Borrower, a South Carolina limited liability company, in the original principal amount of Six Million Five Hundred Thousand and No/100 (\$6,500,000.00) Dollars pursuant to a Loan Agreement (the "Loan Agreement") dated June 25, 2008 and entered between Bank and Borrower. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement unless the context hereof requires otherwise. Bank has advanced, and there is currently outstanding, Four Million Seven Hundred Sixty-Nine Thousand Seven Hundred Twenty-Five and 23/100ths (\$4,769,725.23) Dollars (the "Outstanding Balance") in principal upon the Loan. The obligation of Borrower to repay the Loan are evidenced by the Note executed by the Borrower. Timely payment and performance of the Note is guaranteed by a Guaranty executed by each Guarantor and dated June 25, 2008. Payment and performance of Borrower's obligations with respect to the Loan are secured in part by a first mortgage lien evidenced by the Borrower Mortgage given by the Guarantor Will Darwin Wheeler and encumbering and comprising a first mortgage lien upon certain unimproved real property (the "Guarantor Parcel") having an address of 334 Myrtle Avenue, Pawleys Island, Georgetown County, South Carolina, having Tris No. 42-1670-42.3 and designated as Lot 4 on a plat prepared by The Earthworks Group dated July 9, 2006. The Borrower Mortgage was recorded in the ROD Office for Georgetown County, South Carolina on June 25, 2008, in Book 990 at Page 265.

Borrower has failed to pay timely 2008 Georgetown County, South Carolina, property taxes (the "2008 Taxes") which were due January 15, 2009, upon the Project Property (encumbered by the Borrower Mortgage), and such 2008 Taxes are currently past due and owing.

Borrower and Guarantors have requested that Bank satisfy and cancel the Guarantor Mortgage and accordingly release the Guarantor Parcel from the Collateral such that Bank will no longer have a lien thereupon. Bank is agreeable to so doing upon the following express conditions and provided that Borrower and Guarantors: (i) release Bank from any, every and all claims which Borrower and each Guarantor might have or consider against Bank, (ii) simultaneously with the satisfaction and release by Bank of the Guarantor Mortgage deliver to Bank the sum of Three Hundred Thousand and No/100ths (\$300,000.00) Dollars which funds shall be disbursed by Bank to pay (a) all costs incurred by Bank, including Bank's attorneys' fees (including, without limitation, Bank's attorneys' fees not heretofore paid), in connection with the Loan and with respect to this Agreement and the preparation hereof (collectively, without limitation, "Bank's Costs"), and (b) the 2008 Taxes (which includes all penalties and interest charged by the taxing authority with respect

Page 1 of 5

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FSB-SC 02052

thereto), and the balance thereof shall be deposited by the Bank into the Interest Reserve Account and disbursed by Bank, together with funds already on deposit therein, to pay interest upon the Note as the same shall accrue and be due and payable, pay Georgetown County, South Carolina, property taxes due for the calendar year 2009 (the "2009 Taxes"), when due, and for such other purposes (including, without limitation, Bank's future attorneys' fees and costs hereafter incurred in connection with the Loan or the modification or recovery thereof) as are described in the Loan Agreement (with any funds remaining therein, if any, to be paid over to the Borrower upon payment and satisfaction of the Note and all Borrower's other obligations with respect to the Loan in full), (iii) acknowledge and agree that Bank shall not, nor shall Bank have any obligation to, make any Advance upon the Loan in excess of the Outstanding Balance, and (iv) agree and acknowledge with Bank the amendment and modification of the Loan Agreement, the Note, the Security Documents and the Guaranties (together with all other instruments, made, given, executed or delivered by Borrower or Guarantors in connection with the Loan the "Loan Documents"), to reduce the term of the Loan such that the Note and all obligations of the Borrower with respect to the Loan shall be due and payable not on July 3, 2011, but on July 5, 2010. Borrower and Guarantors are agreeable to these said terms and conditions imposed by Bank as are hereinabove and hereinafter set forth and accordingly the parties have entered this Agreement.

TEXT OF AGREEMENT AND RELEASE

NOW THEREFORE, for and in consideration of these premises and the mutual promises herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The factual recitals set forth in the Preliminary Statement are hereby incorporated as part hereof, and Borrower and each Guarantor, by execution hereof, hereby confirms the truth and accuracy thereof.
2. The terms and provisions hereof shall be deemed to and shall modify and amend the terms and provisions of the Loan Agreement, the Note, the Security Documents and each of the Guaranties, but shall not otherwise modify or amend the terms of any Loan Documents. Other than as expressly set forth herein each and every term, provision and condition of each and every Loan Document remains in full effect, and as modified and amended hereby, is hereby ratified and affirmed.
3. Borrower and each Guarantor hereby, and by these presents does, on its, his and her behalf, respectively, and on behalf of its, his and her respective legal representatives, heirs, successors and assigns, renounce, release and forever discharge Bank, its successors, assigns, officers, directors, shareholders, employees, attorneys, agents and servants (collectively and individually the "Released Parties"), of and from all, and all manner of action and actions, cause and causes of actions, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespass and trespasses, damage and damages, judgments, extents, executions, claims and claims, and demand and demands, whatsoever,

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both at law and in equity, which against the said Released Parties and any of them, Borrower and each Guarantor ever had, now has or which Borrower, each Guarantor, or its, his or her respective personal representatives, heirs, successors and assigns, hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatever from the beginning of the world up to the day, hour and minute of the execution of these presents, including, without limitation, with respect to the Loan, and any matter or thing whatever arising out of the same, either known or unknown at this time, apparent or not apparent, and both present and future.

4. Bank, Borrower and Guarantors agree that as of the date hereof the Outstanding Balance of the Loan is Four Million Seven Hundred Sixty-Nine Thousand Seven Hundred Twenty-Five and 23/100ths (\$4,769,725.23) Dollars. Borrower and each Guarantor further acknowledges and agrees that Bank shall not be obligated to make, and neither Borrower nor either Guarantor shall have any right to demand, request or otherwise require or seek to have Bank to make any further Advance upon the Loan, nor shall Bank be otherwise obligated or required in any fashion to loan or make available for borrowing any funds of the Loan in addition to the Outstanding Balance.

5. Bank has simultaneously with the entering hereof, delivered, in trust, unto the Borrower's and Guarantors' attorney, Robert Gwin, Esquire (the "Escrow Agent"), the Guarantor Mortgage, duly satisfied and cancelled (the "Satisfied Mortgage"). Escrow Agent shall release the Satisfied Mortgage from escrow for recording in the Georgetown County, South Carolina, ROD Office, upon, but only upon, receipt by Escrow Agent of the sum of Three Hundred Thousand and No/100ths (\$300,000.00) Dollars, all of which funds shall promptly be delivered by federal funds wire transfer or such other commercially reasonable method as Bank shall select, by Escrow Agent unto Bank, and disbursed by Bank to (i) pay the 2008 taxes, (ii) pay Bank's Costs, and (iii) deposit the balance in the Interest Reserve Account to be disbursed by Bank to pay interest payments due upon the Note as and when due, to pay the 2009 Taxes when due, and for such other purposes (including, without limitation, Bank's future attorneys' fees and costs hereafter incurred in connection with the Loan or the modification or recovery thereof) as are described or permitted in the Loan Agreement and the Security Documents; any funds thereafter remaining in the Interest Reserve Account, if any, shall be paid over to the Borrower upon payment and satisfaction of the Note and all Borrower's other obligations with respect to the Loan, in full. With respect to the foregoing disbursements from the Interest Reserve Account, Borrower and Guarantors acknowledge and agree that Bank has made no representation or warranty whatsoever that the funds on deposit in the Interest Reserve Account are or will be sufficient to pay the items described above as and when due, and that nothing contained herein or in any of the Loan Documents relieves or reduces, or is intended to relieve or reduce, the absolute and unfettered obligation of Borrower and of each Guarantor to timely pay all indebtedness and other obligations (including, without limitation, 2009 taxes and all interest payments due upon the Note) as provided and required by the Loan Documents and each of them.

6. Bank and Borrower do hereby amend and modify the Note and each of the other Loan Documents as applicable, such that the term of the Note shall be reduced and all indebtedness under and with respect to the Note and Borrower's other obligations with respect to the Loan shall be due

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN)

Civil Action No. 2010-CP-22-01233

First South Bank,)

Plaintiff,)

vs.)

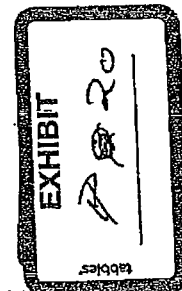
South Causeway, LLC,)

Defendant.)

AFFIDAVIT OF
PEGGY WHEELER-CRIBB

PERSONALLY APPEARED BEFORE ME, Peggy Wheeler-Cribb, who being duly sworn deposes and says as follows:

1. I am over eighteen years of age and am fully competent to testify as to the matters contained herein.
2. The information contained in this Affidavit is based upon my personal knowledge, and this Affidavit is made in opposition to the Motion for Summary Judgment filed by the plaintiff in the above matter.
3. As affiant, I believe the information contained in this Affidavit to be true, complete and accurate.
4. I am the sole member of the defendant, South Causeway, LLC.
5. In our about October of 2005, my son, Will Darwin Wheeler, and I executed a Promissory Note in favor of First Palmetto Savings Bank, F.S.B. ("First Palmetto") in the amount of \$4,500,000.00. The Note was secured by mortgages on two properties: (1) 17.49 acres of undeveloped, commercial property in Pawleys Island, South Carolina owned by me (hereinafter "the South Causeway Property"); and (2) residential property located in Pawleys Island, South Carolina owned by my son.



6. The First Palmetto Note was originally due on October 15, 2007, but it was later extended to October 15, 2008. When the Note was extended by First Palmetto, the bank released its mortgage on the residential property owned by my son. After January 25, 2007, the First Palmetto loan was secured solely by the South Causeway Property.
7. Through our dealings with First Palmetto, my son and I met F. Wayne Lovelace, who, at that time, was Vice President of First Palmetto. Lovelace was our primary contact at First Palmetto, and we communicated with Lovelace about our loan and our loan renewal on numerous occasions.
8. In April of 2006, I acquired an additional 1.68 acres abutting the South Causeway Property. After that time, the South Causeway Property totaled approximately 19.17 acres.
9. I engaged in negotiations with a national, retail grocery chain about building a facility on the South Causeway Property and entering a long-term lease. The grocery store issued a letter of intent, memorializing the plan.
10. At some point in 2007, Lovelace joined First South Bank.
11. In or about September of 2007, Lovelace contacted me and inquired about the possibility of moving the First Palmetto loan to First South Bank. Lovelace represented to me that First South Bank could offer me a better rate and could help with the development of the South Causeway Property.
12. Throughout my negotiations with Lovelace and other agents of First South, I repeatedly explained that I was not willing to cross-collateralize a development loan with other properties owned by my son or myself. I was repeatedly assured that additional collateral would not be necessary. This was a critical term since I anticipated that I may need

additional funds if the grocery store was unable to open in time, and in the event I did, I needed other property that could be used as collateral.

13. In May of 2008, South Causeway, LLC was organized, and thereafter, in exchange for my membership interest, I deeded the South Causeway Property to the company.
14. The First South Bank loan was scheduled to close in June of 2008. Prior to closing, Lovelace sent copies of the loan documents to me by electronic mail. After reviewing the documents, I discovered that the draft Note was secured by mortgages covering the South Causeway Property, as well as property owned by my son.
15. I immediately telephoned Lovelace to object to the inclusion of the additional property, and Lovelace assured me that this would be corrected prior to closing.
16. During the closing on June 25, 2008, my son and I discovered that Lovelace had not corrected the Note, and that in order to close, my son had to agree to mortgage his individual property as security for the loan. At that point, we felt that we had no other choice since the First Palmetto loan was coming due, and Lovelace assured us that First South Bank would see the development through its conclusion. Reluctantly, we agreed to close.
17. At closing, South Causeway, LLC executed a Promissory Note in favor of First South Bank in the principal amount of \$6,500,000.00. Under the terms of the Note, South Causeway, LLC was obligated to make monthly payments of accrued interest with the principal due on July 5, 2011.
18. Shortly after closing, in mid-July of 2008, Lovelace called me and requested a meeting. During our meeting, Lovelace informed my son and I that First South Bank was freezing

its loan, and no further funds would be advanced to us. We were shocked and requested the Bank reconsider, but Lovelace refused to do so.

19. In 2009, my son and I approached First South Bank about making a second loan to be secured by residential property we owned. However, First South Bank refused to advance us any funds.
20. Finally, we found a lender, Kennedy Funding out of New Jersey, that was willing to loan us money on our residential property. However, the lender required as security the lot that was being held by First South Bank as security under its loan. My son and I approached Lovelace and requested the lot be released from First South Bank's mortgage.
21. Lovelace agreed to release the lot owned by my son, but to do so, we had to pay First South Bank \$300,000.00. In addition, Kennedy Funding required a \$50,000.00 non-refundable deposit.
22. At closing, after the \$50,000.00 had been paid, we discovered that in addition to the \$300,000.00 payment, First South Bank was taking back a year from the South Causeway, LLC Promissory Note and demanding an acceleration of the maturity date. The Bank demanded a new maturity date of July 5, 2010. I was taken completely off-guard, and if I refused to close on the loan, I would be forced to forfeit the \$50,000.00 deposit. Additionally, if I did not close, the lot would remain subject to First South Bank's mortgage, preventing us from closing with Kennedy Funding. Faced with no other option, I executed the closing documents; I would have never voluntarily signed the purported loan agreement, but I felt I had no reasonable alternative.

23. Thereafter, I immediately began soliciting offers for the purchase of the South Causeway Property. I executed a listing agreement with Robbie Buice of Prudential Source One Realty.
24. During this time, Lovelace continued to involve himself in the marketing and sale of the property. He consistently suggested other realtors, and at some point, William Hudson, an agent with Keystone Commercial Realty, presented me with a contract for sale of the South Causeway Property. I refused the contract because it contained an unacceptable closing date. Hudson then informed me that he had spoken with Lovelace, that Lovelace told him it was a good offer, and that I should accept it.
25. After speaking with Hudson, I contacted Lovelace and demanded that he and the Bank stop interfering with my efforts to sell the property and allow me to market the property as my agent and I saw fit.
26. Then, in April of 2010, Lovelace informed me that First South Bank was considering selling the South Causeway, LLC loan to a third party individual even though the Bank said the loan was to mature just three months later. I demanded to know what information the Bank had disclosed and to whom the Bank made such disclosure.
27. Initially, Lovelace refused to give me any information regarding the potential purchaser. Later, Lovelace disclosed the potential purchaser as Charles McCullen, a long-time, valued customer of the Bank. However, Lovelace and the Bank continued to refuse to provide me with copies of the documents provided to McCullen.
28. In the meantime, we had contracted with Vintage Estates Realty to auction the South Causeway Property. We paid for advertising and marketing materials, as well as the auction fees.

29. The auction was scheduled to take place in June of 2010. Only eighteen days before the auction, Lovelace contacted Don Thomas, who is the broker-in-charge of Vintage Estates Realty. Lovelace informed Thomas of the status of the South Causeway, LLC loan, the amount of the principal balance owed, and that our loan would not be renewed.
30. Lovelace also told Thomas that the property could not be subdivided and sold in lots, thereby limiting the options of the auction company and potential purchasers. As a result, we were forced to change the terms of our auction agreement. Instead of subdividing the lots and setting the reserves at prices commiserate with the size of the parcels, we were forced to set the reserves for all four lots at the same price.
31. The original auction contract, which was produced during the deposition of Thomas, clearly shows that the initial reserve prices that we set with the input and professional judgment of our agent were marked out and new reserve prices for each parcel, all equal to \$4,800,000.00, were substituted for the original amounts set by us.
32. In addition, Lovelace compromised our bargaining position with potential purchasers by revealing confidential information to Thomas and possibly others, which we had made a deliberate decision not to disclose to anyone.
33. I believe that because of the disclosures and restrictions on the manner of sale imposed by Lovelace and the Bank, the auction was unsuccessful, and we received no acceptable offers of purchase.
34. We have never been provided any information, either orally or in writing, from First South Bank regarding why our loan was called or why the Bank refused to renew or otherwise negotiate our loan. It is our belief that the Bank's motivation in calling the loan and interfering with our attempts to sell the property was to accommodate another

bank customer in his desire to purchase the South Causeway Property and to prevent us
from finding a suitable purchaser.

AND FURTHER THE DEPONENT SAITH NOT.

SWORN to before me this
26 day of July, 2011.

Diane Saxon

Notary Public for South Carolina

My Commission Expires: ~~MY COMMISSION EXPIRES~~
OCTOBER 28, 2013

Peggy Wheeler-Cribb
Peggy Wheeler-Cribb

Chitty, Carson

From: Lovelace, Wayne
Sent: Tuesday, June 03, 2008 2:00 PM
To: 'WheelerCribb@aol.com'; dlh@sc.rr.com; GGeer@sc.rr.com; wwheeler2@sc.rr.com
Subject: RE: Questions?

Dear Peggy, Darwin, Doug and George:

Thank you very much for the questions you have raised concerning our commitment for financing your project located at South Causeway Road and Highway 17. I will attempt to answer each as follows:

-----Original Message-----

From: WheelerCribb@aol.com [mailto:WheelerCribb@aol.com]
Sent: Tuesday, June 03, 2008 11:48 AM
To: Lovelace, Wayne; dlh@sc.rr.com; GGeer@sc.rr.com; wwheeler2@sc.rr.com
Subject: Questions?

Wayne, Darwin and I have gone over the proposed loan commitment several times and we have gotten on the speaker phone with Doug Hinds. I'm listing our concerns.

Some of it was a little hard for us to understand and Doug said he had to study it and he and George will study it some more today.

First Doug said he thought he saw somewhere that the appraisal was for 17 acres. We need to make sure all tracks of the land were appraised. There were two track in the first purchase, then we added Neil Lewis property which made it 19.22 acres. We need a copy of appraisal before we can make a final decision.

ANSWER

We have not received a copy of the "Land Comparison Appraisal" report but the appraiser has indicated that his final value will be between \$8MM and \$8.1MM (or approximately \$420,000 / acre). This valuation is based on sales of similarly-sized properties as close in proximity to the subject site as possible.

Once all of the necessary documents have been received by us (i.e. construction contracts for the installation of the road system, water, sewer and storm drainage infrastructure; etc.), we will forward them to the appraiser and he will render the actual A&D appraisal by assigning a value to the overall project by placing a value on the common area and the individual lots within the development. This should take approximately 2 weeks.

As to the actual acreage, he was furnished a boundary survey of both the original 17.54 acre tract and the 1.68 acre "Lewis" tract to appraise. Thus, his report will reflect a value for the entire 19.22 acre tract, as requested.

Page 2.

A. \$65,000 fee needs to be due at closing, not signing

ANSWER

On Page 3 of the Commitment Letter, the fee described will be considered "fully earned" once the commitment is accepted. However, the fee will not be due until closing.

B. We need to know the cost of Banks legal fees that we have to pay.

11 24

EXHIBIT
11 24

ANSWER

I have discussed this with Don Tyler (Tyler, Cassell, Jackson, Peace & Silver, LLP) and this, obviously, is a function of the time devoted to document review, preparation, etc. Based on Don's best estimate, he believes that his fee will be approximately \$9,500 for this transaction. However, according to Don, it may be slightly more or slightly less, depending on what other legal needs may / may not arise.

- C. We need to know exactly what kind of insurance you are talking about. We have no plans to name First South Bank on our beach houses. We expect the Causeway property to stand on it's own.

ANSWER

Aside from normal title Insurance requirements and evidence from the General Contractor that there is adequate protection afforded for Workers Compensation and General Liability claims, no additional insurance should be required. However, the Bank will reserve the right to require certain Insurance coverages (such as flood and / or hazard) if any improvements constructed or installed at the "Project Site" during the development phase are considered "insurable".

No Insurance naming First South Bank connected with any of your other improved properties (i.e. those with habitable structures) is expected or required.

Page 6

7. If we understand the wording of this, it is not acceptable. We will in no way secure this loan with our beach houses and lots. In speaking with you, I understood you were using lot # 4 as extra collateral until final lease was worked out with Lowe's, which may be around 6 months.

ANSWER

It was never our intention to make a part of our collateral package any properties other than the 19.22 acres and Lot 4 / 334 Myrtle Avenue. Further, the reason for including Lot 4 stemmed from the fact that we did not have a current appraisal upon which to make a decision as to how much to allocate toward our initial advance at closing. The statutory advance against "unimproved property" is 65% of the appraised value of the real estate being purchased / financed and a maximum of a 75% against the total value of the proposed project. In the absence of a current land appraisal, we wanted to make sure that we were sufficiently secured in the event that the property appraised for less than expected and still be able to fund your initial needs.

As to the proposed release of Lot 4, your understanding is correct. Subject to the maximum advance requirements stated above, once we receive a copy of the engineer's certificate evidencing that all of the Infrastructure improvements have been installed, the development is complete and is in compliance with all applicable zoning requirements or we have been furnished a final copy of the signed lease between you and Lowe's Foods, our collateral interest in Lot 4 will terminate and our mortgage will be released.

Also, we would want the excess funds from loan at First Palmetto and the excess funds from the original \$550K loan with First South Bank to go to us at closing.

ANSWER

I cannot speak for First Palmetto, but it would seem to me that all they would be interested in would be the payment of all principal and accrued interest through the requested payoff date. Any funds remaining in your reserve account would be released and would be made available to you for withdrawal, etc.

As to First South Bank, we have requested that the funds remaining in your reserve account with us (approximately \$31,169 as of today) be "netted" against the payoff as these funds were originally part of the loan proceeds so you would get the benefit of these funds by way of a lower payoff amount. If this creates a problem, we will be glad to discuss it further and get back to you.

7/24

Of the \$1,400,000.00 for construction and installation of roads, drives, parking, etc. we would need at closing, \$100,000.00 for clearing and storm water work that is on going now and will be completed by closing. (already at \$60,000)

ANSWER

As stated above, we have not received a copy of the construction contract(s) or the actual budget for the infrastructure development from your approved / selected General Contractor. After receipt, review and approval of the contract(s) and budget, we will make advances based on all work performed which has been approved and certified to by the supervising engineer.

Thank you for your time and effort in this.

Peggy and Darwin

Get trade secrets for amazing burgers. Watch "Cooking with Tyler Florence" on AOL Food.

GUARANTOR'S CLOSING CERTIFICATE
Peggy Wheeler-Cribb

WHEREAS, SOUTH CAUSEWAY, LLC, a South Carolina limited liability company (herein referred to as the "Borrower") has accepted a loan in the maximum principal amount of Six Million Five Hundred Thousand and No/100 (\$6,500,000.00) Dollars (the "Loan") from First South Bank ("Lender"); and

WHEREAS, the following instruments, each of even date herewith (the "Loan Documents"), have been duly executed and delivered to the Lender pursuant to the terms, provisions, and conditions of the Loan:

1. Loan Agreement made by the Borrower with the Lender providing for the terms and conditions of the Loan;
2. Promissory Note made by the Borrower in the principal sum of Six Million Five hundred Thousand and No/100 (\$6,500,000.00) Dollars, payable to the order of the Lender with interest at the rate therein provided;
3. A Guaranty (each a "Guaranty") guaranteeing payment and performance by the Borrower of the Loan executed by each of Peggy Wheeler-Cribb and Will Darwin Wheeler (individually a "Guarantor" and collectively the "Guarantors");
4. Each of the other "Security Documents" as defined and identified in the Loan Agreement.

WHEREAS, as an inducement for Lender to make the Loan to the Borrower, the undersigned Guarantor makes the following representations and warranties in favor of the Lender.



NOW, THEREFORE, the undersigned does hereby certify, represent, warrant, covenant and state:

1. The Guarantor and, to the best of Guarantor's knowledge, each of the Borrower and the other Guarantor is solvent, is not bankrupt, is not contemplating nor has recently contemplated bankruptcy, receivership or reorganization (nor is there any prospect of such), and there are no outstanding liens, suits, garnishments, bankruptcies or court actions which could render Guarantor or, to the best of Guarantor's knowledge, Borrower or the other Guarantor, insolvent or bankrupt.

2. There has been no material adverse change, financial or otherwise, in the condition of the Guarantor or, to the best of Guarantor's knowledge, the Borrower or the other Guarantor, from that heretofore disclosed to Lender in writing or in other supporting data submitted therewith.

3. All of the Guarantor's representations, warranties, and affirmative covenants contained in this Guarantor's Closing Certificate, Guaranty, and all other documents and instruments executed and delivered by Guarantor in connection with the Loan, if any, are true and correct as of the date of delivery and all actions necessary to authorize the Guarantor to enter into any of the aforesaid documents have been taken.

4. To the best of Guarantor's knowledge, all of the Borrower's representations, warranties and affirmative covenants contained in the Borrower's Closing Certificate executed and delivered in connection with the Loan, each of the Loan Documents, and all other instruments and documents executed and delivered pursuant thereto, if any, are true and correct as of the date of delivery.

5. To the best of Guarantor's knowledge, the representations, warranties, and affirmative covenants of the other Guarantor contained in the other Guarantor's Closing Certificate executed in

connection with the Loan, the other Guarantor's Guaranty, and all other documents and instruments, if any, executed and delivered by the other Guarantor, in connection with the Loan, are true and correct as of the date hereof.

6. To the best of Guarantor's knowledge, all documents necessary to authorize the Borrower to execute the Loan Documents and to engage in any transaction or business in connection with which the Loan is made have been duly authorized, executed and filed.

7. The Guarantor acknowledges that, except as expressly set forth in the Loan Documents, no representations of any kind or character have been made to Guarantor by the Lender to induce Guarantor to execute and deliver this document and Guarantor's Guaranty. The Guarantor further acknowledges that the Guarantor has had an adequate opportunity to have this document and each of the Loan Documents reviewed by an attorney or representative of the Guarantor's choice acting on the Guarantor's behalf, that the contents of this document and the Loan Documents have been explained to the Guarantor, that the Guarantor understands the contents hereof and thereof, and that the Guarantor signed this document, the Guaranty, and all other documents executed by the Guarantor in connection with the Loan, voluntarily.

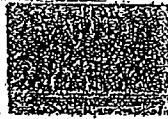
EXECUTED AND DELIVERED as of the 15th day of June, 2008.

WITNESSES:

[Signature]
[Signature]

GUARANTOR:

Peggy Wheeler-Cribb (SEAL)
Peggy Wheeler-Cribb



LAW OFFICES
HINDS, COWAN, STRANGE & GERR

DOUGLAS L. HINDS
 WILLIAM S. COWAN
 RYAN L. STRANGE
 GEORGE R. GERR, JR.

601 FRONT STREET
 GEORGETOWN, SOUTH CAROLINA 29440

MAILING ADDRESS
 POST OFFICE DRAWER 1410
 GEORGETOWN, SOUTH CAROLINA 29442

TELEPHONE (843) 527-2241
 FACSIMILE (843) 527-0363
 E-MAIL HC@HCSG.net

June 25, 2008

First South Bank
 1333 Main Street, Suite 100
 Columbia, SC 29201
 Attn: F. Wayne Lovelace, Senior Vice President

Re: \$6,500,000.00 development loan (the "Loan") of First South Bank ("Bank") to South Causeway, LLC ("Borrower"), payment and performance of which is guaranteed by each of Peggy Wheeler-Cribb and Will Darwin Wheeler (each a "Guarantor" and collectively the "Guarantors").

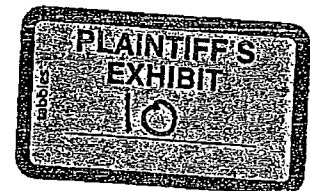
Dear Sir:

We refer to the Loan Agreement (the "Agreement") of even date herewith between the Bank and the Borrower with respect to the Loan. Unless otherwise defined herein or the context otherwise requires, this opinion uses capitalized terms with the respective meanings ascribed to them in the Agreement. We have acted as counsel to the Borrower and the Guarantors in connection with the Loan. This opinion is delivered to you pursuant to the requirements of the Agreement and at the direction of our clients.

We have examined the Agreement, the Note, the Security Agreement, the Borrower Mortgage, the Financing Statements, and each and every one of the other Security Documents to be entered or given by Borrower (collectively the "Loan Documents"), and the Guarantor Mortgage and each of Guaranties. We have made inquiry of the Borrower and the Guarantor and have also examined, reviewed and relied upon to the extent we deem appropriate such other documents, records, abstracts, reports, papers, indices, books, certificates, both public and private, and other instruments, and matters of law, and have made such investigations as we deemed necessary or relevant for the rendering of this opinion.

Based thereupon it is our opinion that:

1. Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of South Carolina.
2. Borrower has qualified to do business and is in good standing in every jurisdiction where its conduct of business, ownership of property or other activities requires such qualifications under the laws of such jurisdiction.



FSB-SC 02372

3. Borrower has full power, authority and legal right to own its properties, to carry on its business and to enter into and perform its obligations under the Loan Documents.

4. The execution and delivery by Borrower of the Loan Documents through the person therein indicated to be its duly authorized representative, have been duly authorized by all necessary action of the Borrower.

5. Neither the execution and delivery of the Loan Documents by the Borrower, nor the execution and delivery of the Guarantor Mortgage and the Guaranties by the Guarantors, nor the consummation of the transactions contemplated thereby by each of the foregoing, nor the performance by Borrower and each Guarantor of its, his and her respective obligations thereunder, (a) violate, conflict with, breach or constitute a default under (i) any statute, law, rule, regulation, order, writ, decree, injunction or other proceeding of any court, regulatory body or other Governmental Authority, (ii) Borrower's Articles of Organization, Operating Agreement or similar charter or organizational document, or any duly adopted resolutions of Borrower presently in force or effect, or (iii) any mortgage, indenture, contract, agreement, or other instrument to which Borrower or a Guarantor (or any assets or properties of Borrower or a Guarantor, respectively) is subject or by which Borrower or a Guarantor is bound; (b) results in or constitutes an event by reason of which any holder of indebtedness of Borrower or a Guarantor would be entitled to accelerate such indebtedness in whole or in part; or (c) results in the creation or imposition of any security interest, lien, encumbrance or charge on or upon any asset or property of Borrower or a Guarantor (other than liens and security interests created pursuant to the Loan Documents and the Guarantor Mortgage).

6. There are no actions, suits or proceedings pending or, to the best of our knowledge (after due inquiry) threatened, against or affecting the Borrower or either Guarantor before or by any court, administrative agency, arbitrator or governmental body with respect to any of the transactions contemplated by the Loan Documents, the Guarantor Mortgage and the Guaranties, respectively, or which will, if determined adversely to Borrower or a Guarantor, respectively, materially and adversely affect its, his or her business, assets, operations or condition, financial or otherwise, or adversely affects its, his or her ability to perform its, his or her obligations under the Loan Documents, the Guarantor Mortgage and the respective Guaranties.

7. Borrower and each Guarantor has each obtained or made all necessary consents, approvals, waivers and notifications of stockholders, creditors, and other non-governmental persons, in connection with the execution and delivery of the Loan Documents, the Guarantor Mortgage and each of the Guaranties.

8. No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of, any state, federal or other governmental authority or agency is required

in connection with Borrower's execution, delivery, and performance of its obligations under, or the consummation of the transactions contemplated by, the Loan Documents.

9. The Loan Documents constitute legal, valid and binding obligations of Borrower, enforceable against the Borrower in accordance with their terms.

10. Will Darwin Wheeler has executed the Guarantor Mortgage, and the Guarantor Mortgage constitutes the legal, valid and binding obligations of Will Darwin Wheeler enforceable against the Guarantors in accordance with its terms.

11. Each Guarantor has executed the Guaranty intended for such respective Guarantor, and the Guaranty of each such Guarantor constitutes the legal, valid and binding obligations of such Guarantor, enforceable against such Guarantor in accordance with its terms.

12. The Note is entitled to the benefit and security afforded by the Guarantor Mortgage, and the Borrower Mortgage and the other Security Documents.

13. No taxes, fees, or other charges are payable to any Governmental Authority in connection with the execution and delivery of the Loan Documents, or the consummation of the transactions therein contemplated, except for nominal recording taxes or fees payable in connection with the recording of the Borrower Mortgage, the Guarantor Mortgage and the Financing Statements.

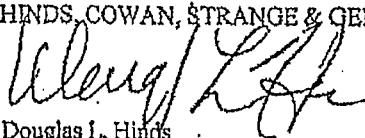
14. The execution and delivery of the Security Documents, and the recording of the Borrower Mortgage, the Guarantor Mortgage and the Financing Statements, create a valid and perfected security interest in the Bank in the Collateral. No other filings in any jurisdiction are necessary to perfect the security interest of the Bank in the Collateral as against any third parties, and no further action is required to create, preserve, or perfect such security interest, except that an appropriate continuation statement with respect to each of the Financing Statements must be timely filed at within six months prior to each five year interval after the original filing in order to maintain the perfection of such security interest.

15. The Loan and all of the Loan Documents are governed by the laws of the State of South Carolina and the interest charged by and to be paid to the Bank as set forth in the Note is not usurious under those laws.

First South Bank
June 25, 2008
Page 4

Very truly yours,

HINDS, COWAN, STRANGE & GEER


Douglas L. Hinds

DLH/rab

FSB-SC 02375

Chitty, Carson

From: Lovelace, Wayne
Sent: Monday, March 09, 2009 3:14 PM
To: WheelerCribb@aol.com
Subject: Proposal
Peggy:

As I mentioned a few minutes ago, these are the two proposals that Chip and I have discussed to release our mortgage on the Myrtle Avenue property:

OPTION #1

1. \$ 65,000 - 2008 real estate property taxes.
65,000 - 2009 real estate property taxes (to be escrowed w/ First South Bank and to be paid when billed you by Georgetown County, SC).
10,000 - Attorney fees
375,000 - Additional interest reserve contribution to carry the loan to the original maturity date of 07/05/11.
\$515,000 - Total

OPTION #2

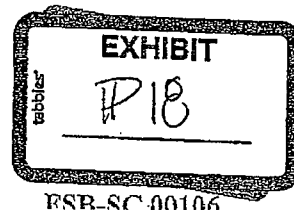
2. \$ 65,000 - 2008 real estate property taxes.
65,000 - 2009 real estate property taxes (to be escrowed w/ First South Bank and to be paid when billed you by Georgetown County, SC).
10,000 - Attorney fees.
160,000 - Additional interest reserve contribution to carry the loan to new maturity date of 07/05/10.
\$300,000 - Total

As you will note, Option #2 requires \$215,000 less in outlay than Option #1 because we are shortening the maturity of the loan by one year and we will require payment in full on the 07/05/2010 maturity date.

Please review and let me know how you wish to proceed.

Wayne
First South Bank
Columbia Office

1/5/2011



Chitty, Carson

From: WheelerCribb@aol.com
Sent: Tuesday, March 10, 2009 3:16 PM
To: Lovelace, Wayne
Subject: Can you please help me understand this?

Wayne, Can you explain to me a question I have on The loan. I have been reviewing you proposal and Darwin and I are leaning towards Option 2.

We were reviewing the interest and interest reserve. The initial payment on August 6 2008 was \$31,798.16 which was a very large amount on the \$ 4.8 million note. The subsequent months also seemed high so if you could clarify the rate calculations and what principal amount was used initially.

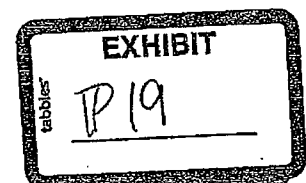
I appreciate you working with us on this.

Peggy 

A Good Credit Score is 700 or Above. See yours in just 2 easy steps!

1/5/2011

617



FSB-SC 00107

Chitty, Carson

From: WheelerCribb@aol.com
Sent: Wednesday, March 11, 2009 3:39 PM
To: Lovelace, Wayne
Subject: Loan

Wayne, Darwin and I have decided to go with option #2. We are concerned about the \$10,000 in attorney fee. We feel this is extremely high for making a change when we already paid high attorney fees when we closed on the loan. I know you said this was an estimate and of course I would request an itemized statement of the charges.

We really appreciate your working with us on this and we are pushing to close on Monday so I can pay the other taxes.

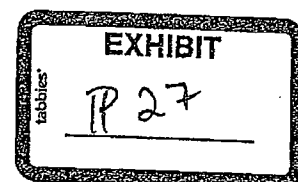
I know you aren't comfortable with talking to Neil Mauntone, but if you want to get on a conference call with Doug Hinds and myself to talk about the additional \$10,000 attorney fees, please let me know.

Again I thank you for working with us on this.

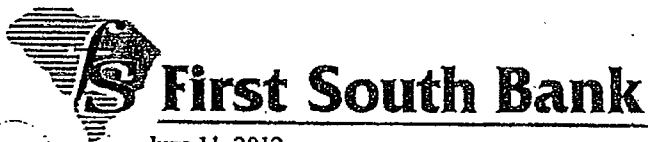
Sincerely, Peggy 

A Good Credit Score Is 700 or Above. See yours in just 2 easy steps!

1/5/2011



FSB-SC 00109



June 11, 2012

Collins & Lacy, P.C.
P. O. Box 12487
Columbia, SC 29211-2487

Re: Payoff Quote- South Causeway, LLC
Note #8134802

To Whom It May Concern:

It is our policy to send a letter of disclosure when quoting a verbal payoff.

The payoff amount for note #8134802 in the name of South Causeway, LLC is \$5,274,772.66* as of 06/11/2012. Please add daily per diem for each day after payoff date.

Payoff should be submitted to First South Bank, Attn: Chip Lyerly or Wayne Lovelace, 1333 Main Street, Suite 100, Columbia, SC 29201.

The following is a breakdown of the amount due. If you have any questions regarding this payoff, please contact Chip Lyerly at (803) 806-3103 or Wayne Lovelace at (803) 806-3104.

Current Balance	\$4,774,112.73
Accrued Interest	378,357.74
Late Charges	999.99
Escrow in Payoff	0.00
Prepayment Penalty	0.00

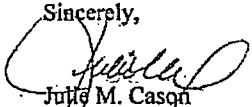
Appraisal Fee -	750.00
(Invoice# 42198- Atlantic Appraisals, LLC)	
Property Tax Redemption- (2010 and 2011)	
(Parcel# 04-0164-030.00.00 and 04-0164-033.00.00)	47,831.40
(Parcel# 04-0169-001.03.00 and 04-0169-001.04.00)	72,593.05
Misc. Fees-	
(copies from Horry County Clerk of Court)	127.75

TOTAL PAYOFF AMOUNT	\$5,274,772.66*
Per Diem	563.61

* Total payoff amount may not include additional funds due to First South Bank including but not limited to Attorney Fees, property taxes currently due, etc. *Please contact account officer for exact payoff.*

If we may be of further assistance, you can call either Chip or Wayne at the numbers mentioned above.

Sincerely,


Julie M. Cason
Executive Assistant to the President
Banking Officer



STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

First South Bank,

Plaintiff,

vs.

South Causeway, LLC,

Defendant,

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT

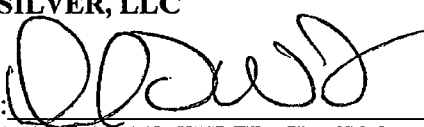
C/A NO.: 2010-CP-22-1233

PLAINTIFF'S RESPONSE/CONSENT TO
DEFENDANT'S RETURN IN OPPOSITION
TO MOTION FOR ATTORNEYS' FEES
AND COSTS

Plaintiff First South Bank ("First South") has filed certain affidavits to support an award of attorneys' fees and costs. Defendant South Causeway, LLC ("South Causeway") has filed a Return in Opposition to Motion for Attorneys' Fees and Costs (the "Return"). In the Return, South Causeway challenged the reasonableness and appropriateness of \$52,661.45 in costs and fees requested by First South. While First South believes that the fees and costs are reasonable and appropriate and does not agree with the substance of South Causeway's objections, nonetheless, to avoid further dispute, First South consents to the reduction in the amount of attorneys' fees and costs that it is seeking by \$52,661.45.

Respectfully Submitted,

**TYLER, CASSELL, JACKSON, PEACE
& SILVER, LLC**

By: 

DONALD W. TYLER, JR., ESQ.

1331 Elmwood Avenue, Suite 300

P.O. Box 11656

Columbia, South Carolina 29211-1656

Telephone: (803) 779-4997

AND

Joel W. Collins, Esquire
James L. Floyd, III, Esquire
COLLINS AND LACY, P.C.
Post Office Box 12487
Columbia, South Carolina 29211
Telephone: (803) 255-0482

ATTORNEYS FOR PLAINTIFF

November 1, 2012
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2010-CP-22-1233

First South Bank,

Respondent,

v.

South Causeway, LLC,

Appellant,

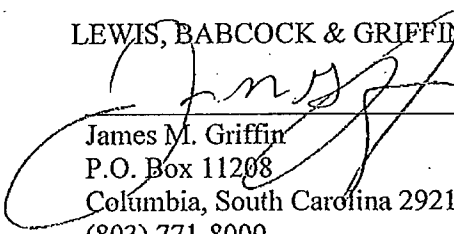
SC COURT OF APPEALS
NOV 8 2012
RECEIVED

NOTICE OF APPEAL

South Causeway, LLC (South Causeway) appeals from the jury verdict entered against South Causeway on September 25, 2012 and the Court's Order denying Post Trial Motions entered November 5, 2012. South Causeway received written notice of the Order denying Post Trial Motions on November 5, 2012. South Causeway also appeals from the Judgment of Foreclosure and Order For Sale entered November 1, 2012 and the Supplemental Judgment of Foreclosure entered November 2, 2012. South Causeway received written notice of these two orders on November 2, 2012. Copies of the referenced Order and Judgments are attached.

Respectfully submitted,

LEWIS, BABCOCK & GRIFFIN LLP



James M. Griffin
P.O. Box 11208
Columbia, South Carolina 29211
(803) 771-8000

Attorney for Appellant

Columbia, South Carolina

November 30, 2012

Other Counsel of Record:

Joel W. Collins Jr.
Collins & Lacy P.C.
P.O. Box 12487
Columbia, S.C. 29211

Attorney for Respondent

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

FIRST SOUTH BANK,

Plaintiff,

vs.

SOUTH CAUSEWAY, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER:

2010-CP-22-01233

**ORDER DENYING DEFENDANT'S
POST-TRIAL MOTIONS**

FILED
2010-5-11-10
CLERK OF COURT

This matter came before me on post-trial motions of the Defendant South Causeway, LLC ("South Causeway") for judgment notwithstanding the verdict ("JNOV") on South Causeway's counterclaims, or, in the alternative for a new trial, and for an amendment of the judgment on Plaintiff First South Bank's ("First South") foreclosure claim. First South filed an Opposition to South Causeway's motion. Based on the arguments presented in the briefs, as further explained below, South Causeway's post-trial motions are denied.

I. South Causeway's Motion for JNOV.

South Causeway moved for JNOV on the three counterclaims that the jury unanimously decided in favor of First South: breach of contract, tortious interference with contract, and violation of the South Carolina Unfair Trade Practices Act. In considering a motion for JNOV, the Court views the evidence in the light most favorable to First South and draw all reasonable inferences in its favor. Strange v. S.C. Dep't of Highways & Public Transp., 314 S.C. 427, 445 S.E.2d 439 (1994). A motion for JNOV will be denied if "either the evidence yields more than one inference or its inference is in doubt." Id.

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A. Breach of Contract.

1. Funding Interest Reserve.

The Commitment Letter provides for the deposit of an additional \$550,000 of proceeds into the interest reserve account "upon the earlier to occur of completion of the Infrastructure and six (6) months from the date of Loan Closing." Pl.'s Trial Ex. 1, p. 2, ¶ F. South Causeway has asserted that the foregoing provision is ambiguous as to the funding date, that the jury had to construe this ambiguity against First South, and if construed against First South Bank then the jury could have only concluded that First South breached the loan agreement. This argument ignores the other language encompassed within the parties' agreements and the evidence of the parties' intent introduced at trial. When viewed as a whole, the evidence clearly permitted a reasonable interpretation of the entire agreement between the parties which supports the jury's unanimous verdict.

The Loan Agreement provides that it governs over any provision of the Commitment Letter. Pl.'s Trial Ex. 2, p. 18, §9.10. The Loan Agreement divides the funding between an initial advance at closing and subsequent advances that will only take place upon the completion of certain events. See id. at p. 3, §4.1, p. 6, §4.2, & pp. 7-8, §4.4. Part of the initial advance included funding \$300,000.00 into the interest reserve account, which took place at closing and is undisputed. Id. at p. 7, §4.4. The \$550,000 referenced in the Commitment Letter was not part of the initial advance and was not part of the Loan Agreement. As a subsequent advance, this additional funding was not required by the Loan Agreement. Even if required, any such advance was subject to the conditions precedent applicable to other subsequent advances. "Advances subsequent to the Initial Advance shall be made from time to time as construction of the Improvements progresses, but not more frequently than once each month, in a sum equal to (a)

the total expenditures incurred by the Borrower and approved by the Bank for fees and costs incurred in connection with the Loan, funding the Interest Reserve Account . . . through the end of the period covered by the Request for Advance . . . subject, in each case, however, to the further provisions of this Article IV." Id. p.8, §4.4. Section 4.2 of the Loan Agreement (contained within Article IV), sets forth a list of conditions precedent that must be satisfied prior to "each subsequent advance." Id. p. 6, §4.2. The evidence supported the finding that South Causeway did not meet the conditions precedent and abandoned developing the property. The evidence supported that South Causeway abandoned its initial plan to develop the property. Def.'s Trial Ex. 13. Therefore, the evidence supports finding First South never had a duty to make any subsequent advance of the \$550,000 into the interest reserve account.

Witnesses also testified to the interpretation and intent of the \$550,000 funding referenced in the Loan Commitment. Consistent with the terms of the Loan Agreement, testimony provided that the advancement of \$550,000 into the interest reserve account was contingent on South Causeway achieving certain milestones associated with construction upon the property. As South Causeway never met those milestones and informed First South it was abandoning its plan to develop the property, the evidence supports the jury's finding that First South had no duty to deposit an additional \$550,000 into the interest reserve account.

The Release contained in the April 10, 2009 Agreement between the parties further supports the jury's unanimous verdict that First South did not breach the contract. This release is additional grounds to deny South Causeway's motion for JNOV. First South's alleged failure to fund the interest reserve account with an additional \$550,000 would have occurred prior to April 10, 2009. The Agreement entered into on April 10, 2009, broadly released First South from any

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claim that arose prior to April 10, 2009. Pl.'s Trial Ex. 11, pp. 2-3, 13. The release bars South Causeway's claim for breach of contract on this basis.

2. "Termination" of the Loan.

South Causeway also seeks JNOV on its breach of contract claim on the ground that First South "terminated" the loan "by reducing the amount of available principal." Witnesses, such as Wayne Lovelace, testified that the loan was not terminated. There was evidence showing that South Causeway abandoned its construction plans. Def.'s Trial Ex. 13 ("About two weeks ago we decided with the economy as it we would like to sell it" "If you want or need to do away with the construction part of the loan that is fine") Once South Causeway abandoned its plan to develop the property, First South was under no obligation to make any "subsequent advances." The Loan Agreement provides that South Causeway's abandonment of construction with the intent not to resume for a period of 5 consecutive days was an event of default and terminated any further funding obligation of First South. Pl.'s Trial Ex. 2, p. 13 §7.1 & p. 15, §§7.1(13) & 7.2. The Release also bars the breach of contract claim on this basis as any purported termination of the loan took place before April 10, 2009.

3. Breach of Implied Covenant of Good Faith and Fair Dealing.

South Causeway also seeks JNOV on the jury's unanimous finding that First South did not breach the implied covenant of good faith and fair dealing. South Causeway bases its motion on First South's disclosure of information to Vintage Estates Realty, LLC ("the auction company) and Lincoln Harris, a Charlotte based development company. With regard to the disclosure to the auction company, there was testimony that the information should have been disclosed to the auction company. With regard to the disclosure to Lincoln Harris, testimony was offered that First South had the right to sell the loan and would need to disclose the

information it provided to Lincoln Harris in order to exercise that right. Therefore, evidence supports the finding that First South did not breach the covenant of good faith and fair dealing.

Further, to prevail on its breach of contract claim South Causeway had to prove by a preponderance of the evidence that it sustained some damage due to the alleged breach. Branche Builders, Inc. v. Coggins, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). The possibility of damages alone is not enough. The evidence at trial supported a finding that South Causeway did not sustain any damages due to First South's disclosure to either the auction company or to Lincoln Harris. This alone is sufficient to uphold the jury's unanimous verdict in favor of First South and deny South Causeway's Motion for JNOV.

B. Tortious Interference with Contract.

To prevail on its claim for tortious interference with contract South Causeway had to prove, among other elements, that there was an intentional procurement of a breach, absence of justification, and resulting damages. DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293 (1981). Testimony of the representative of the auction company supported finding that the auction company did not breach its contract with South Causeway (in fact, no evidence was presented that the auction company breached the contract). The evidence at trial also supported finding that First South was justified in disclosing the information, as the auction company needed the information in order to effectively conduct the auction. Further, evidence was presented that South Causeway was not damaged, as no one entered any bid at the auction at any price. Viewing the evidence in a light most favorable to First South, South Causeway is not entitled to JNOV on this claim.

C. Unfair Trade Practices Act.

South Causeway has also moved for JNOV on the jury's unanimous verdict that First South did not violate the South Carolina Unfair Trade Practices Act ("UTPA") when First South disclosed information to the auction company and to Lincoln Harris. The testimony supported a finding that the auction company needed the information provided by First South to effectively conduct the auction. Therefore, the evidence supports a finding that the disclosure was not an unfair or deceptive act and supports the jury's unanimous verdict. As noted above, there was evidence that South Causeway did not sustain any damage due to the disclosure of any information, and therefore, South Causeway could not prevail on its UTPA claim. See Fields v. Yarborough Ford, Inc., 307 S.C. 207 210 S.E.2d 166 (1992) (holding a plaintiff could not prevail on a UTPA claim where there was no evidence of damages due to a violation of the UTPA).

As to the disclosure to Lincoln Harris, the evidence at trial supported the jury's unanimous verdict in favor of First South on the UTPA claim. Testimony established that banks sell troubled loans during the normal course of business. To sell loans, banks must disclose information of the type that First South disclosed to Lincoln Harris. The evidence also established that this case involved a transaction that presented a unique set of circumstances, negating the potential for repetition or the potential impact on the public interest. The evidence, including the testimony of South Causeway's expert, supported finding that the disclosure to Lincoln Harris did not cause any actual damages to South Causeway. Instead, the testimony supported finding any loss in value of the property was caused by the downturn of the economy during this time period. The jury was free to reject South Causeway's claim of damages of \$8 million (the difference between Lincoln Harris's first offer and their last offer) as total speculation or not caused by any act of First South. Each of these grounds is sufficient to support the jury's unanimous verdict in favor of First South.

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II. New Trial.

South Causeway also moved for a new trial on each of the claims discussed above based on the "thirteenth juror doctrine." A new trial is only appropriate when the judge "finds the evidence does not justify the verdict." Lane v. Gilbert Constr. Co., LTD., 383 S.C. 590, 681 S.E.2d 879 (2009). A decision under the thirteenth juror doctrine is premised on a trial judge's "duty of seeing that justice is done" and requires the trial judge to be "*convinced* that a new trial is *necessitated* on the basis of the facts in the case." Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996) (emphasis added). Here the evidence supports the jury's findings and justice was done, and therefore, this Court declines the invitation to overturn the verdict under the thirteenth juror doctrine.

As discussed above, the evidence supports the jury's unanimous verdict in favor of First South on each of the causes of action. South Causeway's reliance on the testimony of Ms. Peggy Wheeler-Cribb in support of its Motion for a New Trial does not warrant invading the province of the jury as the finder of fact on these claims. There was conflicting testimony and evidence on the issues presented. The jury was free to find that Ms. Wheeler-Cribb was not credible and to not accept all or part of her testimony. Resolving disputes over the conflicting versions of the facts and the correct inferences to draw from those facts falls squarely within the jury's role as finder of fact. Therefore, the verdict is justified and this Court denies South Causeway's Motion for a new trial on any of South Causeway's claims.

South Causeway also requests this Court to reconsider its rulings directing verdicts in favor of First South on the counterclaims for fraud, breach of fiduciary duty, and breach of contract accompanied by fraudulent action. This request is again denied for the reasons previously provided on the record.

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III. Amendment of Judgment on First South's Foreclosure Claim.

South Causeway also requests that the Court reconsider its decision on First South's foreclosure claim, pursuant to Rule 59, SCRCP. South Causeway disputes the following findings by this Court: (a) South Causeway was not under duress, and (b) First South established the debt owed on the loan. This Motion is denied.

A. Duress.

South Causeway asserts that it was under duress when it signed the original loan documents and when it signed the April 10, 2009 Agreement. South Carolina law requires evidence establishing "a condition of mind produced by improper external pressure or influence that practically destroys the free agency of a party and causes him to do an act or form a contract not of his own volition." Phillips v. Baker, 284 S.C. 134, 136, 325 S.E.2d 533 (1985) (quoting Cherry v. Shelby Mut. Plate Glass & Cas. Co., 191 S.C. 177, 4 S.E.2d 123 (1939)). This Court found no duress.

South Causeway bases its request that this Court alter its judgment on the testimony of Ms. Wheeler-Cribb, which was contradicted and uncorroborated at trial, and its claim that she "is an elderly woman." However, sitting as the finder of fact, this Court give little or no weight to Ms. Wheeler-Cribb's testimony. Her testimony was discredited and totally uncorroborated. South Causeway's claim of duress was unfounded. Ms. Wheeler-Cribb previously signed an affidavit, which was submitted to the Court to avoid summary judgment, which set forth the alleged duress. Aff. of Peggy Wheeler-Cribb, Pl.'s Trial Ex. 20. In paragraph 16 of her affidavit, Ms. Wheeler-Cribb addressed the original loan closing:

16. During the closing on June 25, 2008, my son and I discovered that Lovelace had not corrected the Note, and that in order to close, my son had to agree to mortgage his individual

property as security for the loan. At that point, we felt that we had no other choice since the First Palmetto loan was coming due, and Lovelace assured us that First South Bank would see the development through its conclusion. Reluctantly, we agreed to close.

At trial, Ms. Cribb was confronted with correspondence, parts of which she authored, which established that First South clearly explained to her well before the closing that it would require Lot 4, owned by her son, to be additional collateral. It became clear that her affidavit was not true. See Pl.'s Trial Ex. 24.

Presumably because Ms. Wheeler-Cribb's statement in her affidavit was shown to be false, she now claims that "she felt she was forced by Wayne Lovelace to move forward with the closing of the loan despite her request to postpone the closing." This claim ignores the fact she was represented by counsel and had no obligation to move forward with the closing. There was no evidence that South Causeway would have lost any deposit, as none existed. Ms. Wheeler-Cribb's loan with First Palmetto Bank was not due for another two months. Ms. Wheeler-Cribb and South Causeway's counsel executed letters confirming the closing was performed properly. See Pl.'s Trial Ex. 9 at p. 3 ¶7 & Ex. 10. This alone is sufficient to support this Court's finding that there was no duress and to deny South Causeway's Motion to Amend the Judgment on this ground.

Paragraphs 21 and 22 of Ms. Cribb's Affidavit relate to the April 10, 2009 Agreement:

21. Lovelace agreed to release the lot owned by my son, but to do so, we had to pay First South Bank \$300,000. In addition, Kennedy Funding required a \$50,000 non-refundable deposit.

22. At closing, after the \$50,000 had been paid, *we discovered* that in addition to the \$300,000 payment, First South Bank was taking back a year from the South Causeway, LLC Promissory Note and demanding an acceleration of the maturity date. The

Bank demanded a new maturity date of July 5, 2010. I was taken completely off-guard, and if I refused to close on the loan, I would be forced to forfeit the \$50,000 deposit. Additionally, if I did not close, the lot would remain subject to First South Bank's mortgage, preventing us from closing with Kennedy Funding. Faced with no other option, I executed the closing document; I would have never voluntarily signed the purported loan agreement, but felt I had no reasonable alternative.

(emphasis added). Emails offered at trial made it clear that First South informed Ms. Wheeler-Cribb long before the April 10 closing that the maturity date would be shortened and that Ms. Wheeler-Cribb chose the proposal that resulted in the shortened maturity date. Pl.'s Trial Exs. 18, 19, & 27. Therefore, to the extent that South Causeway's duress argument is based on Ms. Cribb's testimony, South Causeway failed to establish a basis to support duress and the Court's will not amend its judgment on duress.

South Causeway's assertion that Ms. Wheeler-Cribb's elderly age contributed to the purported duress is also insufficient to justify amending this Court's judgment. The evidence showed that Ms. Wheeler-Cribb served on a bank board and that that South Causeway was represented by counsel at both closings. Cox & Floyd Grading, Inc., v. Kajima Constr. Servs., Inc., 356 S.C. 512, 589 S.E.2d 789 (Cl. App. 2003)(finding a party represented by an attorney in the execution of documents was bound by terms therein); Hyman v. Ford Motor Co., 142 F. Supp. 2d 735 (D.S.C. 2001)(finding that a duress argument is substantially undermined where a party was represented by counsel). Duress is not implied merely from a hard bargain which required that a release be given in adverse business conditions. Id. The party claiming duress must also establish the lack of a reasonable alternative to signing the contract and those circumstances were caused by the opposing party. Id. at 746. As this Court noted at trial, South Causeway had every right to not sign the loan agreement or the subsequent agreement.

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Therefore, this Court denies South Causeway's motion to amend the judgment as the evidence at trial does not support the affirmative defense of duress.

B. Damages.

In First South's case-in-chief, its custodian of records took the stand and testified to the contents of the loan documents and those documents were entered into evidence. These documents included a June 11, 2012 payoff statement. Pl.'s Trial Ex. 13. Counsel for South Causeway cross-examined the custodian of records regarding how the numbers in the payoff statement were derived. The custodian of records testified the figures were the product of First South's computer system. South Causeway did not object to the payoff statement and has not otherwise offered evidence that the numbers reflected on the payoff statement were incorrect. Instead, South Causeway is asking the Court to amend its Judgment that First South established its damages based on its argument that First South did not offer testimony as to how the computer system operated and how the system precisely calculated the interest and principal amounts.

The business records rules were put in place because business records are trustworthy and "it was utter[ly] impossible . . . that any man could keep in his memory, even with the aid of memoranda, the minute, varied and complicated transactions of even an ordinary mercantile or other trading concern, hence the necessity of substituting the book entries for the memory of the witness." Thyer v. Deen, 20 S.C.L. (2 Hill) 677, 678 (1835). The payoff statement is presumed trustworthy as a business record and it was admitted into evidence without objection from South Causeway. By allowing the payoff statement to be admitted into evidence without objection, South Causeway waived any right to later question the fact First South failed to offer technical testimony regarding the underlying computer methodology that was used to determine the payoff

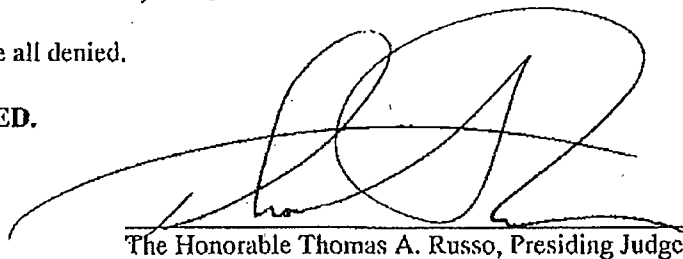
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figures. This Court found the payoff statement credible based on the evidence at trial and that conclusion will not be amended.

At best, South Causeway's challenge is to the ultimate amount reached, not to whether there was sufficient evidence of the payoff amount to support First South's foreclosure action. This argument goes to the weight of the evidence, and South Causeway offered no evidence or testimony showing the computer system was untrustworthy or that the amounts reflected on the payoff were incorrect. The bank's president, Mr. W.C. "Chip" Lyerly, III, testified to the calculation of the daily per diem and the fact that referenced interest rates had not changed since the loan matured for payment. Therefore, South Causeway's motion to amend the judgment as to its finding that First South established its damages is denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that South Causeway's post-trial motions are all denied.

AND IT IS SO ORDERED.



The Honorable Thomas A. Russo, Presiding Judge

Nov. 2nd, 2012
Florence, South Carolina

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STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
C/A NO.: 2010-CP-22-1233

First South Bank,

Plaintiff,

vs.

South Causeway, LLC,

Defendant,

**JUDGMENT OF FORECLOSURE
AND ORDER FOR SALE**

FILED
CLERK OF COURT
NOV - 1 AM 9:15

This matter was heard by the Court during the jury term beginning on September 17, 2012. Plaintiff First South Bank ("First South") brought this lawsuit seeking foreclosure of commercial property. Defendant South Causeway, LLC ("South Causeway"), answered the foreclosure lawsuit asserting various defenses and counterclaims. Pursuant to prior order of the Court, South Causeway's counterclaims were heard by a jury. First South's foreclosure action, which is equitable in nature, was to be determined by the Court, with the Court being bound by any findings of fact made by the jury. Johnson v. S.C. Nat. Bank, 292 S.C. 51, 354 S.E.2d 895 (1987). The foreclosure action and counterclaims were presented in one trial. First South presented its case in chief to the court in support of its foreclosure action by offering into evidence through its custodian of records the relevant loan documents, demand letter, and payoff statement.

By verdict rendered on September 25, 2012, the jury found for First South on all three of South Causeway's counterclaims submitted to the jury: (1) breach of contract, (2) violation of the South Carolina Unfair Trade Practices Act, and (3) tortious interference with a contract. Thereafter, as to the First South's foreclosure action, taking into account the jury's findings and considering the testimony and evidence presented, also on September 25, 2012, the undersigned

rendered verdict in favor of First South on First South's foreclosure action, based on the following findings and conclusions of law:

FINDINGS OF FACT:

1. The Lis Pendens was filed on August 4, 2010, and the Amended Lis Pendens was filed on August 5, 2010.

2. For value received, South Causeway made, executed and delivered to First South a Universal Note and Security Agreement ("Note") dated June 25, 2008, promising thereby to pay to the order of First South up to the sum of \$6,500,000.00, upon the terms and conditions set forth therein.

3. To secure payment of the Note, South Causeway made, executed and delivered to First South a Mortgage dated June 25, 2008, ("Mortgage") covering real property in Georgetown County. The Mortgage was filed on June 25, 2008, and is of record in the office of the Register of Deeds for Georgetown County in Mortgage Book 990 at Page 247.

4. South Causeway and First South entered into an Agreement (the "Agreement") effective as of April 10, 2009, which, among other things, modified the maturity date of the Note to July 5, 2010.

5. As modified by the terms of the Agreement, the Note matured on July 5, 2010, and payment due on the Note was not made as provided for therein.

6. Based on the terms of the Note and Mortgage, First South is entitled to recover its collection costs, including attorneys' fees and costs.

7. South Causeway asserted various defenses to the foreclosure in its Amended Answer to Complaint and Counterclaims.

a. With regard to defenses one through fourteen, South Causeway failed to prosecute and/or submit sufficient evidence to establish any of the defenses, and therefore, the undersigned finds in favor of First South for each such defense (as to those defenses actually addressed during the trial, the undersigned refers to the record for further explanation); and

b. With regard to defenses fifteen through twenty-one which were also alleged as counterclaims by South Causeway, during the jury trial, the undersigned directed verdict as to the sixteenth defense (Breach of Contract Accompanied by Fraudulent Act), eighteenth defense (Breach of Fiduciary Duty), nineteenth defense (Fraud, Constructive Fraud, and Misrepresentation), and the twenty-first defense (Tortious Interference with Prospective Contract), with the grounds for such directed verdict being stated on the record. As to the fifteenth defense (Breach of Contract), seventeenth defense (Violation of South Carolina Unfair Trade Practices Act), and twentieth defense (Tortious Interference with Contract), the jury returned a verdict in favor of First South for all three defenses/counterclaims.

8. The amount due and owing on the Note, with interest at the rate provided in the Note and other costs and expenses secured by the Mortgage, is as follows:

a.	Principal due as of September 25, 2012	\$4,774,112.73
b.	Interest through June 11, 2012	\$378,357.74
c.	Interest from June 12, 2012 through September 25, 2012 at per diem rate of \$563.61	\$59,742.66
d.	Late Charges	\$999.99
e.	Appraisal Fee	\$750.00
f.	Advanced Real Property Taxes	\$120,424.45
f.	Copies from Horry County Clerk of Court	\$127.75

Debt secured by Note and Mortgage, including interest through September 25, 2012		\$5,334,515.32

The amount due (shown above) together with First South's collection costs, including attorneys' fees and costs, to be determined by the Court shall accrue interest at the maximum post judgment rate and together with such interest shall constitute the debt due to First South.

9. First South is seeking foreclosure of the Mortgage against South Causeway, and its right to a deficiency judgment against South Causeway is expressly demanded.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

First South should have judgment of foreclosure of the Mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. South Causeway and all persons whosoever claiming under it be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

2. As of September 25, 2012, there is due to the First South on the Note and Mortgage the sum of \$5,334,515.32, plus its collection costs, including attorneys' fees and costs to be determined by the Court, plus interest thereafter at the post judgment rate representing the debt due to First South.

3. The amount due in the preceding paragraph shall accrue interest from the date of judgment at the maximum statutory rate per annum and together with such interest shall constitute the total debt due to First South.

4. The amount due shall be subject to increase to permit First South to recover additional costs, commissions and expenses. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

5. South Causeway shall, on or before the date of sale of the property hereinafter described, pay to First South or First South's attorney the amount of South Causeway's debt as aforesaid, together with the costs and disbursements of this action.

6. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Georgetown County Clerk of Court at public auction, at the Georgetown County Courthouse, 333 Cleland Street, 2nd Floor Master in Equity Courtroom, Georgetown, County and State aforesaid (or such other place as specified in the Notice of Sale), on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on some other day appointed by the Court), on the following terms, that is to say:

A. FOR CASH: The Georgetown County Clerk of Court will require, at the time of the bid, a deposit of five (5%) percent on the amount of the bid in cash or equivalent (unless First South is the successful bidder) same to be applied on the purchase price if compliance is made; but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to South Causeway's debt owed to First South.

B. Interest on the bid shall be paid through the day of compliance at the rate of 7.25%, which is the present maximum post judgment interest rate.

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

D. First South shall pay for any statutory commission on the sale from the proceeds of sale, and purchaser to pay for deed preparation, costs of recording the deed and deed stamps.

7. A personal or deficiency judgment being demanded, the bidding will remain open after the date of sale for thirty (30) days.

8. That the Georgetown County Clerk of Court will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the purchaser, or purchasers, a deed to the premises sold. If, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within twenty (20) days after date of sale, then the Georgetown County Clerk of Court may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

9. That the Georgetown County Clerk of Court will apply the proceeds of sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment to First South or First South's attorney, of the amount of South Causeway's debt owed to First South and interest (including attorney fees) or so much thereof as the purchase money will pay on the same.

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

#6 MK
10. That First South shall have judgment of foreclosure. That First South shall have judgment against South Causeway for the full amount found to be due First South on the Note and Mortgage, which judgment shall be reduced by the net proceeds of sale pursuant to S.C. Code Ann §29-3-650, as amended, as determined by this Court in a subsequent Order for Deficiency Judgment. First South may waive any of its rights prior to sale, including its right to

a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure. First South's waiver shall be made in writing.

11. If First South is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness owed to First South in full, First South may pay to the Georgetown County Clerk of Court only the amount of the costs and expenses, crediting the balance of the bid on the indebtedness owed to First South.

12. Should the First South, First South's attorney or agent fail to appear on sales day, the property shall not be sold, but shall be re-advertised and sold at some convenient sales day thereafter when the First South, First South's attorney or agent is present.

13. In the event the successful bidder is other than South Causeway, upon the presentation of a Writ of Assistance, the Sheriff of Georgetown County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in such peaceable possession.

14. That the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Clerk of Court or Register of Deeds in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the Clerk of Court for Georgetown County, who executes such deed as grantor.

15. The undersigned, shall direct the Clerk of Court/Register of Deeds to release of record the mortgage lien being foreclosed, after the Order Confirming Sale and Disbursements has been executed and filed, which mortgage lien is described as follows:

#17
THK
That certain Mortgage given by South Causeway to First South dated June 25, 2008 and recorded in the Office of the Clerk of Court/Register of Deeds for Georgetown County on June 25, 2008 in Book 990 at Page 247.

16. The undersigned will retain jurisdiction to do all the necessary acts incident to this foreclosure including, but not limited to, the issuance of a Supplemental Order to evidence additional debt incurred if the sale of the property is delayed by the filing of a bankruptcy petition, transfer of service of the Note and Mortgage by First South, or an attempt of the parties to reach a settlement, the issuance of a Supplemental Order to correct a harmless error in the action that does not substantially affect the rights of the parties, the issuance of a Writ of Assistance, disposing of any surplus funds pursuant to Rule 71(c), SCRCP, and hearing any issues involving appraisal proceedings under §29-3-680 et seq of the South Carolina Code of Laws (1976) as amended.

17. Mortgaged property to be sold by Georgetown County Clerk of Court:

All those certain pieces, parcels or tracts of land situate, lying and being in the County of Georgetown, South Carolina, and designated as Parcel A containing 11.66 acres and Parcel B containing 0.91 acres and Parcel C containing 4.92 acres on the plat entitled "Plat of 17.49 acres at the Southeastern intersection of U.S. Highway 17 and the South Causeway to Pawleys Island, Surveyed for Peggy Wheeler-Crihb", said plat prepared by Trico Engineering Consultants, dated October 5, 2005, and recorded in the Office of the Register of Deeds for Georgetown County in Slide 564 at Page 2, all of which will more fully appear by reference to the aforesaid plat which is incorporated herein and made apart and parcel hereof by reference thereto.

ALSO:

All right title and interest in and to the easement reserved in Indenture Deed from Ruth Oliver Bell, et al. to C.B. Foster, as Trustee for the RBP Trust dated January 31, 1989, recorded on April 23, 1989 in Deed Book 332 at Page 125.

ALSO:

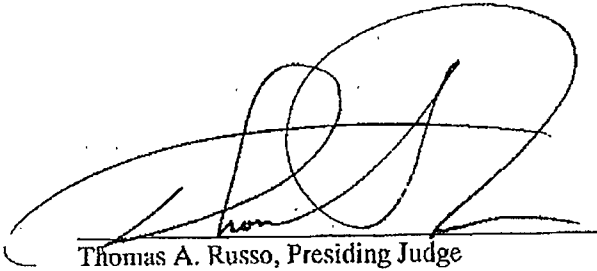
All that certain piece, parcel or tract of land situate, lying and being in Tax District Number Four (4) County of Georgetown, State of South Carolina, shown and designated as 1.68 acres on a map prepared for James N. Lewis by Samuel M. Harper, R.L.S., dated June 4, 1982, recorded in the Office of the Clerk of Court for Georgetown County in Plat Book 2 at Page 30; said parcel measuring and containing 1.68 acres and Butting and Bounding as follows: to the Northeast a distance of 473.1 feet on lands designated "C. W. Stamper"; to the Southeast a distance of 379.9 feet on lands of A.H. Parsons, et al; to the Northwest a distance

of 50 feet by U.S. Highway 17; and to the Southwest a distance of 140 feet on lands of A. H. Parsons, et al.; all of which will more fully and at large appear by reference to said map.

This being the same property conveyed to South Causeway, LLC by Peggy Wheeler-Cribb by deed dated June 25, 2008, recorded in the Office of the Register of Deeds for Georgetown County on June 25, 2008 in Record Book 990 at Page 242.

18. This is a foreclosure of commercial property and therefore, exempt from (1) the Home Affordable Modification Program ("HMP") program pursuant to Administrative Order of the South Carolina Supreme Court dated May 22, 2009, and (2) the right to foreclosure intervention pursuant to Administrative Order of the Supreme Court of South Carolina dated May 2, 2011.

AND IT IS SO ORDERED.



Thomas A. Russo, Presiding Judge

Oct. 12, 2012
Florence, South Carolina

Attorneys for Plaintiff First South Bank:
Donald W. Tyler, Jr.
Tyler, Cassell, Jackson, Peace & Silver, LLC
1331 Elmwood Avenue, Suite 300
Post Office Box 11656
Columbia, South Carolina 29211
(803) 252-7689

AND

#9
MK
Joel W. Collins, Jr.
James L. Floyd, III (Lee)
Collins & Lacy, P.C.
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NO.: 2010-CP-22-1233

First South Bank,

South Causeway, LLC,

PLAINTIFF,

DEFENDANT,

Submitted by:
TYLER, CASSELL, JACKSON
PEACE & SILVER, LLC
Donald W. Tyler, Jr.
1331 Blmwood Avenue, Suite 300 (29201)
Post Office Box 11656
Columbia, South Carolina 29211

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

DISPOSITION TYPE (CHECK ONE):

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial/hearing before the court. The issues have been tried or heard and decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE COURT RULING IN THIS APPEAL.

FILED
GEORGETOWN COUNTY, S.C.
2012 NOV -2 PM 3:05
ALAN Y. WHITE
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☒ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
First South Bank	South Causeway, LLC	THE PROPERTY WHICH IS THE SUBJECT OF THIS ACTION BE SOLD AT PUBLIC SALE PURSUANT TO THE JUDGMENT OF FORECLOSURE AND ORDER FOR SALE. JUDGMENT IN THE SUM OF \$5,694,334.89

If applicable, describe the property, including tax map information and address, referenced in the order:
Parcel Numbers: 04-0164-030-00-00 (0 Ocean Highway; 5.0 acres 2 Towers Township 7 & Lot on US 17 SLD 564-2 f/k/a 2 Towers Township 7 - SLD 494-1); 04-0164-033-00-00 (9156 Ocean Highway, 1.7 Acres Mainland); 04-0169-001-03-00 (0 Ocean Hwy, 11.66 acres, Parcel A Intersection US Hwy 17 & South Causeway SLD 494-1, 564-2; SLD 726-7B); 04-0169-001-04-00 (Smalls Loop, 0.91 acres, PT r/y Smalls Loop SLD 494-1, 564-2)

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

Thomas A. Russo, Presiding Judge

2141 November 2nd 2012

FORM 4

For Clerk of Court Office Use Only

This judgment was entered on the 2nd day of November, 2012, and a copy mailed first class or placed in the appropriate attorney's box on this 2nd day of November, 2012 to attorneys of record or to parties (when appearing *pro se*) as follows:

TYLER, CASSELL, JACKSON PEACE & SILVER, LLC Donald W. Tyler, Jr. 1331 Elmwood Avenue, Suite 300 (29201) Post Office Box 11656 Columbia, South Carolina 29211 AND Joel W. Collins, Esquire James L. Floyd, III, Esquire COLLINS AND LACY, P.C. Post Office Box 12487 Columbia, SC 29211 ATTORNEY(S) FOR THE PLAINTIFF(S)	Audra M. Byrd, Esquire Mark Goddard, Esquire Turner, Padgett, Graham and Laney, P.A. 2411 Oak Street, Suite 301 PO Box 2116 Myrtle Beach, SC 29578 ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter: None

Laura L. Davis, Deputy
 CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

FIRST SOUTH BANK,
Plaintiff,

vs.

SOUTH CAUSEWAY, LLC,
Defendant.

CIVIL ACTION NUMBER:
2010-CP-22-01233

SUPPLEMENTAL JUDGMENT OF
FORECLOSURE

FILED
GEORGETOWN COUNTY, S.C.
2012 NOV 12 PM 3:05
ALMA WHITE
CLERK OF COURT

This matter came before me on motion of the First South Bank ("First South") for an award of attorneys' fees and costs. Pursuant to the Order of the Honorable Larry B. Hyman, Jr., dated August 27, 2012, and filed on September 20, 2012, First South was allowed to present evidence as to the amount of its attorneys' fees and costs to the Trial Court post-trial. At the conclusion of the jury trial of this matter, which was heard during the September 17 Term of Court, I ruled that First South was entitled to recover its attorneys' fees and costs in an amount to be determined by the court. First South submitted the Affidavit of Donald W. Tyler, Jr., and the Affidavit of James L. Floyd, III, in support of its request for attorneys' fees and costs. Defendant South Causeway, LLC ("South Causeway"), filed a Return in Opposition to Motion for Attorneys' Fees and Costs (the "Return"). In the Return, South Causeway challenged the reasonableness and appropriateness of certain costs and fees totaling \$52,661.45. While First South did not concede that the \$52,661.45 was unreasonable or inappropriate, First South nonetheless consented to the reduction in the award of attorneys' fee and costs by the \$52,661.45.

Accordingly, based on the evidence presented, the Judgment of Foreclosure and Order for Sale ("Judgment") is hereby supplemented to include the attorneys' fees and costs as set forth in the following supplemental findings of fact and conclusions of law.

SUPPLEMENTAL FINDINGS OF FACT AND
CONCLUSIONS OF LAW:

1. Pursuant to the terms of the Universal Note and Security Agreement ("Note") and Mortgage, First South is entitled to recover its litigation costs, including attorneys' fees and costs, from South Causeway, including its costs and attorneys' fees to bring the foreclosure action and to defend the counterclaims because the counterclaims were intertwined with the foreclosure action and challenged the validity and enforceability of the Note and Mortgage. Charleston Lumber Co., Inc. v. Miller Housing Corp., 318 S.C. 471, 483-84, 458 S.E.2d 431, 438-39 (Ct. App. 1995).
2. First South has incurred the actual sum of \$175,722.15 in attorneys' fees with Tyler, Cassell, Jackson, Peace and Silver, LLC, for the prosecution of the foreclosure action and defense of South Causeway's counterclaims, as reflected in the Affidavit of Donald W. Tyler, Jr., Esquire and Exhibits filed herein.
3. First South has incurred the actual sum of \$17,991.32 in costs and expenses advanced by Tyler, Cassell, Jackson, Peace and Silver, LLC in association with the prosecution of the foreclosure action and defense of South Causeway's counterclaims, as reflected in the Affidavit of Donald W. Tyler, Jr., Esquire and Exhibits filed herein.
4. First South has also incurred the actual sum of \$33,230.43 in costs and expenses that First South paid directly in association with the prosecution of the foreclosure action and defense of South Causeway's counterclaims, as reflected in the Affidavit of W. C. Lysterly, III, attached to the Affidavit of Donald W. Tyler, Jr., Esquire.
5. First South has incurred the actual sum of \$179,566.52 in attorneys' fees with Collins & Lacy, P.C., for the prosecution of the foreclosure action and defense of South Causeway's counterclaims, as reflected in the Affidavit of James L. Floyd, III, Esquire and Exhibits filed herein.

6. First South has incurred the actual sum of \$5,970.60 in costs and expenses advanced by Collins & Lacy, P.C. in association with the prosecution of the foreclosure action and defense of South Causeway's counterclaims, as reflected in the Affidavit of James L. Floyd, III, Esquire and Exhibits filed herein.
7. First South's attorneys' fees and costs presented in Paragraphs 2 - 6 total \$412,481.02. Therefore, subtracting the \$52,661.45 as challenged by South Causeway in its Return (to which First South has consented) the total attorneys' fees and costs sought by First South is \$359,819.57.
8. The attorney fees requested are fair and reasonable under the six (6) applicable factors under Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989):
 - (a) This litigation involved a complex commercial dispute, which included the defense of numerous counterclaims and affirmative defenses containing allegations of breach of contract, fraudulent misconduct, and unfair trade practices by First South;
 - (b) The time actually devoted to the matter was necessary to complete extended discovery, numerous motions and depositions, and presenting the case at a trial by jury, which lasted six (6) days;
 - (c) The professional standing of the attorneys at Tyler, Cassell, Jackson, Peace and Silver, LLC, and Collins & Lacy, P.C., are excellent and they regularly represent clients in matters similar to the issues presented in this case;
 - (d) The contingency of compensation factor is inapplicable since this was not a contingency case;
 - (e) The rates of the attorneys involved in this matter are consistent with those customarily charged in the Counties of Columbia and Georgetown for similar legal services; and

- (f) The beneficial results that First South received in prevailing on its action to foreclose on a Note exceeding \$5 million in value and prevailing in the defense of the counterclaims, which sought to invalidate the Note and/or to recover \$8 million in claimed actual damages.
9. The Court also notes that the amount of attorneys' fees and costs were exacerbated, at least in part, as a result of the inaccuracies included in the affidavit of Peggy Wheeler-Cribb which South Causeway presented to the Court in opposition to First South's prior motion for Summary Judgment.
10. The amount due and owing on the Note, with interest at the rate provided in the Note and other costs and expenses secured by the Mortgage, as shown in Paragraph 8 of the Judgment is hereby amended as follows:

a.	Principal due as of September 25, 2012	\$4,774,112.73
b.	Interest through June 11, 2012	\$378,357.74
c.	Interest from June 12, 2012 through September 25, 2012 at per diem rate of \$563.61	\$59,742.66
d.	Late Charges	\$999.99
e.	Appraisal Fee	\$750.00
f.	Advanced Real Property Taxes	\$120,424.45
f.	Copies from Horry County Clerk of Court	\$127.75
g.	Attorney Fees & Costs	\$359,819.57

Debt secured by Note and Mortgage, including interest through September 25, 2012	\$5,694,334.89

The amount due (shown above) shall accrue interest at the maximum post judgment rate and together with such interest shall constitute the debt due to First South.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

All Findings of Fact and Conclusions of Law set forth in the Judgment shall remain in full effect, with the exception of the following:

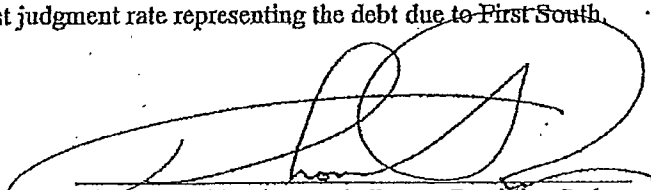
1. The attorney fees requested are fair and reasonable under the six (6) applicable factors to be considered under Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989):

- (a) This litigation involved a complex commercial dispute, which included the defense of numerous counterclaims and affirmative defenses containing allegations of breach of contract, fraudulent misconduct, and unfair trade practices by First South;
- (b) The time actually devoted to the matter was necessary to complete extended discovery, numerous motions and depositions, and presenting the case at a trial by jury, which lasted six (6) days;
- (c) The professional standing of the attorneys at Tyler, Cassell, Jackson, Peace and Silver, LLC and Collins & Lacy, P.C., are excellent and they regularly represent clients in matters similar to the issues presented in this case;
- (d) The contingency of compensation factor is inapplicable since this was not a contingency case;
- (e) The rates of the attorneys involved in this matter are consistent with those customarily charged in the Counties of Columbia and Georgetown for similar legal services; and
- (f) The beneficial results that First South received in prevailing on its action to foreclose on a Note exceeding \$5 million in value and prevailing in the defense of the counterclaims, which sought to invalidate the Note and/or to recover \$8 million in claimed actual damages.

2. Paragraph 8 of the Findings of Fact of the Judgment is hereby supplemented as shown in Paragraph 10 above.

3. Paragraph 2 of the Conclusions of Law of the Judgment, is hereby supplemented to state as follows: there is due to the First South on the Note and Mortgage the sum of \$5,694,334.89, plus interest at the post judgment rate representing the debt due to First South.

AND IT IS SO ORDERED.



The Honorable Thomas A. Russo, Presiding Judge

November 2nd, 2012
Florence, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2010-CP-22-1233

First South Bank,

Respondent,

v.

South Causeway, LLC,

Appellant,

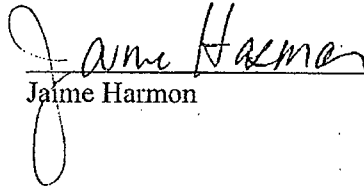
PROOF OF SERVICE

I, Jaime Harmon, the undersigned employee of Lewis, Babcock & Griffin L.L.P, attorney for Appellant South Causeway, LLC, do hereby certify that I have served a copy of the foregoing **Notice of Appeal**, in connection with the above-referenced case by hand delivering a copy of the same to the following address on November 30, 2012:

Joel W. Collins Jr.
Collins & Lacy P.C.
1330 Lady Street
Columbia, SC 29201

And by mailing a copy of the same by United States Mail, postage prepaid, to the following address on November 30, 2012:

The Honorable Alma White
Clerk of Court, Georgetown County
P.O. Box 479
Georgetown, SC 29442-0479


Jaime Harmon

Columbia, South Carolina
November 30, 2012

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
2010-CP-22-01233

COUNTY OF GEORGETOWN

FIRST SOUTH BANK,

-vs-

SOUTH CAUSEWAY, LLC,

Defendant.

September 18-25, 2012

B E F O R E:

HONORABLE THOMAS A. RUSSO, SR.

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

JOEL W. COLLINS, JR., Esquire
JAMES LEON FLOYD, Esquire
DONALD W. TYLER, JR., Esquire
Attorney for the Plaintiff

AUDRA M. BYRD, Esquire
MARK B. GODDARD, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

VOLUME I OF VI
September 18, 2012

I-N-D-E-X

PAGE:

JURY SELECTION	7
MOTIONS	23
OPENING STATEMENT BY MR. COLLINS	138
OPENING STATEMENT BY MS. BYRD	179
MOTIONS FOR DIRECTED VERDICT	275
MOTIONS FOR DIRECTED VERDICT	755
MOTIONS FOR DIRECTED VERDICT	895
CLOSING ARGUMENT BY MR. COLLINS	918
CLOSING ARGUMENT BY MS. BYRD	1013
FINAL CLOSING ARGUMENT BY MR. COLLINS	1032
JURY CHARGE	

WITNESSES:

JULIE CASON

Direct Examination by Mr. Floyd	198
Cross Examination by Ms. Byrd	259

DON THOMAS

Direct Examination by Ms. Byrd	284
Cross Examination by Mr. Tyler	309
Redirect Examination by Ms. Byrd	316
Recross Examination by Mr. Tyler	318

WAYNE LOVELACE

Direct Examination by Ms. Byrd	328
Cross Examination by Mr. Collins	416
Redirect Examination by Ms. Byrd	464

WILLIAM LYERLY

Direct Examination by Ms. Byrd	516
Cross Examination by Mr. Tyler	554
Redirect Examination by Ms. Byrd	563

1	WILLIAM BARKSDALE	
2	Direct Examination by Mr. Goddard	586
	Cross Examination by Mr. Collins	637
3	Redirect Examination by Mr. Goddard	668
4		
	PEGGY WHEELER-CRIBB	
5	Direct Examination by Ms. Byrd	679
6	Cross Examination by Mr. Collins	714
	Redirect Examination by Ms. Byrd	755
7		
8	PEGGY WHEELER-CRIBB	
9	Direct Examination by Mr. Collins	809
10		
	WILLIAM LYERLY	
11	Direct Examination by Mr. Tyler	812
12	Cross Examination by Ms. Byrd	831
	Redirect Examination by Mr. Tyler	837
13		
14	WILLIAM ASHBURNE	
15	Direct Examination by Mr. Floyd	846
	Cross Examination by Mr. Goddard	867
16	Redirect Examination by Mr. Floyd	881
	Recross Examination by Mr. Goddard	885
17		
18		
	COURT EXHIBITS:	
19	1 (Emails)	565
20	2 (Deposition of Robert Gwin)	585
21		
22		
23		
24		
25		

1 PLAINTIFF EXHIBITS:

2	1	(Commitment Letter)	201
	2	(Loan Agreement)	201
3	3	(Promissory Note	201
	4	(Mortgage)	201
4	5	(Closing Certificate)	201
	6	(Guaranty)	201
5	7	(Closing Certificate)	201
	8	(Cribb to Lovelace Email)	201
6	9	(Lovelace to Cribb Email)	201
	10	(Loan Summary)	201
7	11	(Modification Agreement)	201
	12	(Lovelace to Cribb Letter	201
8	13	(Cribb to Lovelace Email)	201
	14	(Mortgage)	257
9	15	(Mortgage)	258
	16	(Plat)	423
10	17-ID	(Photograph)	
	18	(Lovelace to Cribb Email)	428
11	19	(Cribb to Lovelace Email	429
	20	(Cribb Affidavit)	431
12	21	(Potts Letter)	443
	22	(Interface Properties Letter)	444
13	23	(Photograph)	446
	24	(Lovelace to Cribb Email)	458
14	25	(Lovelace to Cribb Letter)	462
	26	(Cribb to Lovelace Email)	718
15	27	(Cribb to Lovelace Email)	730
	28	(Cribb to Lysterly Email)	741
16	29-ID	(Wheeler to Cribb Email)	

17
18 DEFENDANT EXHIBITS:

19	1	(Closing Statement)	324
	2	(Listing Agreement)	287
20	3	(No Exhibit 3)	
	4	(Auction Expenses)	324
	5	(Thomas to Cooper email)	298
21	6	(Don Thomas' Notes)	
	7	(Auction Sign In Sheet)	
22	8	(Lovelace to Cribb Email)	329
	9	(Lovelace to Cribb Email)	335
23	10	(Loan Summary)	338

24

25

1	11	(Cribb to Lovelace Email)	346
	12	(Lovelace to Wheeler and Crib Letter)	349
2	13	(Cribb to Lovelace Email)	358
	14	(Cribb to Lovelace Email)	362
3	15	(Lovelace to Lyerly Emails)	362
	16	(Lovelace to Wheeler Email)	364
4	17	(Lovelace to Geer Email)	367
	18	(Lovelace to Cribb Email)	369
5	19	(Lovelace to Cribb Letter)	401
	20	(Cribb to Lovelace Email)	397
6	21	(Cribb to Lovelace Email)	403
	22	(Lovelce to Lyerly Email)	408
7	23	(Risk Rating Report)	476
	24	(Email)	513
8	25	(Confidentiality Agreement)	513
	26	(Bank Policies)	514
9	27	(Purchase Offer)	753
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1 P-R-O-C-E-E-D-I-N-G-S

2 (Convened 10:30 a.m., September 18, 2012).

3 THE COURT: Good morning, ladies and
4 gentlemen, welcome back. I know you all were here
5 yesterday. My name is Tommy Russo, I'm a Circuit
6 Court Judge out of Florence and I will be here this
7 week holding Common Pleas court, what is commonly
8 referred to as civil court. I think you all were
9 here yesterday for jury qualification and you know
10 Judge John is here handling criminal court. We're
11 going to be doing civil cases in this courtroom and
12 so that is why you're here this morning, we're
13 going to need your assistance in this case that we
14 have here this week.

15 The caption of the case, just for your
16 information, ladies and gentlemen, is First South
17 Bank versus South Causeway, LLC. It's civil action
18 number 2010-CP-22-1233.

19 (Jury Voir Dire).

20 (Recessed at 11:18 a.m.).

21 (Resumed at at 11:35 a.m.).

22 THE COURT: Is the plaintiff ready to
23 proceed?

24 MR. COLLINS: The plaintiff is ready, Your
25 Honor.

1 THE COURT: Is the defendant ready?

2 MS. BYRD: The defendant is ready, Your

3 Honor.

4 THE COURT: All right, Madam Clerk.

5 THE CLERK: The plaintiff.

6 MR. COLLINS: The plaintiff strikes Number 3.

7 THE CLERK: Number what?

8 MR. COLLINS: Three.

9 THE CLERK: The defendant?

10 MS. BYRD: The defendant strikes juror 19.

11 MR. COLLINS: The plaintiff strikes 14.

12 THE CLERK: The defendant?

13 MS. BYRD: The defendant strikes juror 17.

14 THE CLERK: The plaintiff?

15 MR. COLLINS: The plaintiff strikes number 5.

16 THE CLERK: The defendant?

17 MS. BYRD: The defendant strikes number 1.

18 THE CLERK: The plaintiff?

19 MR. COLLINS: The plaintiff strikes 13.

20 THE CLERK: The defendant?

21 MS. BYRD: The defendant strikes 15.

22 THE CLERK: First alternate, 21 through 23.

23 Plaintiff?

24 MR. COLLINS: The plaintiff strikes 22.

25 THE CLERK: The defendant?

1 MS. BYRD: I'm sorry. The defendant strikes
2 21.

3 THE CLERK: For the second alternate, 24
4 through 26. The plaintiff?

5 MR. COLLINS: The plaintiff strikes 24.

6 MS. BYRD: The defendant -- I'm sorry.

7 THE CLERK: Go ahead.

8 MS. BYRD: The defendant strikes number 26.

9 THE CLERK: For confirmation, the plaintiff
10 struck numbers 3, 5, 13, 14.

11 MR. COLLINS: Correct.

12 THE CLERK: 22 and 24, is that correct?

13 MR. COLLINS: That's correct.

14 THE CLERK: Okay. The defendant struck
15 numbers 1, 15, 17, 19, 21, and 26, is that correct?

16 MS. BYRD: That is correct.

17 THE CLERK: All right.

18 THE COURT: Are there any motions regarding
19 jury selection, from the plaintiff?

20 MR. COLLINS: No, Your Honor.

21 THE COURT: Anything from the defense?

22 MS. BYRD: No, Your Honor.

23 THE COURT: All right, madam clerk.

24 THE CLERK: When I call your names please
25 come with your belongings and take a seat in the

1 jury box.

2 Juror number 46, Delores Cooper.

3 Juror 55, Sunny Daniel.

4 Juror number 161, Laquinta Linnen.

5 Juror number 285, Casey Wheeler.

6 Juror number 188, Jannie Moultrie.

7 Juror number 92, Albertha Grate.

8 Juror number 274, Yolanda Waiters.

9 Juror number 244, Marjorie Smith.

10 Juror number 164, Gregory Long.

11 Juror number 237, Thomas Shurling.

12 Juror number 133, Fran Johnson.

13 Juror number 129, Christopher Jayroe.

14 Juror number 270, Michael Vicas. Take a seat

15 in the first alternate seat.

16 Juror number 114, William Hensel. Take a

17 seat in the second alternate seat.

18 JRUOR: Judge --

19 THE COURT: Yes.

20 THE CLERK: I think you have a juror --

21 (Unrecorded bench conference between the

22 Court and Juror Wheeler).

23 THE COURT: Take this young man and have him

24 have a seat over there, he is in custody right now.

25 (Unrecorded bench conference).

1 THE COURT: All right, is the plaintiff
2 ready?

3 MR. COLLINS: Yes, sir.

4 THE COURT: Is the defense ready?

5 MS. BYRD: Yes, sir, Your Honor.

6 THE COURT: All right.

7 MR. COLLINS: The plaintiff strikes 27.

8 THE CLERK: The defendant?

9 MS. BYRD: The defendant strikes 29.

10 THE COURT: All right. Let me -- Mr. Vicas,
11 I'm going to get you to step over one seat, if you
12 would. And Mr. Hensel, move over one.

13 Go ahead.

14 THE CLERK: Juror number 134, Leslie Johnson.

15 THE COURT: And we'll put on the record in
16 just a minute, but let me, for the remainder of the
17 panel, call back after 6:00 o'clock this evening
18 the number you have and follow whatever
19 instructions that you will get on that phone call.
20 If you call around, you know, if you call and get a
21 busy signal because there are several of you
22 calling, just hang up and try again a little later,
23 there are several people calling in, but go ahead
24 and call that number after 6:00 and follow whatever
25 instructions are on that message, okay?

1 So, the remainder of the jury panel, you are
2 free to go.

3 (The jury panel was excused from the
4 courtroom).

5 THE COURT: Let me get you all to step up here
6 real quick.

7 (Unrecorded bench conference).

8 THE COURT: All right, ladies and gentlemen,
9 it's about ten minutes to 12:00 so we're going to
10 break for lunch at this time but before I send you
11 out I'm going to send with you some instructions
12 and these instructions will be with you throughout
13 the trial of the case, okay, and they are very
14 simple.

15 You are to have no conversation with anyone
16 about this case. If anyone tries to speak with you
17 about the case you just need to let them know that
18 you're a juror and you can't talk about it. If
19 they persist or they try to talk with you, if you
20 can let me know who that is I will make sure that
21 that doesn't continue.

22 We live in a day and age where everybody
23 walks around with phones in their pockets that are
24 basically mini computers, all right, these little
25 devices do about everything these big devices do.

1 My order to you, my charge to you is that you are
2 not to use any electronic devices or anything at
3 all, in other words, it is not your place to
4 investigate this case, okay?

5 As jurors you are going to be taking an oath
6 and your oath is to decide this case based on the
7 testimony and the evidence that is brought before
8 you in this courtroom by the attorneys and by
9 nothing else. You are not to consider anything
10 outside this courtroom in deciding this case, so
11 the Chief Justice has told us to let jurors know
12 that you are not to do any of your own independent
13 investigation or looking into any other matters,
14 that you just, when you're not here in the
15 courtroom listening to testimony and when you're
16 outside the courtroom let your mind relax, get this
17 case off your mind and just try to relax.

18 Now, you're not to have conversation, as I
19 said, about the case. When you reassemble after
20 lunch in your jury room that order to not have any
21 conversation about the case continues even among
22 yourselves. You are not even to discuss the case
23 among yourselves, and sometimes people look at me a
24 little odd because they think, "Well, I thought
25 that is what we're supposed to do as a jury."

1 Well, it is but you do not begin your
2 deliberations, you do not begin discussion of the
3 case, as a matter of fact you do not decide any
4 issue in this case until all of the evidence has
5 been presented, the attorneys have had an
6 opportunity to address you with their closing
7 remarks and I have given you the charge on the law.
8 It is not until that point that you're allowed to
9 have any conversation about the case at all. So
10 please remember that, don't talk to anyone about
11 the case at all, just go and enjoy your lunch.

12 Now, I'm going to ask you, as you leave here
13 you're going to go with the bailiff, he is going to
14 show you where your jury room is and then from
15 there you will go ahead and go to lunch. I'm going
16 to ask you, if you would, to please be back in the
17 jury room at 2:30, okay? I'm going to give you
18 some extended time for lunch because I have to take
19 up some matters of law before we get started and
20 that will give me that opportunity to do that,
21 okay?

22 So, if you would, follow the bailiff, he will
23 show you the jury room and when you come back at
24 2:30 you will return back to the jury room, okay?

25 MR. COLLINS: Your Honor, you didn't mean to

1 swear them until later?

2 THE COURT: Not until we get back and we're
3 ready to get started.

4 (The jury was excused from the courtroom).

5 THE COURT: All right, what I want to do is
6 first let's take up the issue that we had. Let me
7 just, I tell you what, before we do that, let me
8 just take a short break, okay? We'll take about a
9 five minute break, then we'll get started back and
10 we'll take up the issue regarding the alternate
11 juror.

12 (Recessed at 11:55 a.m.).

13 (Resumed at 12:05 p.m.).

14 THE COURT: I want to allow the defense to
15 put on the record any exceptions there may be
16 regarding -- just for the record, let me say that
17 we went through the qualification questions and we
18 had, and of course I asked the typical catch all
19 question at the end, I asked if there was, if any
20 member of the jury panel knew of any reason at all
21 why they could not serve as a juror to please let
22 me know, a couple folks stood up and came up and
23 gave reasons and then that was the end of it and so
24 we proceeded to jury selection.

25 The clerk, Madam Clerk prepared a strike

1 sheet, the attorneys had an opportunity to review
2 those strikes and then we came in and we went
3 through the process of exercising the strikes. At
4 the conclusion I asked if there were any motions
5 regarding jury selection. At that time there
6 weren't any from either side.

7 Then when we proceeded to call the members of
8 the panel up who had been selected juror number
9 285, Mr. Casey Wheeler, was selected as juror
10 number 4, according to my notes here, and Mr.
11 Wheeler informed the Court at that time that he
12 could not render a decision in this case, he said
13 something along the lines of that he had some
14 experience regarding people owing money and just he
15 would not be able to be a juror in the case. I
16 asked him why he didn't respond to my earlier
17 question and he really didn't have a response to
18 that. So, he was set aside.

19 There were, at the time we, as I indicated,
20 we had a panel, we had first alternate and second
21 alternate jurors. The first alternate juror was
22 Michael J. Vicas, juror number 270, and the second
23 alternate was William H. Hensel, Jr., juror number
24 114. I discussed with the attorneys briefly, Miss
25 Byrd had indicated on behalf of the defense that

1 they would request that all the jurors be placed
2 back into the jury panel and we restrike the jury.
3 Mr. Collins for the plaintiff took the position
4 that the first alternate would just be then moved
5 into the jury panel and that the Court would then
6 open jury selection back up to seat another
7 alternate.

8 My understanding of the status of the law in
9 South Carolina is that we have civil court and
10 criminal court and the process is different for
11 each, I believe. I believe in civil court when you
12 have more than one alternate and a member of the
13 main panel for whatever reason has to be excused
14 you elevate the first alternate onto the panel and
15 the second alternate becomes the only alternate and
16 you proceed.

17 In criminal cases where you have two
18 alternates it's different. In criminal cases if a
19 person on the main panel has to be excused you then
20 take the two names of the alternates and you put
21 them in a hat and you randomly draw to determine
22 which alternate is seated in the main panel, and it
23 is my understanding that is the way it is done in
24 South Carolina.

25 And so that's what I did in this case, is I

1 moved Mr. Vicás into the main panel, who was the
2 first alternate, and Mr. Hensel became the first
3 alternate and then we went through the process of
4 selecting a second alternate, which Miss Johnson
5 then became that second alternate, and we went
6 through that process and the defense obviously
7 objected and felt it was more appropriate to
8 impanel or begin the process from square one, so I
9 want to give either side an opportunity to voice
10 their position with regard to that at this time.

11 MS. BYRD: Your Honor, I think that you have
12 stated for the record what our request was and,
13 Your Honor, we would request that if you are going
14 to deny that request, and obviously you have, if
15 you would procedurally take the names of the two
16 jurors, two alternates and pick one out of the hat
17 rather than elevating the first alternate and
18 having him be a member of the panel. Essentially
19 the reason is that the way the strike process went
20 with alternates we were given three names, so
21 essentially one of those three was going to be a
22 member of the jury and that is what practically
23 happened, so we would just ask, we think that it
24 would be most fair to draw from a hat if we are not
25 going to be allowed to redo the strike process,

1 Your Honor.

2 THE COURT: All right.

3 Mr. Collins, do you wish to be heard on that?

4 MR. COLLINS: Well, Your Honor, I believe you
5 stated the law and I think it is a very fair
6 process. I have been involved in many trials where
7 for one reason or another a juror had to be
8 replaced by an alternate and every time I have seen
9 the first alternate move up and then at that point
10 we wouldn't have the opportunity to pick another
11 alternate because we would have no jury panel. I
12 have never seen the second alternate jump over the
13 first alternate to become a member of the jury, it
14 is always an orderly progression of number one
15 becomes a juror, two becomes number one.

16 We learned about this problem in time to go
17 ahead and pick another alternate and, Your Honor,
18 the idea of us starting from scratch and restriking
19 this jury makes no sense. You will note that we
20 were left with only 33 jurors at the end of the
21 day, with all the excuses and the people who
22 transferred to other terms, the panel that was
23 drawn yesterday for a criminal case, the ones that
24 you excused today for various reasons, and we wound
25 up with 33 names. That is pretty low. I don't

1 recall another case where we got down that close,
2 so you have only got four people left in this whole
3 venire who are not, you know, involved in this jury
4 selection process, so we would wind up with a very,
5 very similar jury should we go through the strike
6 process again, I believe, and so I believe this is
7 not an appropriate request, I believe Your Honor
8 has ruled correctly.

9 Thank you.

10 THE COURT: All right. What I will do, I'm
11 going to double check, I'm pretty sure I'm right
12 but I don't know for sure and I'm going to double
13 check. It is either a statute or there is case law
14 that speaks to the seating of an alternate juror
15 and I thought at one point it was a statute but it
16 may be case law but I will look at it and before we
17 proceed and swear the jury I will have an answer
18 for you and I'm just going to follow whatever the
19 case law is.

20 MS. BYRD: Thank you, Your Honor.

21 THE COURT: All right. Now let me make this
22 suggestion. It is ten minutes after 12:00, I was
23 going to give us about 35 minutes to do lunch and
24 start back at a quarter until 1:00 with pretrial
25 motions. That should give us at least an hour and

1 45 minutes, if not two hours, to handle pretrial
2 matters.

3 MS. BYRD: Yes, sir, Your Honor.

4 THE COURT: Does that suit everybody?

5 MR. COLLINS: That's fine, Your Honor.

6 THE COURT: I would rather have a longer
7 lunch but we need to get going.

8 MR. COLLINS: That's okay.

9 THE COURT: All right. So court will be in
10 recess. Now as far as trial, we'll be in recess
11 until 12:45 -- excuse me. Yes, 12:45.

12 MS. BYRD: Thank you, Your Honor.

13 THE COURT: Mr. Wheeler, I'm going to get you
14 to come around, if you would, sir, let me address
15 your issue here. Mr. Wheeler, let me ask you a
16 question. Yesterday you had spoken to Judge John
17 about an excuse, or about needing to have an
18 excuse. Is that my understanding?

19 JUROR: I was trying to go to the institution
20 to get my paperwork.

21 THE COURT: Where is that, now?

22 JUROR: They sent it to Columbia.

23 THE COURT: What institution.

24 JUROR: The one right there at Waccamaw.

25 THE COURT: The mental health facility at

1 Waccamaw?

2 JUROR: Yes, sir.

3 THE COURT: You're a patient there?

4 JUROR: I was.

5 THE COURT: How long ago, when were you
6 released from there?

7 JUROR: I didn't get released, my parents
8 stopped having the money to take me there.

9 THE COURT: Okay, all right. Well, I mean,
10 yesterday is that what you were trying to do, Judge
11 John was trying to get the paperwork from Waccamaw?

12 JUROR: That is what I was trying to do so I
13 could take it to him and show it.

14 THE COURT: All right. And they weren't able
15 to?

16 JUROR: Some MICA something, I can't remember
17 what the name of it is, they said I couldn't get it
18 from them, I would have to go to Columbia to get
19 it.

20 THE COURT: Okay, all right.

21 DEPUTY SHERIFF: Your Honor, in his defense,
22 I was working at the front door yesterday and he
23 came up a couple times to us trying to figure out
24 what he was supposed to do and we shared with him
25 he needed to either get that medical information or

1 either talk to the judge.

2 THE COURT: Yes.

3 DEPUTY SHERIFF: And I'm not sure that he
4 understood completely.

5 THE COURT: Okay. Mr. Wheeler, here is the
6 thing, and I know you didn't do anything
7 intentionally but it causes a lot of problems, that
8 is why we go through these questions, okay, and at
9 the end I asked if there was any reason, you may
10 not have heard me or whatever, but that is the
11 whole purpose in doing that. Here is what I'm
12 going to do. I'm going to just go ahead and excuse
13 you from jury service this week.

14 JUROR: Right.

15 THE COURT: All right. So you don't need to
16 call the number, you don't need to call back or
17 anything, I'm going to go ahead and have Miss Alma
18 just excuse you from the panel for this week.

19 JUROR: All right.

20 THE COURT: All right, sir.

21 JUROR: Thank you.

22 (Juror excused from the courtroom).

23 (Recessed at 12:15 p.m.).

24 (Resumed at 1:00 o'clock p.m.).

25 THE COURT: Thank you, ladies and gentlemen,

1 please have a seat.

2 I'm sorry I put everybody on that short lunch
3 break, if you wisked something down and you have
4 indigestion and you need to be excused just let me
5 know and we'll let you do that.

6 I have received several motions in limine
7 from plaintiff's counsel. I don't know if there is
8 any particular order that you all want to take
9 those up in.

10 One, I would hope there may be more to it, I
11 don't mean to under estimate any argument but one
12 here looks fairly simple, it is the motion to
13 prevent Mrs. Cribb from being referred to as Miss
14 Peggy. That seems rather simple. Is that going to
15 be an issue?

16 MR. GODDARD: Well, Your Honor, yes. I mean,
17 we feel that we should be able to call her by her
18 name. I mean, her name is Peggy.

19 THE COURT: Call her Peggy.

20 MR. GODDARD: And we don't see what prejudice
21 there is in the south of just saying Miss Peggy.
22 That is what her name is and what she goes by, just
23 as if anybody else is called by their name. The
24 practical matter is Miss Wheeler-Cribb is difficult
25 to say and difficult on every one to say and, Your

1 Honor, I mean, she goes by Miss Peggy, that is her
2 name. By saying it is a nickname I think is not
3 really correct. It is directly what, her name is
4 Peggy Wheeler-Cribb and I cannot imagine what
5 prejudice there is to either side by saying that,
6 using Miss Peggy is in any way prejudicial to the
7 bank or shows sophistication in any way, it shows
8 the name she goes by.

9 THE COURT: All right.

10 MR. COLLINS: Judge, I was trained by the
11 Honorable Matthew J. Perry, Jr., probably the
12 greatest judge South Carolina has produced,
13 especially if you add in the outstanding record he
14 had as a civil rights lawyer, he was a giant and he
15 had a clear rule that no one in his courtroom was
16 referred to by their first name, everybody was
17 referred to by their last name and that was his
18 unflinching rule and I think is a very good rule.

19 A chummy terms, a first name, a nickname even
20 does not lend itself to the dignity that a legal
21 proceeding in this courtroom should have, so I am
22 taking a page out of the book of Matthew J. Perry
23 and I'm asking that we all refer to each other by
24 our proper names and not by our first name and
25 certainly not by our nicknames, and I believe that

1 is a good rule for every court of law everywhere.

2 THE COURT: Well, you will get no argument
3 from me as far as the esteem with which you hold
4 Judge Perry, I feel the same way about him, and as
5 iconic as I think he is, I don't necessarily agree
6 you can't call someone by their first name. What
7 prejudice is there? Obviously the purpose that any
8 attorney would do that would be to kind of have the
9 jury, you know, give the jury a little warm
10 feeling, not being so rigid and so formal, so it is
11 kind of basically making your client a little more
12 human to the jury. I know that is the reason
13 people do it. I don't understand the prejudice.

14 MR. COLLINS: Your Honor, it is an attempt to
15 have jurors endear themselves to this person
16 because of this affectionate name. I have some
17 affectionate names, believe it or not, but I don't
18 use them in the courtroom and I they are not --

19 THE COURT: I have heard some of them.

20 MR. COLLINS: I just believe, I think they
21 are affectionate and they are not professional.

22 THE COURT: Let me ask, what's the problem
23 with, if you want to call her Peggy, call her
24 Peggy?

25 MR. GODDARD: Your Honor, a couple different

1 reasons. First, we are in the south and I think by
2 calling her just by her first name would be rude in
3 some ways. Some jurors may see that. Also, and I
4 think practical, it is important, there is
5 confusion, the plaintiffs in this case have
6 confused her name throughout the depositions and
7 throughout trial, they have called her Miss
8 Wheeler, Miss Cribb, Miss Wheeler-Cribb and, Your
9 Honor, it is just, she goes by Miss Peggy. For
10 them to say that is a term of endearment or term of
11 affection for Miss Peggy, it is her name, it is
12 what she goes by, we're in the south, it is very
13 common to have that, especially her generation. To
14 say that we're able to, to show that there would be
15 prejudice as to the actual facts of this case, it
16 is just not there.

17 THE COURT: Will, here is the thing. I don't
18 totally disagree with you on that but, I mean, I
19 don't know that anybody would take offense, and let
20 me give you an example. If she was on the stand
21 and I was examining her I may say, "Ma'am, you're
22 Miss Peggy Wheeler-Cribb, is that correct?" "Yes,
23 that's correct." "Miss Wheeler-Cribb, would you be
24 offended if I just referred to you as Peggy? Can I
25 call you by your first name?" "No, no, that's

1 fine". And then proceed with your examination.
2 What's wrong with that?

3 MS. BYRD: Your Honor, I will argue that
4 point because I will be the one examining her.

5 THE COURT: Sure.

6 MS. BYRD: And to me, Your Honor, we have had
7 this case for so long I would never call her Peggy,
8 it is going to be nearly impossible for me to do
9 that, especially in front of a jury, and for me to
10 preface my examination of my own client by saying
11 is that okay, that appears, I mean, that is not, I
12 think that they have stated no basis whatsoever in
13 law or fact which would support granting this
14 motion. That is her name and I do not want to
15 appear rude to the jury, I have seen the jury and
16 their ages, they are from here and I think it would
17 be offensive.

18 THE COURT: Let me ask you this. When she
19 takes the stand you are just going to fire out and
20 start calling her Miss Peggy?

21 MS. BYRD: No, sir, Your Honor. And I don't
22 imagine that I will be using her name much other
23 than in opening and instead of saying Miss Peggy
24 Wheeler-Cribb, I may occasionally say Miss Peggy,
25 but I have gone over my opening, it is not a

1 repetitive thing.

2 THE COURT: I've got you. I'm going to deny
3 the motion, you can refer to her as Miss Peggy. I
4 don't think there has been any prejudice shown. In
5 saying that I don't mean that to be disrespectful
6 to Judge Perry because I again hold him in great
7 esteem, I just, you know, as long as there is no
8 prejudice, if a person wants to call their witness
9 by their first name I don't have any problem with
10 that, so it's allowed.

11 All right. I didn't mean to take things out
12 of order but I thought that might have been
13 something simple, it is not, so we'll move on.

14 Mr. Collins, is there any particular order
15 you would like to address these, sir?

16 MR. COLLINS: Your Honor, the first one in my
17 book is the motion we have for an order in limine
18 to exclude any evidence or parole evidence of any
19 understanding or agreement other than that which is
20 stated in the contractual agreement. Your Honor,
21 the evidence in this case is, and if you read the
22 complaint and the counter-claims, I mean the answer
23 and the counter-claims, you see that it is their
24 contention that there were representations made by
25 Mr. Lovelace, the loan officer who dealt with this,

1 that are totally contrary to the note, the
2 mortgage, the loan agreement and the commitment
3 letter. Each of those documents, Your Honor, have
4 clear language. For example, here is one from the
5 loan agreement. It says the note and security
6 agreement and the commitment letter contain the
7 entire agreement between the borrowr and the bank
8 regarding the loan and collateral, no oral
9 representations or statements shall be binding on
10 the bank and no agent of bank has the authority to
11 vary the terms of this agreement except in writing
12 on the face hereof or on a separate page attached
13 hereto.

14 Similar language is found in other loan
15 documents. The modification agreement that she
16 signed on April 10, 2009, that is about a year or
17 so after the original loan, it has a similar
18 clause. It says that that agreement has its clear
19 terms and they may be varied only by written
20 agreement signed by the bank and the borrower and
21 each of the guarantors. The guarantors, Your
22 Honor, are Miss Cribb and Mr. Wheeler.

23 Your Honor, we have cited case law in our
24 memorandum and I believe this is very well settled
25 law because this happens with some frequency in

1 mortgage foreclosure cases and we have cited you to
2 several South Carolina cases that make that clear.
3 Quoting from Palmetto State Savings Bank versus
4 Barr, "When an agreement is reached," excuse me,
5 "When an agreement is reduced to writing there is a
6 strong implication the whole intention of the
7 parties has been expressed and there is no
8 agreement or intention contrary to that expressed,"
9 close quote.

10 Judge, if you're going to let people come to
11 court, and notwithstanding these carefully drawn
12 and carefully executed documents, come in and just
13 make up testimony any way they want to about an
14 oral representation that was made to them, for
15 example, in this case they say Mr. Lovelace
16 promised that he would not require additional
17 collateral for this mortgage. We're talking about
18 a beach lot. It is clearly called for in the
19 commitment letter, it's clearly called for in the
20 mortgage.

21 Miss Cribb had legal counsel representing her
22 both before and during that closing. If she gets
23 to come to court and say, "Well, you know, he told
24 me that wasn't going to be a problem at all, he
25 even told me we wouldn't have to put that lot in

1 there," it is in there, it is clearly in there,
2 it's in writing and if all you've got to do is come
3 to court and claim there was some other oral deal
4 that is binding and that you are therefore relieved
5 from the requirements clearly set forth in the
6 commitment letter, the note, the mortgage and the
7 security agreement, then they aren't worth the
8 paper they're written on and we don't have any way
9 to enforce rights, and why would any lender want to
10 come to Georgetown County and loan any money if all
11 you've got to do is make up a new rule when the
12 foreclosure comes along and you hadn't paid your
13 payments and you just make up a new deal?

14 She also claims that Mr. Lovelace said First
15 South Bank would unconditionally, quote, "See the
16 development through its completion." In other
17 words, "We'll keep loaning them money as long as
18 they needed it," and they would see it to
19 completion.

20 Judge, this loan started off as a loan for
21 not only the acquisition but the development of a
22 commercial piece of property in a shopping center.
23 It changed at some point. They abandoned that
24 plan, they notified the bank in writing that they
25 were not going to develop it, they were just going

1 to try to sell it at a profit.

2 Well, thereafter they didn't get any more
3 loan proceeds because the loan documents clearly
4 said, "In order for you to get any more draws on
5 this loan such as for infrastructure development
6 and you have to make proper showings and the bank
7 has to, you have to apply for that additional draw,
8 the bank has to satisfy itself that the conditions
9 precedent have been met and then and only then
10 would there be more money forthcoming from the
11 loan."

12 Well, those things were not done but they
13 want, they want Your Honor to allow Miss Cribb to
14 say, "Wayne Lovelace told me he would see this
15 development through to the end, without any
16 limitation, without any dates or due dates."

17 There is another ground other than the case
18 law we cited that we believe would require you to
19 grant this motion, and that is the so called bank
20 Statute of Frauds. It is found in Section
21 37-10-107 of the South Carolina Code of Laws. It
22 says that, quote, a failure to perform an alleged
23 promise or agreement to loan money in excess of
24 \$50,000 unless the party bringing the action has
25 received a writing from the party to be charged,

1 that there can be no action or defense based on any
2 such oral representation.

3 In other words, I didn't read that very
4 precisely but what it says is this. If you've got
5 a loan that is \$50,000 or more it's got to be in
6 writing and the terms have got to be in writing.
7 It is just like a contract to buy or sell land,
8 Your Honor. There is no such thing as an oral
9 contract to buy or sell land. That is the Statute
10 of Frauds that has protected us very ably for
11 centuries and we believe the bank Statute of
12 Frauds, together with the case law interpreting
13 language in the loan document in this case leaves
14 this Court with the clear obligation to grant this
15 motion and preclude such testimony from coming in.
16 Otherwise we let this thing become a very
17 disorderly and unorganized squabble about who said
18 what, and that should never be the case in a five
19 million dollar mortgage foreclosure case, Your
20 Honor.

21 MR. GODDARD: Your Honor, I would like to
22 address a couple different things. Really what
23 this motion is is a second opportunity for the bank
24 to try to argue the summary judgment motion. And
25 why I say that is I agree that it is well

1 established law that there is the parole evidence
2 rule that you cannot introduce evidence to try and
3 change or modify the terms of the agreement.
4 However, there is, it is also well established law
5 that parole evidence is generally admissible to
6 show fraud in the inducement of the writing, it
7 says seller cannot be allowed to hide behind parole
8 evidence to avoid the consequences of
9 misrepresentation whether fraudulent or negligent.

10 And what that does, Your Honor, why that's
11 important, we have directly argued in our defenses
12 that there is fraud in the inducement of the
13 writing, fraud in the inducement of the initial
14 contract or note and mortgage we're here for today
15 and why that is important is there has already been
16 a finding in this case by Judge John, and I will
17 read his order, "Similarly, South Causeway
18 presented evidence that if proven could support a
19 jury finding that the First South Bank fraudulently
20 induced South Causeway to execute the loan
21 documents in issue in this case."

22 What that says is there is a standard, there
23 is facts in question here that raise the issue and
24 should go to the jury whether there is fraud in the
25 inducement of the loan and, Your Honor, it is

1 important, there are other facts, you are getting
2 facts back and forth, but they can't have it both
3 ways. There is evidence that will be shown to the
4 jury that at the day of the closing, at the date of
5 the initial closing they hand delivered a letter
6 that was not in the commitment letter, that was not
7 in the loan agreement, that was added terms about
8 how they could release the collateral, that this
9 whole question was raised.

10 There will be documents and there will be
11 testimony that Judge John has seen and heard
12 already that says this collateral was never
13 supposed to be included. There was oral
14 representations and written representations that
15 this collateral would not be included and then when
16 they get to the day of the closing, instead of that
17 change, what they have is a letter saying, "Well,
18 add these terms to what the mortgage is, we'll add
19 these terms to the note." Those terms weren't in
20 the initial commitment letter that they are relying
21 on, it is not in the, any of the closing documents
22 other than a hand delivered letter, and that goes
23 directly to our claim of fraud in the inducement.

24 There is numerous cases on point that says
25 evidence of fraud in the inducement allows you to

1 introduce parole evidence as to those rules. And
2 what I think is important also, Your Honor, in the
3 two cases cited by the plaintiff, one of which is
4 Ray versus South Carolina National Bank, it
5 directly says on the last page of that, "Here Ray
6 is the only person who signed the notes, the notes
7 are clear and properly executed, therefore no
8 evidence of fraud, accident or mistake."

9 And that is the point that is different than
10 our case. There is evidence of fraud and that is
11 why we're allowed to introduce this evidence.

12 THE COURT: Well, she was represented by
13 counsel, correct?

14 MR. GODDARD: She was represented at the
15 initial, at the initial closing, yes, Your Honor.

16 THE COURT: Throughout this process, when
17 they sat down at the closing to execute these
18 documents she didn't have legal counsel?

19 MR. GODDARD: Not during the modification
20 that occurred the second time, Your Honor. The
21 initial loan, yes, we would agree that she was
22 represented by counsel but, Your Honor, I think the
23 representation of counsel still is outside the
24 fraud and the inducement of the contract, that
25 there is evidence to support this claim and that

1 has been found by, already ruled in this case as a
2 ruling that there is sufficient evidence of fraud
3 in the inducement of the contract. In fact, Your
4 Honor, it was twice, because they did a motion, I
5 believe a motion to reconsider that was again
6 denied on similar grounds.

7 THE COURT: Mr. Collins?

8 MR. GODDARD: Your Honor, I think it is also
9 important for your knowledge that there, they are
10 not going to deny that they made those
11 representations. We have the deposition testimony
12 that those representations were made by Wayne
13 Lovelace to Peggy Wheeler-Cribb. It is not a case
14 where it's a he said, she said. Their officer
15 admits those, to see the loan through. I want to
16 be clear to the Court. We're not planning to
17 introduce any evidence that we thought they were
18 going to unlimited, we had an unlimited checkbook
19 to write whatever fees were necessary but what
20 there was, was an indication that, "We'll do this
21 together, we're not going to, you know, hold your
22 feet to the fire, we'll work with you."

23 That was never done and more importantly it
24 was that, "This collateral that I said from the
25 very beginning of our first conversation that I

1 don't want to be included in this loan and if it
2 was then we are not going to do the loan," they
3 said, "Oh, it's just a formality, we're going to
4 get rid of that, we're not going to need it, it is
5 all going to change when you do the appraisals,"
6 and when they get to the closing it is still there
7 and they get hand delivered a different letter with
8 additional terms outside of it.

9 THE COURT: If it is still there why did they
10 sign it?

11 MR. GODDARD: Your Honor, that goes to our
12 additional defenses we have that there was, the
13 way, the time line of how this occurred is with
14 their testimony, with their promises to Miss Peggy
15 the maturity date on the loan they were having to
16 pay off was coming due and because they said they
17 would fix this and it wasn't going to be included,
18 she got to a point where there was nothing she
19 could do, if she didn't sign the documents that day
20 then the loan from first Palmetto, they would not
21 have been able to pay off and it would have been a
22 default and, Your Honor, I think it is important,
23 it isn't just an issue of facts, I think the case
24 law is clear if there is any evidence of fraud in
25 the inducement of the contract then the case law

1 supports you can introduce this parole evidence and
2 it is the jurors' decision whether they believe
3 there is sufficient facts to support the fraud in
4 the inducement.

5 THE COURT: All right.

6 MR. GODDARD: Thank you, Your Honor.

7 THE COURT: Mr. Collins?

8 MR. COLLINS: Judge, the letter that was
9 produced at the closing was a letter that didn't
10 change anything in the mortgage, the note,
11 commitment letter or anything. It was a letter
12 that outlined a procedure that the bank would
13 consider for them going forward but it didn't
14 change anything and the lawyer representing her was
15 there and they could see for themselves that the
16 bank required as additional collateral, other than
17 the tract of land known as the South Causeway, the
18 beach property which has the address of 334 Myrtle
19 Avenue, Pawley's Island, Georgetown County,
20 designated as lot 4 on a plat prepared by the Earth
21 Works Group dated July.

22 Her defense is there was duress. You know,
23 when I bought my house I had to borrow the money, I
24 was under a lot of pressure. Is that an invalid
25 mortgage? Heck no, it's not. Who borrows money

1 that doesn't feel a certain measure of pressure?
2 the idea you have a lawyer representing you,
3 you've got the documents provided to you in
4 advance, you have a chance to go over those
5 documents with your lawyer and you elect to go
6 forward and you sign the note and the mortgage,
7 Judge, if all that can be undone by a claim that,
8 "I was under duress and I think I was fraudulently
9 induced because of a conversation I had earlier,"
10 if all that, if all that can work, then these
11 carefully drawn provisions in every note and
12 mortgage executed in this state are not worth a
13 thing and so the word is going to go out, it has
14 already gone out, Judge, let me tell you this, the
15 word is already out if you want to beat a mortgage
16 foreclosure you counter-claim. They've got two
17 more just like it.

18 MR. GODDARD: Your Honor, I'm going to say I
19 think this is improper argument here.

20 THE COURT: It is.

21 MR. GODDARD: And goes far outside the scope
22 of this motion.

23 THE COURT: It is.

24 MR. COLLINS: Judge I apologize. But the
25 point is the idea --

1 THE COURT: Talk about, let's talk about the
2 law.

3 MR. COLLINS: All right.

4 THE COURT: They cited the case where parole
5 evidence is admissible if the purpose of it is to
6 show fraud in the inducement.

7 MR. GODDARD: Your Honor, I will be happy to
8 provide numerous cites that cite that, that
9 directly cite that holding. We have Gilliland
10 versus Elmore Properties, 301 South Carolina 295,
11 United States Leasing Corporation versus Janicare.

12 THE COURT: Slow down a little bit, now. 301
13 South Carolina what?

14 MR. GODDARD: Gilliland versus Elmore
15 Properties is 301 South Carolina 295.

16 THE COURT: All right.

17 MR. GODDARD: We have United States Leasing
18 Corporation versus Janicare, 291 South Carolina
19 312. We have Redwiend versus Edwards which
20 directly holds it's well established law that
21 allows parole evidence, allows extraneous evidenc
22 attacking an instrument on the ground of fraud, not
23 rendered inadmissible by a contract merger
24 provision. Parole evidence is designed to prevent
25 fraud, not promote fraud by immunizing the party

1 against claims arising out of fraudulent
2 misrepresentation, 354 South Carolina 459. You
3 have Hansen versus DHL, 316 South Carolina 505.

4 And I think it is important also, Judge, to
5 look at the case provided by them, Your Honor, Ray
6 versus South Carolina National Bank. It directly
7 holds that in the case that fraudulent, that absent
8 fraud, that's why no parole evidence was allowed.

9 MR. FLOYD: And, Your Honor, if I may, I
10 would note additionally --

11 THE COURT: You've got to identify yourself
12 for the court reporter.

13 MR. FLOYD: Lee Floyd for the plaintiff. I
14 believe Ray did deal with the issue of whether or
15 not oral promises induced then to sign the note.
16 These cases are in the mortgage realm as opposed to
17 some, I believe the cases that were cited by Mr.
18 Goddard which I don't have in front of me right
19 now. Also the lender Statute of Frauds that Mr.
20 Collins cited, which is South Carolina Code -- I'm
21 sorry, Your Honor.

22 THE COURT: 37-10-107.

23 MR. FLOYD: That deals specifically with
24 commercial loans and actually exempts from its
25 operation residential and consumer loans and it

1 applies on point here that the oral terms that they
2 are saying modified the agreement was an agreement
3 to loan money beyond \$50,000. I don't believe any
4 of the cases that either side has cited address
5 that and that is conveniently applied, I believe,
6 by the Court of Appeals, I apologize, actually the
7 Supreme Court in Seacoast Development, LLC, versus
8 Harborside Community Bank, and I can give you the
9 cite if you would like, Your Honor, the last case
10 on the law we provided, and it just deals with the
11 aspect that that statute is basically a lender
12 Statute of Frauds. I think everything that
13 purportedly was said outside it, which we take
14 issue with, just falls outside and is barred from
15 evidence.

16 MR. GODDARD: Your Honor, briefly. I'm just
17 reading the statute as it is, 37-10-107, I think it
18 is important to realize that is in the Consumer
19 Protection Code, not in the Banking Code or
20 anything else, it is in the Consumer Protection
21 Code and I read this as 37-10-107. Subsection 3
22 says subsections 1 and 2 do not apply to a loan of
23 money used for personal family and household
24 purposes. Obviously that would be outside this.

25 However, going to D, promissory notes, real

1 estate mortgages, securities agreements, guaranty
2 and surety agreements and letters of credit.
3 Nowhere in D is it insinuated that the loan of
4 money used for personal family or household
5 purposes is exhaustive, applies to the rest of that
6 list, Your Honor. It says, "Promissory notes, real
7 estate mortgages, security agreements, guarantees
8 and surety agreements are not subject to this
9 statute," and what is also important is it goes
10 back to what I'm saying, relying on the law in this
11 case, the Seacoast case that he cited again does
12 not have a finding of fraud, so it is outside what
13 we're saying.

14 I agree it is well established there is a
15 parole evidence rule but it is equally well
16 established that if you have evidence of fraud in
17 the inducement of the contract that it is directly
18 admissible to introduce that evidence.

19 Just for the Court's information, I gave you
20 the wrong cite. I said 291 on the United States
21 Leasing. That is 294, I apologize about that, my
22 handwriting leaves something to be desired.

23 MR. TYLER: Your Honor, Donald Tyler for the
24 plaintiff. With regard to the statute, we would
25 concede that 3(D) clearly does create some

1 ambiguity in the statute. Having said that, it has
2 always been our practice and understanding kind of
3 in the financial Bar that what 3(C), that
4 exclusion, what it really applies to is the
5 promissory note, mortgage security agreement,
6 guaranties and letters of credit were only going to
7 be signed by the borrower, and so what the
8 Legislature, it is not very well drafted, what the
9 Legislature didn't want, wanted to prevent was when
10 you look at it, it requires you to maintain it, it
11 says if you want to maintain a lawsuit, down in C
12 it says the party seeking to maintain the action,
13 that received the writing from the other party to
14 be charged, the party to be charged has signed the
15 agreement.

16 So, essentially it requires both parties to
17 sign the agreement and so what the exception is in
18 3(C) is really that a bank, because banks typically
19 don't sign promissory notes, mortgages, that they
20 are not going to be required to start signing
21 promissory notes in order to enforce promissory
22 notes. So, it is a poorly drafted, I would say,
23 poorly drafted exception but if you read that
24 exception to apply to notes, mortgages and
25 everything, then it really, it renders the statute

1 a nullity and there is no, there is no application
2 because I think that is really at the heart of it.

3 MR. GODDARD: Just very briefly, Your Honor,
4 and I will sit down. I think it is also important,
5 two things under the Consumer Protection Code, if
6 you look at Section 2, what that code precludes,
7 nowhere in there does it preclude fraud in the
8 inducement. It says there is a negligent
9 misrepresentation but that is separate and distinct
10 from fraud in the inducement. We have a finding
11 from Judge John already that there is evidence of
12 fraud sufficient to go to the jury and under the
13 case law I think it is well established that that
14 allows us to introduce this parole evidence.

15 Thank you, Your Honor.

16 THE COURT: Well, you keep telling me that
17 but we have a finding from Judge John. What are we
18 doing here, then, if Judge John has ruled on this
19 issue?

20 MR. TYLER: Your Honor, we have made a
21 general motion for summary judgment and submitted
22 it to Judge John. He thought there could be an
23 issue of fact and therefore he denied the motion
24 for summary judgment.

25 THE COURT: That is all it is, he denied

1 summary judgment because there is an issue of fact?

2 MR. TYLER: Correct.

3 MR. GODDARD: It is our position if there is
4 an issue of fact in this case, whether there is a
5 fraud in the inducement of the writing, that not
6 allowing us to introduce this evidence would be the
7 equivalent of striking our defense as to fraud in
8 the inducement.

9 MR. TYLER: Your Honor, it is going to be our
10 position that evidentiary standards are certainly
11 different than a Rule 56 motion, and that is the
12 distinction, Your Honor.

13 THE COURT: It would be asking too much to
14 see if you all had copies of these cases you cited?

15 MR. FLOYD: I do, Your Honor. I do not have
16 multiple copies.

17 THE COURT: It would be very helpful to pass
18 it up.

19 MR. FLOYD: If I may, Your Honor.

20 MR. GODDARD: May I approach, Your Honor? I
21 do not have a copy of the DHL case but there is the
22 three other cases.

23 THE COURT: All right.

24 MR. FLOYD: Your Honor, I believe --

25 THE COURT: All right.

1 MR. FLOYD: Thank you, Your Honor.

2 MR. COLLINS: Judge, I know you're getting
3 tired of hearing from all these lawyers but there
4 is one point I would make. At the summary judgment
5 stage a judge is simply looking to see if there is
6 a scintilla of evidence. At the trial the rules of
7 evidence apply. The case law and the statutory law
8 applies and at the trial we are obligated to apply
9 a much higher standard and that is the
10 admissibility under the well settled evidence law
11 that we operate under.

12 THE COURT: Yes, sir.

13 MR. COLLINS: Judge John found a scintilla of
14 evidence based upon an affidavit that Miss
15 Wheeler-Cribb gave and you will hear more about
16 that as the trial moves along but it was only on
17 the basis of her uncorroborated representations in
18 her affidavit that he found that scintilla of
19 evidence.

20 MR. GODDARD: And just briefly, Your Honor, I
21 don't want to belabor the point any more but there
22 was other evidence, there was the, presented at the
23 motion for summary judgment, outside of just the so
24 called uncorroborated affidavit, there was an
25 affidavit of Wayne Lovelace and more importantly

1 there was the deposition testimony of other
2 witnesses that will move forward in this case.

3 Your Honor, if I may, we just had a copy of
4 the other case printed out for you if you would
5 like. May I approach?

6 THE COURT: All right. It appears from the
7 cases I'm reading that to the extent the extrensic
8 or parole evidence is being used to support the
9 claim of fraud in the inducement that it would be
10 admissible for that purpose, so to the extent there
11 are any of these extrensic or oral statements or
12 whatever that are going to show the element of
13 fraud in the inducement I think they would be
14 admissible for that purpose.

15 MR. GODDARD: Thank you, Your Honor.

16 MR. COLLINS: Your Honor, under that ruling
17 it would not be necessary for us to make a
18 continuing and repeated objection to evidence as it
19 is being offered and received by the Court?

20 THE COURT: Well, I'm not sure. Are you
21 talking about anytime they refer to an oral
22 statement made?

23 MR. COLLINS: Yes, sir.

24 THE COURT: As long as it is being used to
25 support their claim of fraud, as evidence to that,

1 then I think it is admissible. I don't think that
2 opens the door for them just to --

3 MR. COLLINS: But do I need to stand up and
4 object every time?

5 THE COURT: No, no, I'm going to note your
6 exception to that ruling and any time that those
7 are raised, that objection will be noted.

8 MR. COLLINS: Judge, as we argued earlier in
9 another motion heard before Judge Hyman, the
10 defenses that were raised such as fraud in the
11 inducement are defenses which we believe should not
12 ever even go to the jury because the mortgage
13 foreclosure action itself is an equitable
14 proceeding and the case of Wells Fargo against
15 Smith recently decided by our Court of Appeals says
16 that the Court will decide the merits of a defense
17 raised in a mortgage foreclosure action, which is
18 equitable, and so what we have here, Your Honor, is
19 a proceeding that should go to either Master in
20 Equity Crosby or to Your Honor and they are taking
21 that evidence, that equitable defense of fraud in
22 the inducement to the mortgage foreclosure and they
23 are turning it into a basis upon which to prove a
24 counter-claim and we believe that under the law of
25 Wells Fargo against Smith counter-claims in

1 foreclosure actions can only result in a jury trial
2 if they go to certain aspects of the creation of
3 the instrument. And in their pleadings in this
4 case, Your Honor, their answer and counter-claims,
5 their amended answer and counter-claims, they do
6 not contest the veracity, the legitimacy, the
7 enforceability of the counter-claim, excuse me, of
8 the complaint which alleges the note, the mortgage
9 and all being enforceable. Their exact response is
10 the reference to the transaction documents which
11 speak for themselves and will be interpreted by the
12 Court as at matter of law. So, they plead fraud in
13 the inducement as a defense to the mortgage
14 foreclosure and that is the ruling that you have
15 just made, they get to offer evidence of fraud in
16 the inducement, to the mortgage foreclosure, but
17 they have not alleged that those documents are
18 invalid. They say, they simply ask the Court to
19 interpret them as a matter of law because the
20 documents speak for themselves.

21 And this is a hearing we had some time ago in
22 this same courtroom, as I recall, before Judge
23 Hyman and we argued that the defendants were not
24 entitled to a jury trial on those issues and we
25 lost, we lost the summary judgment motion and we

1 lost the motion to strike the demand for a jury
2 trial but we believe the law does not give them the
3 right to inject those issues and to ramp up into
4 their counter-claim such evidence as, such case law
5 as they are relying on here.

6 MS. BYRD: I think Mr. Collins just summed up
7 procedurally how many times this exact motion has
8 been made. It is now the fourth time that he has
9 argued that we should not be entitled to a jury
10 trial. Judge John heard it and denied their
11 request to strike our demand for jury trial. Then
12 they filed a motion to reconsider, which he issued
13 another written order denying their motion. Then
14 they filed another motion entitled plaintiff's
15 motion to strike, again another motion to
16 reconsider it, essentially, argued it and Judge
17 Hyman again denied it.

18 And now for a forth time they ask the Court
19 to grant the same motion which has been denied
20 three times. And not only that, but there is clear
21 case law that provides that if there are legal and
22 equitable issues, as he is arguing, that can be
23 tried separately, then the legal claims must be
24 heard first. So, in other words, he couldn't go
25 and try his mortgage foreclosure claim separate and

1 apart from our counter-claims and even if he could
2 and had made that motion to bifurcate, which he has
3 not, if he had made that motion our counter-claims
4 would go first, Your Honor.

5 Thank you.

6 MR. COLLINS: Judge, we know they have won
7 their argument to get the jury trial, we understand
8 that, but that doesn't mean that parole evidence
9 should come in in violation of the case law that we
10 rely on.

11 MR. GODDARD: And, Your Honor, I just don't
12 think there is any case law out there that says if
13 you use, if you use, if you have fraudulent
14 inducement that automatically invalidates your
15 ability to have a jury trial. I mean, this is all,
16 as Audra has argued, this is all the claims and
17 this is this exact ruling has been ruled on now
18 three times. Nothing has changed with your prior
19 ruling as to what our defenses were or anything
20 else, so I just don't, I believe it is an improper
21 motion before the Court.

22 Thank you.

23 THE COURT: Procedurally how would we
24 proceed, then, as far as the foreclosure issue?

25 MR. COLLINS: Judge, we think you decide

1 foreclosure.

2 THE COURT: I think that is a decision the
3 Court makes.

4 MR. COLLINS: Right.

5 THE COURT: So what goes to the jury?

6 MR. COLLINS: The counter-claims.

7 THE COURT: You know, I haven't seen anything
8 in this file. What are the counter-claims?

9 MR. COLLINS: Judge, do you want me to hand
10 you up a copy of their amended answer and
11 counter-claims?

12 MS. BYRD: It is breach of contract, breach
13 of contract accompanied by fraud, violation of the
14 South Carolina Unfair Trade Practices Act, breach
15 of fiduciary duty and one claim that is made up of
16 fraud, constructive fraud and misrepresentation.

17 THE COURT: Let me ask you this. If the
18 Court were to rule that foreclosure was proper and
19 you sent all that to the jury and they ruled in
20 your favor, isn't that conflicting?

21 MS. BYRD: Your Honor, I don't, I don't
22 necessarily, even if we are not, if we lost on the
23 foreclosure issue, in other words, if you decide
24 that the mortgage itself --

25 THE COURT: The documents and everything were

1 all proper, everything was executed properly.

2 MS. BYRD: No defense.

3 THE COURT: All right.

4 MS. BYRD: I think we could still prevail on
5 a counter-claim because it is different elements
6 than the Court would consider in their affirmative
7 claim for foreclosure. But I think, Your Honor, I
8 just now found the cite, Johnson versus South
9 Carolina National Bank, 292 SC 51, and it says when
10 issues common to both legal and equitable claims
11 are to be tried in a single proceeding the legal
12 issues are to be determined first and the findings
13 of the jury are binding on the sitting judge as the
14 trier of equitable claims.

15 So, in other words, we try this to the jury,
16 we send it back to them and they come back, we
17 believe their factual findings are binding on the
18 Court in the mortgage foreclosure portion. Would
19 you like me to print that one?

20 THE COURT: Yes, if you would.

21 MR. TYLER: Your Honor, I don't have the case
22 in front of me but from memory I believe the case
23 also said something along the lines of you can try
24 the case, the equitable case and the jury case in
25 one trial and the judge decides the equitable

1 issues and the jury decides the legal
2 counter-claims, Your Honor.

3 THE COURT: That is my understanding. I
4 guess my question was, Miss Byrd, what are you
5 saying? It sounds like what you are saying, the
6 jury finds, a hypothetical, let's say the jury
7 finds there was a breach of the contract and fraud
8 and all this other stuff, then they, then they
9 decided for me that the foreclosure is improper?

10 MS. BYRD: I believe their findings --

11 THE COURT: So, the jury has made the call
12 where the law clearly states that's a decision the
13 Court makes?

14 MS. BYRD: Well, I think the law, I think the
15 law says that, what I just read to you, was that
16 their findings are binding on Your Honor and so
17 they may make findings that don't in your opinion
18 or the opinion of the Court constitute a valid
19 defense to the enforcement, to the enforcement of a
20 mortgage but they themselves could make a finding
21 and it be binding on the Court on our
22 counter-claim. It is unlikely that would happen
23 but it certainly could happen.

24 THE COURT: I think the issue as to the
25 defendant's right to a jury trial has been

1 established and I think we'll go forward obviously
2 with a jury trial. But I do want to look at that
3 case because --

4 MR. GODDARD: May I approach, Your Honor?

5 THE COURT: In all candor I have never tried
6 a foreclosure case with these counter-claims and
7 have the jury, I knew all along that the Court
8 makes the decision regarding the equitable claim,
9 I'm just trying to figure out how you're telling
10 me, Miss Byrd, they can find, if a jury finds
11 fraudulent inducement, breach of contract and all
12 those things, how a court could ever in the face of
13 that then come back and say but the foreclosure is
14 appropriate. It sounds like the jury is making the
15 decision on the entire case.

16 MS. BYRD: And I think they do, Your Honor.

17 THE COURT: That's contrary to the law.

18 MS. BYRD: I don't think it is, Your Honor,
19 and the case spells it out, practically, Your
20 Honor. If they agree with us and find we have
21 established fraud or breach of contract with fraud,
22 then you could, it would be hard for the Court to
23 make a finding that that did not equate to unclean
24 hands, so that would establish an equitable remedy
25 that would prevent the mortgage foreclosure, and

1 that is just an example, but depending on what
2 their rulings or findings were on our specific
3 claims, there could be a possibility that they make
4 a finding that would allow Your Honor to approve
5 the foreclosure but practically I don't think that
6 could happen but the case law does say if they are
7 to be tried in the same proceeding then we go first
8 and those findings are binding on the Court.

9 MR. COLLINS: Judge, we don't think anything
10 this jury decides precludes you from determining
11 whether the mortgage foreclosure is valid and goes
12 forward. You can't throw into the jury box these
13 issues that they have raised by way of
14 counter-claim and come up with a conclusion that
15 not only does the bank not get to foreclose on
16 their mortgage and get whatever they can of the
17 value of that collateral but that a bank has to pay
18 them money for various counter-claims. If that's
19 the law in South Carolina, Your Honor, it is
20 standing on its head.

21 I'm reminded by Mr. Floyd the case law is
22 this. If a contract is rescinded by virtue of
23 defenses that are asserted or counter-claims that
24 are asserted, then the parties have to go back to
25 square one. The borrower, the mortgagor has to

1 give the money back to the bank, everybody has to
2 go back to square one if you rescind the contract.
3 Well, how are they going to do that?

4 THE COURT: I'm just looking at this case she
5 cited and it summarizes the proper analysis for
6 determining the trial of legal and equitable issues
7 and complaints and counter-claims. Here is what --
8 I mean, citing that case, Johnson versus South
9 Carolina National Bank. One, if both, obviously
10 the complaint and counter-claim, are in equity the
11 entire matter is tried by the Court.

12 Two, if both are at law then the issues are
13 triable by a jury.

14 Three, if the complaint is equitable and the
15 counter-claim is legal and permissive, the
16 defendant waives his right to a jury trial.

17 Then four, which is I think where we are
18 here, if the complaint is equitable and the
19 counter-claim legal and compulsory the plaintiff or
20 the defendant has a right to a jury trial on the
21 counter-claim and in that case the proper procedure
22 is as follows. The trial judge may pursuant to
23 Rule 42(B) order separate trials of the legal and
24 equitable claims or may order the claims tried as a
25 single proceeding.

1 Then it says if separate trials are ordered
2 the judge must determine the issues that are to be
3 tried first if there are factual issues common to
4 both claims. Absent that, then the at law claim
5 must be tried first. If there are no common
6 factual issues it is within the trial court's
7 judicial discretion as to which claims will be
8 tried first. If the claims are to be tried in the
9 same proceeding and there are factual issues common
10 to both claims the jury shall first determine the
11 legal issues, the Court may then determine the
12 equitable claims. The jurors' determination of
13 common factual issues shall be binding on the
14 Court.

15 So, your position is that your counter-claims
16 are basically factual issues that are common to
17 both claims?

18 MS. BYRD: Yes, sir, Your Honor, and Judge
19 John has already ruled they were legal and
20 compulsory, twice, I think.

21 THE COURT: All right. Well, I am going to
22 allow that parole evidence in as it relates to your
23 claims under fraud, so to that extent regarding the
24 motion in limine, I'm going to deny that as to
25 those, that evidence that relates to the fraud

1 issue.

2 All right, what else have we got?

3 MR. COLLINS: Your Honor, we have another
4 motion in limine which is entitled First South
5 Bank's motion in limine to preclude evidence of any
6 alleged wrongdoing upon the execution of the April
7 10, 2009 agreement.

8 Judge, there was an agreement signed on April
9 10, 2009, commonly referred to as a modification
10 agreement, and this was an agreement that
11 essentially released the beach lot so that they
12 could go out and use it as collateral for another
13 loan from another lender called Kennedy Funding,
14 and in that agreement which is attached I believe
15 to our motion in limine there is a broadly worded
16 release found in paragraph three which simply says
17 that the borrower and each of the guarantors does
18 hereby on their own behalf and on behalf of each
19 other hereby release and forever discharge the
20 bank, its successors, assignees, directors,
21 shareholders, employees, attorneys, agents and
22 servants from any, from any and all, of any and all
23 manner of action and actions, causes and causes of
24 action, suits, debts, sums of money, accounts,
25 reckoning, bonds, bills, contracts, controversies,

1 agreements, promises, variances, and it goes on.

2 It's a very broad release and they signed
3 this, Your Honor, and a lot of what you have just
4 heard about, this stuff that happens before they
5 execute the mortgage, they released all that when
6 they entered into this modification, and so having
7 signed that release they now want you to say they
8 are not obligated at all by the terms of that
9 release and we are here once again, Your Honor, we
10 find ourselves in a position where the bank is
11 doing all that it can to comply with this
12 understanding of the loan.

13 We enter into this agreement, and one of the
14 things we have to have going forward is an
15 assurance that you're not going to make any claims
16 based on anything that has happened up to that, so
17 on April 10, 2009, with their lawyer right by them
18 they signed this modification agreement and we
19 believe they ought to be held to the terms of that
20 modification agreement.

21 MR. GODDARD: Your Honor, briefly. I think
22 counsel is correct that our defenses and
23 counter-claims are definitely saying that
24 modification should be invalidated and should not
25 be held, should not be enforceable against Miss

1 Peggy.

2 What we have here, Your Honor, and this
3 specifically is a fact question in this case, one
4 of the major issues in this case is we have the
5 attorney that was present that was serving as the
6 escrow agent for an unrelated loan to this
7 modification. That attorney had said he did not
8 represent South Causeway, LLC, in this transaction.
9 What he has, what they also, what he also says is,
10 Your Honor, and I want to be, why that is important
11 is because that goes directly to our defenses of
12 unclean hands in this case because there is clear
13 South Carolina case law that modification
14 agreements require the involvement of an attorney
15 and it is our position and I think the facts will
16 show there was no attorney present for the bank and
17 there was no attorney present for Peggy, and also,
18 Your Honor, this goes to, and this was directly
19 raised, this exact same issue that all claims
20 should be, prior to the modification agreement,
21 should be dismissed under motion for summary
22 judgment based on this same waiver.

23 And what Judge John found and what we argue
24 is there is clear evidence of duress and also in
25 executing the modification agreement. And the case

1 law is clear that the issue of duress is a fact
2 specific case by case analysis that is left for the
3 jury and we feel that if the jury finds that it is
4 proper that, one, there was not an attorney
5 present, and two, there was, our client was under
6 duress and having to make this as well as other
7 equitable defenses that we have alleged and think
8 we can prove, then this modification and therefore
9 the waiver is not enforceable to our client and I
10 think, you know, Your Honor, and I can cite to
11 Judge John's order where he directly says the facts
12 as presented in the affidavit of Peggy
13 Wheeler-Cribb, and I will represent to you that
14 those will also be presented at trial, are
15 sufficient to establish a factual issue for the
16 jurors' determination as to whether the executed
17 loan documents were done under duress, whether
18 duress exists in a particular case is a question of
19 fact to be determined according to the
20 circumstances of each case, such as ages, sex,
21 compassion and capacity of the parties.

22 MR. COLLINS: Judge, let me help you out
23 here.

24 THE COURT: I appreciate it.

25 MR. COLLINS: They say that this modification

1 agreement of April the 10th, 2009, is unenforceable
2 because they were under duress and they didn't have
3 a lawyer. Well, we deposed Mr. Gwin, Robert H.
4 Gwin, III. "Question: Were you at some point
5 retained and did you represent a company named
6 South Causeway, LLC, and a lady name Peggy
7 Wheeler-Cribb and a gentleman named Will Darwin
8 Wheeler in connection with a loan to be made by a
9 company name Kennedy Funding?" That's the new
10 lender that comes into the picture once the
11 modification agreements is executed. "Answer:
12 Okay, I was not retained, in my opinion, by South
13 Causeway, LLC. I did represent Peggy Wheeler-Cribb
14 and Will Darwin Wheeler in connection with the
15 entity that I represented, and the entity that I
16 represented was Pawley's Island North, LLC."

17 Judge, in the course of discovery we sent out
18 requests to admit. Here is request to admit number
19 13. "Please admit that Peggy Wheeler-Cribb on
20 behalf of the defendant executed the agreement
21 dated April 10, 2009, in the presence of and after
22 opportunity to confer with counsel, a true copy of
23 which is attached hereto as Exhibit G. Response.
24 Admitted."

25 MS. BYRD: Judge -- I'm sorry.

1 MR. COLLINS: I have something else to add to
2 that. We had, and this was produced in discovery
3 and it was referred to in a conveniently taken
4 deposition, an email from Neil Motoene, he is a
5 mortgage broker with NVM Enterprises in New Jersey,
6 a response was sent from Peggy Wheeler-Cribb to
7 Neil Motoene, and so she got this email. Her
8 response is, "Neil, Wayne called me and I told him
9 Shirley Jacobs was overwhelmed with the 80 items had
10 to be taken care of. I thought I had let him know
11 we have a new attorney. Sorry about the mix-up.
12 It is the Gwin Law Firm."

13 So, we have three separate pieces of evidence
14 here, Your Honor, that we think overwhelmingly show
15 that Miss Cribb had a lawyer and Mr. Wheeler had a
16 lawyer and clearly if they had concerns about
17 duress or anything else, you know, South Causeway,
18 LLC, can't get legal counsel except through Miss
19 Cribb, she is the sole member of South Causeway, so
20 if Miss Cribb had a lawyer and if she had counsel
21 and she has ample opportunity to confer and she did
22 in fact do all that and execute this modification
23 agreement she's bound by it, Judge, and Mr. Gwin
24 acknowledges he represented her. Miss Cribb
25 acknowledges in an email to Mr. Motoene that she

1 has a lawyer, namely Mr. Gwin, the guy whose
2 deposition testimony I just quoted, and in answer
3 to request to admit they say that Miss Cribb and
4 Mr. Wheeler had a lawyer when they executed the
5 agreement of April 10th, 2009, in the presence of
6 and after an opportunity to confer with counsel.

7 And by the way, this request to admit says
8 Peggy Wheeler-Cribb on behalf of the defendant
9 executed the agreement in the presence of and after
10 opportunity to confer with counsel. So she, Your
11 Honor, was the person acting on behalf of South
12 Causeway, LLC.

13 Judge, how could this be close and how can
14 the bank be said to have improperly executed and
15 has now an unenforceable modification agreement so
16 that the broadly worded release contained in that
17 modification agreement is of no use to them,
18 affords them no protection and puts them at the
19 mercy of whatever the jury might want to do when
20 they hear all this we believe inappropriate
21 evidence? Judge, there has got to be a better way
22 for a bank to protect its interests and we think
23 this bank did everything the law requires,
24 everything they needed to do and we believe this
25 broadly worded release should be enforced.

1 MS. BYRD: Just to respond to that, Your
2 Honor, there is a way for a bank to protect its
3 interest, and it is to abide by the laws of this
4 state. If anyone has a claim -- I'm responding to
5 his last question.

6 THE COURT: Well, here is what I want to know
7 first, because the bulk of your argument was that
8 the defendant was unrepresented and yet in the
9 request to admit it was admitted that they were
10 represented by counsel and we all know that those
11 are binding, so what is your position? Now you're
12 taking a contrary position to the request to admit.

13 MS. BYRD: The way I read that request, Your
14 Honor, and I can only answer as truthfully as I
15 can.

16 THE COURT: I can't help if you made that
17 mistake.

18 MS. BYRD: I think the way it reads is that
19 they had an opportunity to consult with counsel but
20 the evidence, Mr. Bob Gwin will testify he did not
21 represent them and in fact the agreement that they
22 forwarded to him said, "Sign here to accept our
23 agreement that you will be the escrow agent," and
24 it was sent the day before closing, Your Honor, so
25 he's going to testify he did not represent them, he

1 was representing another LLC in a very complicated
2 loan and the way I answered that question I
3 admitted that Peggy Wheeler-Cribb, Bob Gwin will
4 admit it, too, that he represented her. However,
5 Your Honor, this agreement that was signed by Peggy
6 Wheeler-Cribb, we don't deny Bob Gwin was her
7 attorney, we do deny that that attorney represented
8 South Causeway.

9 THE COURT: Well, who signs for South
10 Causeway?

11 MR. COLLINS: Peggy Wheeler-Cribb.

12 THE COURT: We're chasing a tail right now.
13 You just got through telling me she was
14 represented.

15 MS. BYRD: For a separate transaction on
16 Kennedy Funding. Kennedy Funding made a loan to
17 Pawley's Island North, LLC, and Miss Peggy retained
18 Bob Gwin to review the Kennedy Funding transaction
19 documents, which he did, and as part of that
20 transaction First South Bank said in that
21 transaction, "We want you to serve as our escrow
22 agent, have this signed and send it back to us."

23 Bob Gwin is going to testify he did not
24 represent South Causeway, he was never engaged by
25 South Causeway and he gave her no counsel

1 whatsoever on that agreement. Regardless of what
2 the Court finds on that issue, Your Honor, we have
3 still alleged other circumstances which would
4 invalidate that 2009 agreement besides the non
5 representation by counsel.

6 Your Honor, we have alleged facts --

7 THE COURT: Let me ask you this. Because
8 this is becoming a procedural nightmare and I'm
9 seriously considering bifurcating and separating
10 this whole thing because now we're at the point,
11 now we've got this modification agreement which if
12 the modification agreement, and again I'm speaking
13 hypothetically, if the modification agreement is
14 found to be enforceable, then all of your causes of
15 action did go out the window prior to April 10th?

16 MS. BYRD: You're right.

17 THE COURT: Okay.

18 MS. BYRD: That's right.

19 THE COURT: Which is pretty much your causes
20 of action, correct?

21 MS. BYRD: No, no. Most of them, but the
22 most horrific thing, in our opinion, happened after
23 this time.

24 THE COURT: Okay, but the things prior. So,
25 there has to be a finding first as to whether or

1 not that modification agreement is valid or not
2 valid.

3 MS. BYRD: Which again is going to require
4 factual findings of whether there was duress,
5 whether --

6 THE COURT: All right.

7 MS. BYRD: Whether unclean hands, so the same
8 defenses that apply to the first loan agreement are
9 equally applicable to the second but more
10 importantly, if we are right about the
11 unforceability of the first agreement and the jury
12 so finds, then the modification by its terms could
13 not be enforceable.

14 MR. COLLINS: Judge, that can't be right.
15 Judge, the defenses alleged in this mortgage
16 foreclosure action in this equitable proceeding are
17 to be decided by you. The defenses raised in the
18 mortgage foreclosure action are equitable in
19 nature, unclean hands, fraudulent inducement. If
20 you find this modification agreement is lawful and
21 binding, then everything that happened prior to
22 April 10th, 2009, and that is a very substantial
23 part of the case, Your Honor, there are some things
24 that happened after that they complain about but
25 they become very attenuated and very hypertechnical

1 if what we have is a valid loan, a valid note, a
2 valid mortgage and a valid waiver of any claim of
3 irregularity prior to April 10, 2009, and they have
4 tried to carve out some argument to you that would
5 have you parcel away and invalidate a binding
6 response to request to admit.

7 The case on which the request to admit was
8 submitted was this case, Your Honor, First South
9 Bank versus South Causeway, it was sent to Miss
10 Byrd, the lawyer for South Causeway, LLC. We asked
11 her please admit that Peggy Wheeler-Cribb on behalf
12 of the defendant executed the agreement dated April
13 10, 2009, in the presence of and after an
14 opportunity to confer with its counsel. Admitted.

15 And, Judge, if there are loopholes in there,
16 if that is not a valid document, if that is not a
17 valid and binding response, I don't know what to
18 say. I mean, words mean something and actions
19 taken in litigation mean something and the
20 deposition testimony of Mr. Gwin doesn't contradict
21 that. He says he represented Miss Cribb.

22 Now you can't stand up here and say Miss
23 Cribb didn't have a lawyer, because she did, she
24 sent an email to Wayne Lovelace saying, "I've got a
25 new lawyer, Bob Gwin." She didn't say in that

1 email, "He only represents me in some very, very
2 limited capacity." She said, "He represents me,"
3 and, Judge, we just think this is kind of a
4 threshold and --

5 THE COURT: I think it is. I tell you what
6 we're going to do. We're going to go off the
7 record here and I'm going to get you all to step
8 back so we can speak off the record and let's talk
9 in greater detail procedurally how this cat needs
10 to be skinned, so to speak.

11 MR. COLLINS: Can I have Mr. Lysterly join us,
12 Your Honor?

13 THE COURT: That's fine.

14 MR. COLLINS: He wants to say something.

15 MS. BYRD: We're going to ask, if clients are
16 coming, let's have the clients.

17 THE COURT: I'm going to talk about procedure
18 of the trial, I'm not going to talk about the
19 details of what we're doing as far as legally, but
20 just procedurally how to even proceed in this
21 matter.

22 MS. BYRD: I think it should be among the
23 members of the Bar.

24 THE COURT: I don't disagree with that, so
25 let's just leave it to the lawyers and let's figure

1 out now this is going to proceed.

2 (Recessed at 2:20 p.m.).

3 (Reconvened at at 2:53 p.m.).

4 THE COURT: As I told you, I'm going to go
5 ahead and have them bring the jury in so we can
6 deal with them, then we'll proceed.

7 Go ahead and have the jury join us, please,
8 sir.

9 (The jury returned to the courtroom).

10 THE COURT: All right, ladies and gentlemen,
11 thank you all for being back and being prompt. I
12 hope everybody had a good lunch. I don't know if
13 I'm going to make your day or not but I'm about to
14 excuse you for the balance of today.

15 JUROR: You made mine.

16 THE COURT: Not the week but the balance of
17 today. I have got some matters that if we take the
18 time this afternoon to take up some legal matters
19 it will make the trial go a lot quicker and a lot
20 smoother, so rather than have you sit back there
21 while I'm doing that because it is something that
22 can't be done in front of you, I don't want to
23 inconvenience you, I talked to the attorneys, they
24 agree, they want to make sure that you all are
25 comfortable and not inconvenienced, so we're going

1 to, we're going to continue to stay and work but
2 we're going to let you all leave and ask you, if
3 you would, to please be back here tomorrow morning
4 at 9:30.

5 Now, when you go home you're going to, I'm
6 confident, be asked questions, "Well, did you get
7 picked," or, "What kind of case are you on,"
8 whatever. It is okay to tell your friends, family,
9 or loved ones that you were selected on a jury and
10 that you are going to have to be back tomorrow but
11 that's where it really needs to end. It is very
12 important that your ability to be fair and
13 impartial is preserved and saying something as
14 simple as an innocent as, "Yes, I'm on a case that
15 involves a bank foreclosure," or involves some
16 commercial real estate over at Pawley's Island or
17 whatever, something just innocent as that could
18 possibly elicit a response that would affect your
19 ability to be fair and impartial.

20 So, it is fine to tell whoever that you are
21 on a jury and you can tell them it's a civil case
22 and not a criminal case because I know a lot of
23 people realize we have criminal court going on this
24 week as well, but just let them know you're on a
25 civil case and you're not allowed to talk about it

1 but if they are interested at the end of the case
2 and they still want to know something, then you
3 will tell them all they want to hear. But until
4 that point you're not allowed to have any
5 conversation about the case.

6 And, you know, the thing is, probably the
7 easiest way to tell jurors is, you know, when you
8 arrive back here tomorrow you should know nothing
9 more about this case than you know right now, not
10 one piece of information, you shouldn't have
11 another piece of information than what you have got
12 right now, so that is a nice way of saying don't
13 talk about the case with anybody, okay? It is very
14 important, it is important to the parties that your
15 ability to be fair and impartial and not be
16 influenced by anything outside this courtroom is
17 preserved, okay? So, have a wonderful evening, get
18 a lot of rest if you can and if you would be back
19 here in the jury room at 9:30 in the morning, okay?

20 Everyone else remain seated while the jury is
21 excused.

22 (The jury was excused from the courtroom).

23 THE COURT: All right, the jury has been
24 dismissed and we're going to remain at ease for a
25 moment while I go and make some calls but we'll

1 start back here in just a little bit, okay?

2 (Recessed at 2:59 p.m.).

3 (Resumed at 3:19 p.m.)

4 THE COURT: All right, where were we? We
5 were dealing with the, the motion regarding the
6 evidence of any alleged wrongdoing prior to the
7 execution of the April agreement?

8 MR. COLLINS: Yes, Your Honor.

9 THE COURT: Obviously, and I apologize for
10 not being on more solid footing with regard to
11 these issues but, you know, there is a part of me
12 that says that that is a legal claim that has to be
13 decided, factual issues regarding the fraud or the
14 duress, but it also shares those, those claims also
15 share facts regarding in equity and I keep going
16 back to where the case said when you have that
17 situation, the equitable claims or the equitable
18 facts, the issues, the legal issues are determined
19 first, so it just seems so foolish, it is like that
20 is an issue that has to be decided before you can
21 decide whether or not it's appropriate to go into
22 anything prior to that agreement. So, you have to
23 decide the issue of whether that agreement is valid
24 before you can go into deciding the issues of the
25 other matters and I don't see how that is not an

1 issue for the Court to decide. I'm open to any
2 input. I go back to my earlier comment about
3 having all these pretrial issues resolved outside
4 the term of court where the case is going to be
5 tried.

6 Miss Byrd, did you want to say something?

7 MS. BYRD: Your Honor, I think the only thing
8 that we can say is there are factual issues and the
9 case does provide those to be heard first and it
10 may be counter-intuitive but --

11 THE COURT: Well, you know, I'm almost, based
12 on what the Johnson case says, it seems to me that
13 you have to try this case and, you know, you can't
14 limit the evidence of any wrongdoing prior to the
15 agreement. I think you have to just try the case.
16 Whatever facts the jury finds to be the true facts,
17 those facts are binding on the Court but then the
18 Court takes that and then weighs the equities in
19 determining whether or not, number one, that
20 agreement is valid. If it is, then eliminating
21 anything prior to April the 10th. If it is not,
22 then considering the actions prior to that.

23 MR. COLLINS: Judge, we think you can make
24 that decision now, that you should make that
25 decision now. You have everything before you now.

1 that you need to decide whether that modification
2 agreement with broadly worded release of April 10,
3 2009, is valid.

4 THE COURT: Well, I don't, in all due
5 respect, Mr. Collins, because I haven't heard from
6 them yet, you know, there is the issue regarding
7 whether the defendant was represented. They keep
8 telling me there is more to that.

9 MR. COLLINS: Well, Judge --

10 THE COURT: That is why I was wondering do we
11 need then to proceed and hear testimony regarding
12 that matter? Well, if that is not the way it's to
13 be done, I'm not sure, and I'm just being candid
14 with you, I'm not sure. In reading the case law
15 and in reading what is here, it sounds to me that
16 where you have equitable and legal claims and they
17 share common facts, that the case is put before the
18 jury to decide the legal facts and those findings
19 are binding on the Court and then the Court will
20 take those and then decide the equitable issues.

21 MR. COLLINS: And as I understand it, you
22 would make a decision whether or not this
23 modification agreement with broadly worded release
24 is valid and if you conclude they did have
25 representation and there was no duress and they

1 signed it after conferring with the attorney and it
2 is valid, then you would make the determination
3 that anything the jury found irregular prior to
4 April 10th, 2009, was beyond, was released and
5 therefore should not be considered, correct?

6 MR. GODDARD: Your Honor, our position is --

7 MR. COLLINS: Can I --

8 THE COURT: Well, that is where I'm -- you
9 see, that is where I'm hung up, because what we're
10 talking about is a factual basis, all right,
11 whether or not there was fraud or duress on the
12 legal claims, which if the jury found that there
13 was, then I don't know, and this is where I have a
14 problem with what this ruling says, I don't know
15 that I have the authority at that point to say
16 there was no, there was no duress.

17 MR. COLLINS: Judge, it can't be fraud
18 because they knew about it. They said they went to
19 the closing and there they saw this language in
20 there that obligated them to pledge as collateral
21 the beach lot as well as the South Causeway
22 property and there it was and it bothered them.
23 Fraud is when a representation is made and the
24 person hearing it doesn't know it and they later
25 discover it. They knew, it was all laid out there

1 in front of them.

2 The only way you get past that is to say
3 well, there was duress. Well, the duress argument
4 fails as a matter of law. We have case law that
5 says if you come to a closing and you have got a
6 lawyer and you have had the ample opportunity to
7 review the documents beforehand and you sign them
8 you can't, you can't avert or avoid your
9 obligations under those documents on a claim of
10 duress. Mr. Tyler pulled you that case, he was
11 telling me about it earlier.

12 So, Judge, there is no fraud because they
13 knew about it, there is no duress because they had
14 a lawyer, and all this is right in front of you and
15 it is not going to get any clearer by hashing it
16 out.

17 THE COURT: Well, let me ask you this because
18 I have yet to hear what the claims are regarding
19 this modification agreement, what the claims are
20 outside of she wasn't represented.

21 MS. BYRD: Well, one is duress and, Your
22 Honor, we can try, I mean, we can give you as much
23 facts as you want but essentially she was put in a
24 position where economically she had no other
25 choice, she had already paid money on another loan

1 as an application fee and I understand --

2 THE COURT: Let me ask you this. And, you
3 know, I didn't know where you were going but when
4 you, as you say this to me, the first thought comes
5 into my mind is I don't know that it can be claimed
6 duress if people make bad business decisions and
7 put themselves into a difficult financial
8 situation, and again I don't know anything about
9 the case, so I'm not saying that happened, what I'm
10 saying is it sounds like what you're saying is she
11 was in a financial state that she had to either
12 accept their offer, or that she had no other choice
13 other than to accept their offer.

14 MS. BYRD: And I think, this is the whole, I
15 mean, obviously these are motions in limine, but it
16 has to be considered, you cannot consider it in a
17 vacuum, you need to see the whole story and know
18 all the facts because, Your Honor, the evidence is
19 going to establish that any financial hardship, the
20 whole reason why she needed that loan was because
21 of the actions and conduct of First South Bank and
22 that is our, that is our theory of the case, we
23 understand they don't agree with that, but that
24 just means it's a factual issue for the jury to
25 decide. We disagree on the facts. Duress is a

1 fact issue and I don't understand, is he making a
2 summary judgment argument?

3 THE COURT: No, I understand what you're
4 saying.

5 MS. BYRD: It seems like it is.

6 THE COURT: That is what I'm saying, it
7 appears to me that the way to proceed is to hear
8 the case, put the case before the jury to decide
9 these factual issues.

10 MS. BYRD: And I think you're right and what
11 you said struck me earlier when you said after the
12 factual issues are found, then the Court weighs the
13 equities, so in other words, you could come up with
14 an equitable result based on their factual findings
15 that is not inconsistent but is just a result of
16 the Court's judgment in weighing equity, which I
17 think is what the Court, a court of equity does.

18 THE COURT: All right.

19 MR. COLLINS: Judge, you asked them to tell
20 you what else they had other than a claim she
21 wasn't represented because we have already seen and
22 heard enough about that, and they said, she said
23 well, there was duress at the time and that she was
24 having personal financial problems. Well, judge,
25 personal financial problems don't create a

1 situation of duress for South Causeway, LLC.

2 MS. BYRD: Again, if this is a summary
3 judgment hearing, then we can offer testimony and
4 evidence that will establish the totality of the
5 circumstances. If we want to have a mini trial to
6 get a ruling, then let's just do it.

7 THE COURT: We don't need it because I'm
8 telling you now that -- here is the thing, Mr.
9 Collins, whatever they're claiming, they're going
10 to have to prove it and at some point, which I will
11 probably remain sleepless tonight thinking about
12 it, we're going to have to put together a jury
13 charge and the charge is obviously going to address
14 what does the law say about duress, okay, and then
15 the jury is going to have to, based on the facts
16 that are presented, decide whether or not they met
17 that burden.

18 They have the burden of proving their
19 counter-claim and so they are going to have to meet
20 that burden just as the plaintiff has to meet their
21 burden with regard to their claims. So I guess,
22 you know, that is a real long way of saying I'm
23 going to respectfully deny the motion. I think it
24 is evidence that needs to be, it is factual
25 evidence that has to be decided by a jury.

1 And of course when the time comes for the
2 Court to make its ruling regarding the equities
3 involving foreclosure then, you know, the Court is
4 going to take into consideration the jurors'
5 decision on the facts and then apply those facts to
6 the equities that are involved in the case to
7 determine whether or not, and it could result in,
8 that the jury does not find for the plaintiff, or
9 excuse me, the defense, that the jury does not find
10 for the defense, that they failed to prove their
11 counter-claims but that the Court rules that the
12 foreclosure is not appropriate, or that the jury
13 finds for the defense but I find that the
14 foreclosure is appropriate. I mean, depending on
15 the facts and the equities, that may not be
16 inconsistent, althought it sounds inconsistent to
17 me.

18 MR. COLLINS: So, you would not be bound by
19 the jurors' answers to the interrogatories?

20 THE COURT: I'm sorry?

21 MR. COLLINS: If you have, if you have
22 special interrogatories for the jury and they
23 answer the questions in a certain way you would not
24 be bound?

25 THE COURT: I'm bound by their factual

1 findings, however I take those factual findings, I
2 then have to as a court of equity have to look at
3 everything to determine, I mean, there could be a
4 situation where the jury finds for them on all
5 their counter-claims and based on the evidence that
6 was presented I still find that there was a proper
7 deed, I mean mortgage, proper note securing that,
8 collateral to secure it and that they failed to
9 comply with the terms and conditions and therefore,
10 you know, the foreclosure is appropriate, and that
11 may not be inconsistent because it may be,
12 depending on how the jury finds it and by the time
13 the dust settles on this thing, that the bank was
14 proper in proceeding on a foreclosure and was
15 correct in the fact that the documents were proper
16 and all, however that the jury finds there was some
17 wrongdoing on behalf of the bank and makes an award
18 based on that. It is crazy and that is why I see
19 now where a lot of times the Court will bifurcate
20 these things and have them tried separately.

21 MR. COLLINS: Judge, we have not asked for a
22 bifurcation.

23 THE COURT: I understand that.

24 MR. COLLINS: The one last motion we have is
25 a motion in limine to exclude evidence of damages

1 to Peggy Wheeler-Cribb and Will Darwin Wheeler
2 because they are not parties to the lawsuit.

3 MR. GODDARD: Judge, briefly. You know, in
4 the interest of time I should say I think it is
5 important to understand exactly what damages he's
6 trying to limit here and give some explanation as
7 to that because I think, because it is possible we
8 may consent to it and we can be done, but without
9 knowing what type of damages he's trying to avoid
10 it is difficult to --

11 THE COURT: Well, I don't mind taking a short
12 recess and letting you all talk.

13 MR. GODDARD: That will be fine.

14 THE COURT: If that will help.

15 MR. FLOYD: I was going to respond quickly,
16 Your Honor. And I understand the question and I
17 think it is pretty clear from the interrogatories,
18 at least, they list their damages they are seeking,
19 they claim a foreclosure on a personal residence, I
20 will use that as an example, and I don't know if
21 they have listed all they may claim but there is a
22 good parody for what we're talking about, that they
23 claim. They claim that Peggy Wheeler-Cribb lost
24 her house at 652 Spring Street as a result of what
25 the bank did. At the same time they claim they are

1 separate entities and it is our theory at some time
2 there are going to be presentations to the jury
3 about their personal damages. It is irrelevant as
4 to what the damages are to the company, I mean, it
5 was formed for a reason, just like they couldn't --

6 THE COURT: I will tell you this. I have
7 already had that discussion with my law clerk as we
8 talked about, you know, people incorporate for a
9 lot of reasons and here is the thing. It is always
10 a double edged sword. You incorporate to get
11 certain benefits but you also could be cut by those
12 same benefits, so I don't know that, it may be that
13 by incorporating they shield themselves from
14 certain issues that could have arose, they have
15 also precluded themselves from being able to claim
16 their personal loss when the suit is against this
17 defendant.

18 MR. FLOYD: Yes, Your Honor, that is exactly
19 it. I think it goes a step further than that.
20 What I mean by this, as a motion in limine we're
21 trying to not only preclude them from recovering
22 for it, they shouldn't even be able to refer to it
23 because it is not a proper basis for any award, so
24 we don't even want to hear about it.

25 THE COURT: I understand that's your

1 position.

2 MR. FLOYD: Okay. Thank you, Your Honor.

3 THE COURT: Again, I'm going to offer you the
4 time if you want to talk about it and then revisit
5 it but if we're ready to just go ahead, let's go
6 ahead.

7 MR. GODDARD: Well, Your Honor, I think it is
8 an interesting way, it is interwoven with exactly
9 one of our motions in limine, and we are here
10 today, we will consent that we are not going to
11 move forward with any damages allegation that the
12 foreclosure action personally, whether it be the
13 Spring Street foreclosure or any other foreclosure,
14 personal foreclosure against Peggy and/or Darwin
15 are direct damages to this case but what we say is
16 our motion --

17 MS. BYRD: She is not involved in the other
18 foreclosure actions personally.

19 THE COURT: All right.

20 MR. GODDARD: I think their motion in limine
21 is to Darwin and both of them. But what we're
22 saying is if they are, however, if they are going
23 to try and somehow introduce these foreclosures and
24 try and show this is some either, some avenue to
25 try and introduce these, either to try and question

1 credibility, character, common scheme or something,
2 say, then we reserve the right to then try and move
3 forward with proving that these are all
4 interrelated because I think it is important that
5 we can limit it as to the foreclosures certainly
6 but --

7 THE COURT: Here is the thing. Their motion
8 is to limit any introduction of any evidence as it
9 relates to personal losses of Miss Cribb, Miss
10 Wheeler-Cribb or Mr. Wheeler.

11 MR. GODDARD: I understand.

12 THE COURT: So that --

13 MR. GODDARD: But --

14 THE COURT: Because they are not parties to
15 the lawsuit.

16 MR. FLOYD: Yes, Your Honor, and no reference
17 to it, no presentation of evidence.

18 THE COURT: I understand that. Here is the
19 thing. There is a list of those damages. You all
20 might can talk and decide, "Well, we agree to this
21 one, we agree to this one," it may be you agree on
22 everything, you may not, I don't know.

23 MR. COLLINS: We're not making any history of
24 this case by all the things we agreed to before
25 trial.

1 MR. GODDARD: There is always a chance for
2 new. We're certainly willing to meet and, you
3 know, if he wants to litigate every issue we can
4 but we're willing to meet and try and come to some
5 resolution.

6 THE COURT: I think you have already begun
7 that direction by stating, and of course I didn't
8 know this until you mentioned it, but apparently
9 Miss Wheeler-Cribb ended up having a foreclosure on
10 a piece of personal property.

11 MR. GODDARD: Yes.

12 THE COURT: Which obviously is not
13 appropriate.

14 MR. COLLINS: No, sir, we're not planning to
15 talk about that but let me tell you what we are
16 interested in introducing, Your Honor. This goes
17 to the first item in their motion in limine. We
18 have evidence, we have gathered evidence --

19 MR. GODDARD: Your Honor, I hate to interrupt
20 but I think this is completely improper, and moving
21 forward --

22 THE COURT: We're not dealing with your
23 motion yet, we're not dealing with your motion yet
24 either.

25 MR. GODDARD: I think it is important for the

1 Court's information that Peggy Wheeler-Cribb is the
2 only member of South Causeway, LLC. We are not
3 going to try and prove any damages directly of
4 Darwin's. However, there is, and I think it is
5 important that we're able to mention and talk
6 about, while there was a separate piece of
7 property, 334 Myrtle, the lot, it is not titled to
8 South Causeway, LLC. However, it is collateral on
9 this loan, was involved in this loan and damages
10 relating to that lot, I think we're certainly
11 entitled to, related to, the damages we can prove
12 as to South Causeway as related to that lot are, I
13 think are --

14 THE COURT: You're talking about the beach
15 lot that is referred to as the beach lot?

16 MR. GODDARD: Correct.

17 MR. FLOYD: Your Honor, I could only respond
18 to what they have identified and that foreclosure
19 on that home was one of them.

20 THE COURT: When you say that home, the lot?

21 MR. GODDARD: 652.

22 MR. FLOYD: 652 Spring Street. As to the
23 beach lot, any introduction of anything related to
24 that would be Will Darwin Wheeler's damages, just
25 like the other. He is not a member, he just told

1 us that.

2 THE COURT: But that was pledged as
3 collateral in this loan.

4 MR. FLOYD: But that doesn't make him a party
5 to the action.

6 THE COURT: But it makes that property a
7 party to this action.

8 MR. FLOYD: When it is released, I'm
9 struggling here to see how South Causeway has any
10 damage, the party, the only one that can recover.

11 THE COURT: They have not --

12 MR. FLOYD: And we're, I guess to make a
13 short story long, what I'm claiming and asking the
14 Court to rule is that any damage to that property
15 because it is released and Will Darwin owned it and
16 did whatever he did with it, it is his damages.

17 THE COURT: How is that damages to South
18 Causeway? If that property was in fact damaged,
19 how was that a damage of the defendant in this
20 case?

21 MR. GODDARD: Part of the damages to the
22 defendant in this case is the payment for the
23 release would have been from South Causeway.

24 MS. BYRD: In other words, we paid the money
25 and our position is we should have never been

1 required to pay that money but we were and we did
2 and we should be allowed to present evidence of
3 what we perceived are the damages. We're not
4 trying to go into any damages that her personal
5 foreclosure caused, or Mr. Wheeler's, but this
6 specific piece is not about a foreclosure, we're
7 not going to mention foreclosure, just the money
8 paid.

9 THE COURT: It was released.

10 MR. GODDARD: For a price.

11 MS. BYRD: For money that we paid that --

12 THE COURT: So, it would be the monies that
13 were paid for that release?

14 MS. BYRD: But only if the jury believes that
15 we should not have been required to, one, put up
16 the collateral, and two, that \$300,000 that we paid
17 was put into an interest reserve account, which I'm
18 getting into the facts again, but it should have
19 already been there, Your Honor, and that is our
20 claim. They failed to fund the interest reserve
21 account --

22 THE COURT: All right. How does that piece
23 of property, if it was reduced in value somehow,
24 how would that have any effect in this lawsuit?

25 MS. BYRD: That the devaluation of the

1 property has absolutely none?

2 THE COURT: Here is, guys, it sounds to me
3 like they don't have a clue what you're seeking in
4 damages and so they're making a motion in limine on
5 certain damages but nobody knows what is being
6 sought, that is why I was going to give you the
7 opportunity to talk, to see about what are we
8 talking about. We may be sitting here chasing our
9 tails again over something that is not even an
10 issue.

11 MR. FLOYD: Well, Your Honor, we made the
12 motion because one of the itemized damages is, I
13 mean --

14 THE COURT: I understand. No, I don't argue
15 with you your motion at all, I understand why you
16 made it but I'm saying if those aren't damages why
17 did you list them?

18 MR. GODDARD: We will consent here before the
19 Court that we are not seeking any foreclosure
20 damages personally.

21 MS. BYRD: There was an interrogatory, Your
22 Honor, sometime three years ago, we did the best we
23 could, we flushed it out, we have been to
24 mediation, they haven't, but I went with Mr. Tyler
25 when his firm had the case and so we flushed out

1 what our damages are, he pointed to an
2 interrogatory that was three years ago.

3 MR. FLOYD: Apparently they meant it. We
4 shouldn't expect answers they don't mean --

5 THE COURT: But you know good and well
6 interrogatories over time get amended.

7 MR. FLOYD: And these haven't.

8 THE COURT: Listen, here is what I was told
9 earlier today by the plaintiffs, "Judge, we've got
10 to try this case, this case has sat here, we're
11 ready to go." I don't even know what their damages
12 are they are asking for. It sounds to me like
13 you're not ready to go.

14 MR. FLOYD: I think we are ready to go.

15 THE COURT: Then what are the damages they
16 are seeking? You're going to relate back to an
17 interrogatory three years ago to tell me what you
18 think their damages are? Has there been nothing
19 when you all went through mediation, did none of
20 this get clarified as we got here to trial this
21 week?

22 MR. FLOYD: Well, I can't speak to the
23 mediation, we were not involved at that time, Mr.
24 Tyler can speak to that.

25 THE COURT: Somebody needs to because we are

1 here, we're ready to try the case. I understand
2 the reasons for your motion but it is hard for me
3 as a judge to grant a motion in limine when I don't
4 know what you're asking, you don't know what you're
5 asking me to limit. You are asking me to limit
6 what?

7 MR. COLLINS: Judge, if you're not
8 comfortable ruling on it now, I know judges
9 frequently take a motion in limine under advisement
10 and wait until later.

11 THE COURT: It sounds like we may have to.

12 MR. COLLINS: That is understandable. The
13 interrogatories were sent, the interrogatories were
14 responded to, the interrogatories were never
15 amended. Questions have been put to expert
16 witnesses and we have not learned of any damages to
17 the corporation other than what they have told us
18 about in interrogatories. I don't think you can
19 say that we haven't tried. We have understood that
20 to be an issue in the case and we have tried. We
21 believe that it is time to move past that, on to
22 the next one.

23 THE COURT: All right. So we'll just deal
24 with any issues regarding the admissibility of
25 further damages as they arise.

1 MR. GODDARD: Okay.. If we want to move
2 directly into our motions we certainly are ready.
3 I believe these were sent to you but if you don't
4 have a copy I will hand you a copy, Your Honor.

5 THE COURT: Let see what I've got.

6 MR. GODDARD: May I approach, Your Honor?

7 THE COURT: Yes, sir.

8 MR. GODDARD: Your Honor, our first motion in
9 limine is the motion in limine asking that the
10 plaintiffs not be allowed to present any evidence
11 of any foreclosure, personal foreclosure actions
12 filed against Peggy Wheeler-Cribb or Darwin
13 Wheeler.

14 I think, Your Honor,, as you have already
15 heard, there is personal foreclosure actions in
16 this case but I think, against Miss Peggy and
17 Darwin, however I think, I think in all four of our
18 motions these two parties, these two individuals
19 are not party to this case. South Causeway, LLC,
20 is the only party. There are guarantor agreements
21 out there that they have the right to try and bring
22 and did not.

23 The foreclosures in this case, the
24 introduction is completely irrelevant, is not
25 related to any of the properties. The Spring

1 Street property is not involved and the subsequent,
2 it is our position that the subsequent foreclosure
3 as to Darwin's piece of property is unrelated, Your
4 Honor.

5 They are, what they are wanting to do is
6 introduce these to the jury to try and say, "Look,
7 these people have other foreclosures and therefore
8 they are obviously wrong in this case," and it
9 could not be clearer in the rules of evidence and
10 case law that is just not appropriate. It is clear
11 in the case law that the guarantors of these are
12 not parties and it would be highly prejudicial for
13 them to include other foreclosure actions without,
14 without the jury knowing the facts, the
15 circumstances or anything else. And this goes back
16 to what we're saying, Your Honor, trying to get
17 this case in in a week, what is going to be
18 required if it is allowed, for us to have to do
19 mini trials as to each and every foreclosure, as to
20 the reason behind it and everything else.

21 THE COURT: I understand what you're saying.
22 Here is what it sounds like to me. It sounds like
23 everybody wants the same thing but not to apply to
24 them but to apply to the other person, okay? I
25 don't want to hear about the Spring Street

1 property, you don't want them to have anything to
2 say about that in their case but you may want to
3 raise it. I'm not understanding that, you may not,
4 I don't know, so let's talk, is that an issue, the
5 other foreclosures, are those issues that the
6 plaintiff intends to get involved in?

7 MR. COLLINS: Judge, there are two mortgage
8 foreclosures against Will Darwin Wheeler.

9 THE COURT: Okay.

10 MR. COLLINS: They relate to this joint house
11 he has at the beach that has the imaginary boundry
12 line running through the middle of it where one is
13 a separate lot from the other. There is a two
14 million dollar mortgage on each one, we're talking
15 about four million dollar indebtedness, two
16 separate mortgage foreclosures have been brought.
17 In response to those mortgage foreclosures Mr.
18 Wheeler hired Miss Byrd, and Miss Byrd asserted
19 counter-claims similar to this case, so what we
20 have, Judge, under Rule 404(B) is a common scheme.
21 The scheme is to bring a counter-claim in a
22 mortgage foreclosure, throw a monkey wrench into
23 the procedure, stall it for years and prevent the
24 bank from recovering in foreclosure what they are
25 entitled to have per the terms of the foreclosure

1 agreement.

2 Miss Byrd, Mr. Wheeler counter-claims, jury
3 trial demands, delay, delay, delay. Now, we think
4 it is a common scheme of plan to frustrate banks
5 and their ability to foreclose and to shirk
6 financial obligations people otherwise had. Rule
7 406 also allows evidence of a routine practice, so
8 independent of Rule 406 and 404(B), we think these
9 foreclosure actions are relevant to prove a common
10 scheme or plan and a practice and we believe that
11 showing this is relevant and that the relevance
12 outweighs any prejudice under Rule 403 of the rules
13 of evidence.

14 That is our position, Your Honor.

15 THE COURT: All right.

16 MS. BYRD: Your Honor, obviously, although
17 the Court may not be aware, this is not the first
18 time that Mr. Collins has attempted to attack my
19 credibility before the Court in open court and that
20 is exactly what he has done again, because what he
21 essentially suggested to Your Honor is that I, it
22 was my plan and scheme to file counter-claims to
23 stall foreclosures. He has absolutely no idea why
24 those claims were filed, they have no resemblance
25 to the claims that are filed in here. In fact one

1 is an accounting, we're just asking for an
2 accounting. So, he misrepresented to the Court
3 either knowingly or without having done any due
4 diligence and in fact it is not in any way
5 probative in this case. He is not a party and if
6 it is a plan or scheme it is mine and I'm quite
7 certain that he can't attack my credibility in
8 front of the jury, Your Honor.

9 THE COURT: All right. Is that it, deal with
10 those two?

11 MR. GODDARD: That is issue one, Your Honor.

12 THE COURT: I'm just saying as part of issue
13 one, were those the concerns?

14 MR. GODDARD: Well --

15 THE COURT: I'm going to grant, I'm going
16 grant the motion, we're not going into these other
17 things. I don't think that shows routine, common
18 scheme or plan, it is not an issue in this case.
19 We're going to keep this case focused on the facts
20 at issue in this case.

21 MR. GODDARD: Moving on, Your Honor, our
22 motion in limine number two, the plaintiff's
23 counsel has hired Terry Williams, he is present in
24 the court today, he is a, he is a forensic
25 accountant that was called in and I think it is

1 important to understand exactly what he was called
2 in for, and he said in his deposition he was called
3 in to examine the tax returns and financial
4 statements of Peggy Wheeler-Cribb and Darwin
5 Wheeler. However, what he was not brought in to do
6 was in any way related to how that would have
7 affected the bank or what effect it would have had
8 on the bank and what he is prepared to do is come
9 into court today as an expert witness to try and
10 say they have inconsistencies in their other tax
11 returns or other financial statements outside of
12 this loan agreement, whether it be in other loan
13 documents, whether it be in tax returns or
14 everything else.

15 Your Honor, this goes directly, is directly
16 addressed by the rules of evidence, because exactly
17 what they are trying to do is prove the specific
18 conduct of Miss Peggy and Darwin by the
19 introduction of extrinsic evidence. They are
20 trying to come in and say, "Oh, look at this loan
21 document, they were false in this, so you can't
22 believe them, they acted in conformity in doing
23 this." His statements are not, and I asked
24 specifically during his deposition if he's here to
25 to anything else other than to question the

1 credibility of these witnesses, and he said no.

2 But he is not here, it is important to
3 understand he is not able to say this is definitely
4 wrong or this is definitely wrong, he is making
5 broad based allegations that, you know, "I would
6 like to look more into that, that looks like an
7 inconsistency, that looks like an inconsistency,"
8 and what they are doing is trying to make
9 fraudulent tax return questions without having to
10 prove it in a criminal court fraud.

11 THE COURT: Well, I'm going back to what was
12 said numerous times. The defendant in this case is
13 South Causeway, what is all of this? Miss
14 Wheeler-Cribb and Mr. Wheeler's tax returns and
15 personal financial statements, what has that got to
16 do with this case?

17 MR. COLLINS: Your Honor, we have a case that
18 we would like to hand up to you if I can lay my
19 hand on it, State versus Wilder, here it is right
20 in front of me. This is a case on which we rely
21 for the proposition that we do get to call Mr.
22 Williams. Mr. Williams is prepared to testify that
23 he has examined tax returns, financial statements
24 and loan applications, some of which he just
25 recently got pursuant to a ruling by Judge Hyman.

1 There was a big motions hearing about whether
2 subpoenas we had issued to other banks would be
3 honored, there was a motion to quash on the other
4 side, he denied that motion and we got to see these
5 files. We already had tax returns and financial
6 statements. Mr. Williams is prepared to testify
7 that in his expert opinion Mr. Wheeler and Miss
8 Cribb falsified their tax returns, and these are
9 guarantors under the loan.

10 Now, the case of Wilder versus State which I
11 will hand up at this time is a case where a
12 witness, an eyewitness in a murder case was sought
13 to be impeached by the State -- no, by the
14 defendant on the ground that he had, he had filed
15 several, he had been involved in preparing false
16 tax returns and that these were bad acts, and the
17 case cited Rule 608, and the Court ruled in that
18 case, quote, under Rule 608(B)(1) a trial judge may
19 allow a witness to be cross examined about specific
20 instances of that witness' conduct if the trial
21 judge in his discretion finds that those instances
22 are probative of the witness' credibility.

23 What we have here in this case, Your Honor,
24 with regard to Mr. Wheeler is several things.
25 Income tax, current returns that do not list large

1 items that should have been shown as income.

2 Number two, a financial statement that
3 acknowledges that he put property in the hands, he
4 titles property in his mother's name for asset
5 protection and Mr. Williams is prepared to testify
6 that you can't take assets that you own, put them in
7 somebody else's name, that is fraud, that is
8 defrauding creditors or potential creditors.

9 The third thing is, on his loan application
10 to CitiBank Mr. Wheeler put down that he had income
11 of \$90,000 a month, a month, and his income tax
12 return clearly shows he had far, far less.

13 He also on that same loan application stated
14 that the property known as South Causeway belonged
15 to him, he listed it as his personal asset, and
16 this of course, Your Honor, is highly irregular and
17 so we believe that you have the discretion and that
18 you should allow us to call this witness because
19 Mr. Wheeler is going to testify and he is going to
20 put his credibility at issue and we believe that
21 there is substantial evidence here that would allow
22 you in applying Rule 608 and in Rule 405, Rule
23 405(B) says in cases in which character or trait of
24 character of a person is an essential element of a
25 charge, a claim or defense, proof may be made in

1 specific instances of that person's conduct.

2 We believe these items, Your Honor, are
3 probative of Mr. Wheeler's unlawful conduct, and we
4 have a federal statute, Your Honor, that is also
5 involved in this and that is a statute that we used
6 in our cross-examination of, I'm going to hand this
7 up, let the record show a copy of 18 United States
8 Code, Section 1014, is being handed up to the
9 Court. This is a federal statute that makes it
10 criminal to make any false statement for the
11 purpose of influencing in any way the action of any
12 institution the accounts of which are insured by
13 the Federal Deposit Insurance Corporation, and we
14 represent the CitiBank is such an FDIC insured
15 corporation. It is a felony and we believe that
16 Mr. Williams has analyzed sufficiently what was
17 done and is in a position to state that that
18 falsification of a loan application was evidence to
19 prove his credibility, his character and his
20 routine practice as well. So, under Rule 405, Rule
21 608, Rule 406 and Rule 404(B) we believe that this
22 evidence should be allowed.

23 Thank you.

24 MR. GODDARD: Your Honor, very quickly, and
25 there are a number of issues that need to be

1 addressed and first and foremost it is important to
2 realize Will Darwin Wheeler is not only not a party
3 to this case, he is not a member of South Causeway,
4 LLC, okay?

5 THE COURT: Let me ask this, get this
6 question addressed. Any witness who takes the
7 witness stand is subject to having their character
8 attacked.

9 MR. GODDARD: I agree with that, Your Honor,
10 but there are relevance issues in this case.

11 THE COURT: Right.

12 MR. GODDARD: There is very large prejudicial
13 issues in this case and then we have to go directly
14 to what the rules allow, okay?

15 THE COURT: Okay.

16 MR. GODDARD: 608(B), there is nothing in
17 608(B) that ever allows another witness to come in
18 and testify as to the alleged bad acts. What it
19 does say is specific instances of conduct for the
20 purposes of attacking or supporting the credibility
21 other than a conviction or fine may not be proved
22 by extrinsic evidence. They may, however, at the
23 discretion of the Court, excuse me, if probative of
24 truthfulness or untruthfulness, be inquired into on
25 cross-examination of the witness concerning the

1 witness' character for truthfulness or concerning
2 the character, truthfulness or untruthfulness.

3 So, the ability to call someone else to come
4 in to testify as to the specific bad acts under
5 608(B) is specifically not allowed. What else is
6 not allowed under 608(B) is to come in and to use
7 extrinsic evidence, and that is exactly what they
8 are doing here, they are saying, they are going to
9 try and show CitiBank, an unrelated bank, in their
10 documents, that he made false statements, okay?
11 And then they are trying to go on to say in 404,
12 405, I'm sorry -- well, first of all I think it is
13 most important under 404, evidence of a person's
14 character or traits of character is not admissible
15 for purposes of previous action therewith, except
16 as to 607, 608, 609.

17 607, who may impeach. Certainly they may
18 impeach him. 608 is the exact issue, that we're
19 able to come in to say, and what is important
20 608(A) dealing with the opinion or reputation
21 evidence, there is nothing in the case, and the
22 case law is clear on this what you have to have to
23 have reputation evidence, okay, he doesn't have
24 that, he is not locally from the community, he has
25 no direct interaction with her and he can't offer

1 that opinion testimony.

2 What it comes to, 608(B) specifically in no
3 way allows you to introduce someone else and in
4 fact it specifically says it may not be proved by
5 extrinsic evidence. So, all he can then fall back
6 on is 605, I'm sorry, 405, method of proving
7 character.

8 In cases in which the character or trait of
9 the character of a person is an essential element
10 of a charge, claim or defense proof may be admitted
11 of specific instances of that person's conduct.
12 They cannot show it is an essential element of
13 anything in this case. He is not a party, so how
14 they show it is an essential element? The only
15 thing, yes, while I agree with Your Honor, they can
16 question his credibility and they can try because
17 he is testifying, or if he testifies, they can't
18 get into specific instances of conduct and they
19 certainly can't use Terry Williams' testimony to do
20 so.

21 THE COURT: All right. 608(B) does state if
22 probative of truthfulness or untruthfulness the
23 witness may testify on cross-examination concerning
24 the character of truthfulness or untruthfulness or
25 concerning character for truthfulness or

1 untruthfulness by another witness as to which
2 character the witness being cross examined has
3 testified.

4 MR. GODDARD: Your Honor, I think just for
5 the Court's information, since we're putting
6 everything out there, it is also important that
7 their own expert testify that the personal assets
8 of this individual were not considered in making
9 this loan, and why is that important? Because it
10 goes directly to relevance. Their expert, Mr.
11 Williams, in his testimony, and I cited it in my
12 brief, his quote was, he testified that personal
13 income of Peggy Wheeler-Cribb and Darwin Wheeler
14 were not considered by the plaintiff for repayment
15 of the loan in question.

16 They are trying to get into information that
17 is not even relevant to the case and if admitted
18 would be highly prejudicial, and why it would be
19 prejudicial is because it is allowing him to make
20 his opinion of the law as to, that there were
21 fraudulent, what he couched as fraudulent tax
22 returns, and what we will tell you is there was
23 significant factual issues that we have to address
24 and will prolong this case even longer to show that
25 his inconsistencies are just that, he doesn't know

1 all the information because it wasn't relevant for
2 him and it wasn't relevant to introduce that.

3 My main point I will give you is they are
4 talking about Darwin Wheeler including property on
5 a financial statement, Your Honor. He once was an
6 owner of this property. Until this loan was done
7 South Causeway was not formed, it is not even
8 proper for him to try and put that on an asset
9 statement until such time and even all that being
10 said, Your Honor, it still goes back to, there is
11 not a rule that they are allowed to use this person
12 to testify, there is no, just because he is a so
13 called expert doesn't allow him to come in and use
14 extrensic evidence and there is not one bit of
15 evidence he is going to be able to show that is not
16 extrensic, source of income, it is all outside the
17 scope of this case, outside the scope of this, it
18 is all directly from other cases. And what they
19 don't have, Your Honor, and this is even additional
20 information, they don't have somebody from CitiBank
21 here, they don't have somebody to authenticate all
22 those records, they don't have any of that and what
23 that does is, it is all hearsay at that point
24 anyway, they don't, those documents and
25 interactions with CitiBank, they can't testify to.

1 MR. COLLINS: Judge, we'll have Will Darwin
2 Wheeler to authenticate his own financial
3 statements because he signed them, we'll have him
4 authenticate it. And Rule 608, Your Honor, gives
5 us discretion. If you read that specific instances
6 of conduct section, 608(B), you have the discretion
7 and we're asking you to exercise your discretion.

8 He mentioned testimony about some other
9 witnesses. Mr. Lyerly was deposed in this case and
10 Mr. Lyerly testified that the financial statements
11 of Miss Cribb and Mr. Wheeler, the two personal
12 guarantors of this loan, were certainly relevant to
13 their decision to make this loan and they made
14 financial statement misrepresentations of the
15 assets of the guarantors on the financial
16 statements. We think assets is a very relevant
17 aspect of this loan and we believe we should be
18 allowed to show this, otherwise the jury will not
19 be able to see, as they are entitled to see, who
20 was wearing the white hat, who is telling the
21 truth, who did things by the rules, who fudged and
22 misrepresented. We would like to have the jury see
23 the full manifestation of what has transpired, what
24 the credibility of Mr. Wheeler is and what the
25 credibility of Miss Cribb is, and we think it is in

1 your discretion to allow that, especially since
2 they are going to be testifying, we believe, and
3 they will be subject to cross-examination.

4 THE COURT: Well, but that is what the rule
5 states, the rule states subject to
6 cross-examination, if the Court, in the discretion
7 of the Court you can cross-examine the witness.
8 What you're proposing to do is to put up a separate
9 witness to testify about this person's character.

10 MR. COLLINS: Well, yes, sir, that's true but
11 we think this witness is necessary because these
12 transactions on these tax returns, here is an asset
13 that shows up on the financial statement, it gets
14 sold, there is a \$300,000 profit made by Miss Cribb
15 and it is nowhere to be found on her tax return.
16 Now, that's State versus Wilder, that is the kind
17 of evidence that was being offered in that case to
18 impeach an eyewitness and the Court of Appeals said
19 it should have been allowed, and the only way we
20 can get that sorted out is through the use of Mr.
21 Williams.

22 MR. GODDARD: Your Honor, I think it is
23 important to go back to 608(B) which he just said
24 gave you the discretion. Your discretion per the
25 rule is to allow cross-examination if probative and

1 if it survives the 403 motion, which is
2 prejudicial, and I would say, and there is case law
3 that is out there that says, and I think it is
4 important to realize every case that they can cite
5 under 608(B) or under 405, it is all criminal
6 cases, Your Honor. This case right here goes to
7 criminal cases, and why is that important? Because
8 it goes to the credibility of the witnesses. That
9 is an essential element of the charge.

10 THE COURT: 608 isn't a criminal rule of
11 evidence, it is a rule of evidence in criminal and
12 civil cases and it goes to character. I realize
13 they are citing criminal cases but the rule is just
14 as applicable in civil cases.

15 MR. GODDARD: And I understand but what I'm
16 saying is the credibility of Darwin Wheeler, and
17 let me go further and say, if it is relevant when
18 he is up there, then it is clear it is highly
19 prejudicial to try and argue, as he was trying to
20 do, "Well, you made these false tax returns without
21 any other good faith basis or good faith proof to
22 do that." He is doing it based on this opinion.
23 The fraudulent tax returns have to go in front of a
24 judge, and under a beyond a reasonable doubt
25 standard to prove and to let them get up there and

1 just try and say this is inconsistency, therefore
2 it allows you to make that jump that it was a
3 fraudulent tax return is incorrect. These are all
4 issues and what I will tell the Court, if necessary
5 we can have an expert come in and testify that X, Y
6 and Z were not inconsistencies, there was a good
7 faith belief and reason why these were done, these
8 were not personally prepared by them, they hired an
9 accountant to come in and do these. The person who
10 signed the tax returns was the accountant, Your
11 Honor. The issues he is talking about, and some of
12 the issues that Mr. Williams addressed are issues
13 that there is a gray area in the tax law, one of
14 the inconsistencies he said was how to treat the
15 interest income expense --

16 THE COURT: Here is an example, let me tell
17 you what is not gray. If I tell you I own a beach
18 house on Pawley's Island and I don't, that's not
19 gray. If Mr. Wheeler submitted a personal income
20 statement and listed that he owned a piece of
21 property on there that he did not own that's not
22 gray.

23 But here is what I'm saying. I agree with
24 most of what you're saying, Mr. Collins, but I'm
25 not going to let you put this witness up there just

1 to start going through all this stuff, forensic
2 accounting, "And I saw this discrepancy and that
3 discrepancy and this and that and the other." That
4 is completely inappropriate but I am going to allow
5 on cross-examination you to be able to ask the
6 witness with regard to whether or not he listed
7 property on a personal income statement that he
8 didn't own.

9 MR. GODDARD: And, Your Honor, my only
10 response to that, I certainly understand that, I
11 certainly agree and that is what the, the ruling,
12 as long as Mr. Collins understands that after he
13 asks that question he cannot go further and try and
14 prove through the introduction of extrinsic
15 evidence --

16 THE COURT: No, but what he can do, and again
17 I hate to keep using Mr. Wheeler as an example
18 because he is an actual witness in this case and I
19 like to use a hypothetical, but if a witness takes
20 the stand and the cross-examining lawyer knows that
21 X, Y and Z, that he did X, Y and Z and he asks him
22 about it and he says, "No, I did not," then I think
23 that they can call a witness to rebutt that. If he
24 asks a witness on cross about, "Did you in fact do
25 X, Y and Z," of course those have to be asked,

1 there's got to be a good faith basis for that being
2 asked, but if he has a good faith basis of asking
3 that question and the witness denies it he then can
4 call a witness to rebutt that denial.

5 MR. COLLINS: Judge, let me put your mind at
6 ease here about whether we have a good faith basis.
7 Mr. Williams is a Certified Public Accountant, he
8 has nine years experience with the Internal Revenue
9 Service, he has been qualified as an expert
10 forensic accountant on a number of occasions and he
11 has, he has done extensive review of the financial
12 statements, the loan applications and the tax
13 returns and he has a very detailed analysis upon
14 which he can say there was a willful, deliberate
15 failure to list reportable income, in his opinion.
16 There was factual misrepresentation about assets,
17 in his opinion. And I believe that we can
18 certainly show you instances, as the word is used
19 in Wilder versus State, we don't have to show
20 convictions, Your Honor, we may show instances, and
21 Mr. Williams, we believe, will give you testimony
22 of instances, and we understand your ruling, only
23 if Mr. Wheeler under oath denies that he did that,
24 would we be allowed to call Mr. Williams to rebutt
25 that but we are prepared to proceed in that

1 fashion, Your Honor, thank you.

2 THE COURT: All right, sir. So, let it be
3 made clear. Any witness that takes the stand is
4 going to be subject to having their credibility
5 brought into issue but it will be done pursuant to
6 the rules and it will be done pursuant to, you
7 know, whether or not the probative value outweighs
8 any prejudicial effect. So, I'm not going to allow
9 Mr. Williams just to, in the plaintiff's case in
10 chief, just to take the stand and start rattling
11 off all these issues but, I mean, it just remains
12 to be seen. I have no idea whether Mr. Wheeler is
13 going to take the stand and if he does, what he is
14 even going to testify to.

15 MR. GODDARD: Thank you, Your Honor. Our
16 position is, in light of your ruling, just for the
17 record, that we still believe even in the event
18 that he does testify that the introduction of
19 extrensic evidence to prove that bad act or prior
20 bad act would be improper but we understand your
21 ruling.

22 THE COURT: And I'm not going to allow it, in
23 other words, on the front end. I mean, if a
24 witness, any witness gets up here and is asked,
25 "Did you do X, Y and Z," and he goes, "I did,"

1 well, that is the end of that, then we move on.

2 MR. GODDARD: And, Your Honor, I just want to
3 be clear with the Court's ruling that any, any
4 attack on his credibility could only be done based
5 on a cross-examination after he had testified in
6 the case in chief.

7 THE COURT: That's correct.

8 MR. GODDARD: Thank you, Your Honor.

9 THE COURT: All right.

10 MR. COLLINS: Your Honor, I believe the next
11 item, we already have your ruling on this about
12 financial statements because that is what we were
13 talking about in this long exchange about Terry
14 Williams.

15 The last thing I believe on his motion in
16 limine is the testimony of Tammy Marrow. Miss
17 Marrow is a real estate agent, she is in the
18 community, she knows Miss Cribb very well, she is
19 prepared to come to court, Your Honor, and say that
20 she knows her, knows her reputation in the
21 community, that that reputation is bad and that she
22 would not believe Miss Cribb under oath.

23 MR. GODDARD: Your Honor, our position on
24 this is that we do not believe Miss Marrow meets
25 the standard to be able to testify as to her

1 reputation. In the interrogatory responses which
2 lists her as a potential witness there is a long
3 length of her reasoning for being involved or
4 having a reputation in this case, and what is
5 involved is the purchase of the piece of property
6 that we're here for today, but what is important to
7 understand is her only involvement was she was a
8 buyer's agent, okay, and she had a conflict with
9 the broker and that case went to litigation and she
10 thinks or has some indication that Miss Peggy
11 Wheeler-Cribb was in some way behind her not being
12 paid her one percent commission, or 10 percent
13 commission.

14 MR. COLLINS: 10 percent.

15 MR. GODDARD: 10 percent commission, I'm
16 sorry. It doesn't change the matter. And we will
17 present to Your Honor she had no control over that
18 and she in no way could have had control over that,
19 she didn't have the listing agreement and she
20 wasn't involved in the listing agreement that was
21 in question.

22 MR. COLLINS: Judge, all this has to do with
23 cross-examination.

24 THE COURT: That is what I was starting to
25 say. I mean, if they've got, if they've got a

1 witness who takes the stand and the proper
2 foundation is laid, then that witness can testify
3 and of course that witness is wide open to
4 cross-examination.

5 MR. GODDARD: And I just want to be clear in
6 your ruling that her testimony will be limited per
7 the rule to only stating that she does not have,
8 she believes she is untruthful and would not be
9 believed and she cannot get into the specific
10 facts.

11 THE COURT: We're not going into a bunch of
12 details about what he or she did.

13 MR. GODDARD: I just want to be clear that
14 they are calling Miss Marrow which then under the
15 rules opens the door for us to attempt to bolster
16 by truthfulness of testimony, by other witnesses in
17 rebuttal.

18 THE COURT: Absolutely.

19 MR. COLLINS: Judge, they have listed no such
20 witness.

21 THE COURT: Well, I mean, if they don't have
22 the witness listed, I just called out the witnesses
23 earlier today to the jury, we went over that, those
24 are the witnesses in the case. You have witnesses
25 I haven't put in front of the jury?

1 MS. BYRD: Your Honor, if it is a rebuttal
2 witness to something they raised, then I believe
3 we're entitled to call reply witnesses.

4 MR. COLLINS: Judge, they go first.

5 MS. BYRD: No, we don't go first. You go
6 first, you're the plaintiff.

7 MR. COLLINS: I thought we had a discussion
8 in chambers that you would take the foreclosure
9 action under advisement as a matter of law.

10 THE COURT: That is at the end of the trial.

11 MR. GODDARD: At the end of the trial.

12 THE COURT: That is at the end of the trial.

13 MS. BYRD: You open up with your foreclosure,
14 then we put up our defense and counter-claim then
15 it would be your turn to defend those
16 counter-claims.

17 THE COURT: We'll address that issue.

18 MR. COLLINS: So, you would have us in the
19 morning start off with our case in chief on the
20 foreclosure?

21 THE COURT: Yes, sir.

22 MR. GODDARD: Thank you, Your Honor, for your
23 ruling on that.

24 THE COURT: Okay.

25 MR. COLLINS: I believe we're done, Judge.

1 MR. GODDARD: Nothing further from the
2 defendant --

3 THE COURT: Go ahead, I apologize, go ahead,
4 sir.

5 MR. GODDARD: Nothing further from the
6 defendant.

7 THE COURT: All right. Now, at 9:30 the jury
8 will be here, we'll get started at that point and
9 as you said, Mr. Collins, we'll start with the
10 plaintiff's case and we'll go from there.

11 This is just, I throw it out there now, don't
12 worry about it tonight but just over the next day
13 or so if you have specific requests to charge that
14 you want me to consider I would prefer it, if you
15 can do it, is to have maybe someone from your
16 office, whatever, email those to us but if they do
17 that please have them email it in Word format and
18 not in a PDF file. It just helps us when we're
19 away from home and we don't have a secretary to
20 help us to cut and paste because between me and
21 Brian we type about eight words a minute, it would
22 take awhile to put together a jury charge.

23 MR. FLOYD: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. GODDARD: Thank you, Your Honor.

1 THE COURT: All right we'll reconvene at 9:30
2 and get started.

3 MR. GODDARD: Thank you, Your Honor.

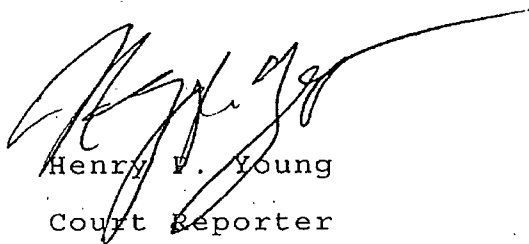
4 MS. BYRD: Thank you.

5 (Recessed at 4:27 p.m., September 18, 2012).
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4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Georgetown County,
11 South Carolina, on the 28th day of September, 2012.

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

14 March 8, 2013

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18 
19 Henry P. Young
20 Court Reporter
21
22
23
24
25

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
2010-CP-22-01233

COUNTY OF GEORGETOWN

FIRST SOUTH BANK,

-vs-

SOUTH CAUSEWAY, LLC,

Defendant.

September 18-25, 2012

B E F O R E:

HONORABLE THOMAS A. RUSSO, SR.

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

JOEL W. COLLINS, JR., Esquire
JAMES LEON FLOYD, Esquire
DONALD W. TYLER, JR., Esquire
Attorney for the Plaintiff

AUDRA M. BYRD, Esquire
MARK B. GODDARD, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

VOLUME II of VI
September 19, 2012

1 (Reconvened 9:40 a.m., September 19, 2012.)

2 THE COURT: Good morning, everybody, have a
3 seat.

4 I have just been informed we have all jurors.
5 Anything we need to take up?

6 MR. COLLINS: We have one thing. We have
7 some enlargements of some of the exhibits which
8 will be coming into evidence and I would like to
9 use them in my opening statement. For example,
10 portions of the affidavit given by Peggy
11 Wheeler-Cribb in opposition to our motion for
12 summary judgment, I would like to be able use them
13 in opening statement if I may.

14 THE COURT: Okay. Any problem with that?

15 MS. BYRD: No objection, Your Honor.

16 THE COURT: Thank you. That will be fine.
17 Anything from the defense before we begin?

18 MS. BYRD: No, sir, Your Honor.

19 THE COURT: All right. Well, let's get our
20 jury out out here and get started.

21 (The jury returned to the courtroom).

22 MR. COLLINS: Your Honor, do you allow jurors
23 to take notes?

24 THE COURT: Well, step up here real quick.

25 (Unrecorded bench conference).

1 THE COURT: Good morning, ladies and
2 gentlemen. I hope everyone had a good evening, got
3 a lot of rest and ready to go to work today. We're
4 about ready to get started here. What I want to do
5 before I address you is get you to give your
6 attention to Madam Clerk. She is going to place
7 you under your oath for jurors for your role as
8 jurors in this case.

9 THE CLERK: Please stand and raise your right
10 hand.

11 (Jury sworn).

12 THE CLERK: Thank you. You may be seated.

13 THE COURT: Ladies and gentlemen, we're about
14 to begin the trial of the case, you heard the
15 caption yesterday, it is First South Bank versus
16 South Causeway, LLC. Now, before we begin this
17 trial I want to tell you that this trial may be
18 very different from what you may expect and the
19 reason for that is not because of the particular
20 parties involved in this case. The reason for that
21 is that most people don't have, have never had the
22 opportunity that you're getting this week, and that
23 is to sit in on an actual jury trial. Most folks'
24 experience regarding jury trials is what they have
25 seen on television, what they have read in books or

1 what they have seen in the movies, and as we all
2 know those trials are always filled with high drama
3 and intense action and riveting circumstances. You
4 wouldn't watch it if they weren't, because that is
5 Hollywood, those trials are there to entertain you.

6 Now, during the course of this trial, while
7 any number of those things may occur, what is
8 important for you to understand is that this trial
9 is not for your entertainment. This trial is a
10 fundamental part of our democracy. It is a search
11 for the truth in an effort to make sure that
12 justice is done between the parties that appear
13 before the Court.

14 Searching for the truth and making sure that
15 justice is done oftentimes can be slow, very
16 deliberate, sometimes repetitive. In other words,
17 very different from what you may have seen on
18 television, read in books or seen in the movies.

19 This courtroom is a place of honor that is
20 dedicated to the protection and to the preservation
21 of citizens' rights through what many have called
22 the greatest justice system ever created. The
23 attorneys that appear before you ladies and
24 gentlemen are advocates for the parties that they
25 represent but first and foremost they are officers

1 of the court, sworn to uphold the integrity and the
2 fairness of our judicial system and to help you in
3 your search for the truth. You should expect them
4 to be professional, competent and ethical in their
5 representation of their clients' interests.

6 Remember, now, that you have just taken an
7 oath to try this case and to reach a fair and a
8 just verdict and so you are also expected to be
9 professional, reasonable and ethical in the
10 performance of your duties, which I have absolutely
11 no doubt you will do and I want to take this
12 opportunity to thank you for your contribution this
13 week to our system of justice here in Georgetown
14 and South Carolina.

15 What I'm going to share with you right now,
16 ladies and gentlemen, is meant to serve as an
17 introduction to the trial of the case. This is not
18 a charge on the law. I will in fact give you
19 instructions on the law at the end of the trial
20 before you begin your deliberations. But what I'm
21 going to do now is basically go through the
22 procedures that we're going to follow so that you
23 can better understand what is taking place as the
24 trial proceeds.

25 You have been selected as fair and impartial

1 jurors whose purpose it is to find and to determine
2 the facts of this case. If at anytime I make any
3 comment regarding the facts you must disregard
4 those comments. You are to determine the facts of
5 this case from the testimony that you hear and from
6 any other evidence that may be introduced during
7 the course of this trial. You should not be
8 influenced by any opinions or statements that you
9 may have heard outside this courtroom. It is
10 especially important that you perform your duty of
11 determining the facts diligently and
12 conscientiously because ordinarily there is no way
13 that we can correct an erroneous determination of
14 fact by a jury. When you comply with your oath to
15 impartially determine the facts of this case you
16 will have fulfilled your duty as jurors and no one
17 will have any right to criticize your verdict,
18 whatever it may be.

19 Now, on the other hand but with equal
20 emphasis the same law that makes you the judges of
21 the facts makes me the judge of the law. The law
22 as given by the Court is the only law that you may
23 consider and you must accept it and you must follow
24 it even though you may disagree with it.

25 I'm not allowed, ladies and gentlemen, to

1 tell you what I think about the facts of this case
2 or anything about the facts of this case and you on
3 the other hand are not allowed to disagree with me
4 about what the law is or what you think the law
5 should be. Your duty and your job is to take the
6 facts as you found them from the evidence, from
7 witnesses and anything else that is introduced
8 during the course of this trial and the law as I
9 give it to you, apply the law to those facts as you
10 find those facts to be and arrive at your verdict.

11 Now, until I tell you to begin your
12 deliberations, as I told you yesterday, you are not
13 to have any conversation with anyone about this
14 case and that includes even amongs yourselves.
15 From time to time we will take breaks and you'll be
16 back in the jury room. During those times please
17 keep in mind your instruction you are not to have
18 any conversation about the case. I will let you
19 know when it is time for you to have deliberations
20 and discussions but until that time please do not
21 have any discussions with anyone.

22 Now, in just a moment the attorneys are going
23 to have an opportunity to address you with what we
24 call opening statements. Ladies and gentlemen,
25 basically the opening statement is an attorney's

1 opportunity to explain to you what they believe the
2 issues are in this case. It is important that you
3 listen to them and give them your undivided
4 attention but it is also equally important that you
5 understand this. What the attorneys tell you in
6 their opening statements is not evidence. It is
7 merely their contention as to what they believe the
8 evidence in this case will show. The evidence in
9 this case is going to be presented to you from
10 witnesses who are placed under oath and take the
11 witness stand and then any other exhibits or items
12 that may come into the case during the course of
13 the trial.

14 From time to time during the trial, ladies
15 and gentlemen, you may hear one of the attorneys
16 say something along these lines, "Judge, excuse me,
17 we've got a matter of law we need to take up with
18 the Court," or, "Your Honor, may we approach the
19 bench?" During those times, ladies and gentlemen,
20 I may ask you, and it depends on the situation, but
21 I may ask you to retire to your jury room to allow
22 me to address the attorneys on a matter of law. If
23 I ask you to step out the only reason I'm asking
24 you to do that is simply this.

25 Oftentimes when I'm dealing with the lawyers

1 regarding a matter of law it requires me to make
2 some comment about the facts in relationship to a
3 ruling that I'm required to make and, as I told you
4 earlier, you are the judges of the facts of this
5 case and I'm not to influence you in any way with
6 regard to your duty as the trier of fact, so to
7 protect you from those comments I may ask you to
8 step into the jury room so that I can discuss
9 freely with the attorneys a matter of law and not
10 influence you in your role as the fact finders.

11 The facts in this case, ladies and gentlemen,
12 are to be determined by you and only by you. As I
13 told you earlier, if I make any comment about the
14 facts which I don't believe I have ever done that
15 but if I ever did you must disregard my comment
16 because only you the jury are allowed to determine
17 the facts of this case.

18 Now, in determining what the facts are in
19 this case you're going to have to decide whether or
20 not the testimony of witnesses is believable. It
21 is going to be my responsibility to rule as a
22 matter of law whether certain testimony is allowed
23 into this trial at all or not but once testimony is
24 allowed into this case, whether or not you believe
25 it is going to be solely up to you to decide.

1 In deciding whether to believe a witness you
2 have the right to consider whether the witness has
3 an interest in the result of the trial, whether the
4 witness is prejudiced toward one side or the other,
5 the opportunity for the witness to have seen the
6 matters about which that witness testifies, the way
7 the witness acted on the witness stand. You have
8 the right, ladies and gentlemen, to consider
9 anything that is in this record that will help you
10 in judging the credibility and the believability of
11 witnesses. That is why it is important that you
12 give close attention to the witnesses, pay close
13 attention to the attorneys and to the Court. Try
14 not to let your thoughts wander but pay close
15 attention to everything that goes on so that at the
16 end of the day when it is time for you to
17 deliberate you have heard all the testimony, you
18 have heard all the evidence, you will have heard
19 from the attorneys and I will give you the law and
20 you will then be in a position to go back to the
21 jury room and deliberate and arrive at a verdict.

22 Now, during the course of this trial, ladies
23 and gentlemen, I leave this completely up to you as
24 individual jurors, if you want to take notes let us
25 know, we'll provide a pad and paper and pencil if

1 you choose to want to do that, or you can choose
2 not to do that and just listen to the testimony. I
3 leave that up to you as individuals. Some of you
4 may choose to do that, some of you may not, none of
5 you may do it, all of you may do it, it doesn't
6 matter to me. I just wanted you to know if you
7 chose to do that or would like to do that we'll
8 make that available to you. Okay?

9 Now I'm about to turn it over to the
10 attorneys for their opening remarks. Again I ask
11 you to give them your undivided attention as they
12 address you with their opening remarks but before I
13 do that let me first inquire of the plaintiff are
14 there any exceptions or objections to the Court's
15 opening remarks?

16 MR. COLLINS: No, Your Honor.

17 THE COURT: Anything from the defense?

18 MS. BYRD: No, sir, Your Honor.

19 THE COURT: All right, thank you very much.

20 Ladies and gentlemen, now if you will please
21 give the attorneys your undivided attention.

22 Mr. Collins.

23 MR. COLLINS: May it please the Court?

24 THE COURT: Yes, sir.

25 MR. COLLINS: Good morning, ladies and

1 gentlemen. This is my first opportunity to try a
2 case in your beautiful new courthouse, I know you
3 are proud of it, it is one of the nicest, maybe
4 even the nicest courthouse of any county in South
5 Carolina. Winston Churchill once said first we
6 shape our buildings and then they shape us, and
7 this building certainly has the ability to shape
8 our perception about our jury system and about
9 government in general.

10 I represent First South Bank, I'm proud to
11 tell you that. The president of First South Bank
12 is Mr. Chip Lyerly, W. C. Lyerly but he goes by
13 Chip. He and I are friends, we are in the same
14 Rotary Club, I have known him for years.

15 Seated behind him on the first row is Mr.
16 Wayne Lovelace. He is also an officer with First
17 South Bank and he will be a witness in this trial,
18 probably Mr. Lyerly will, too. We want you to know
19 who they are.

20 Seated with me at counsel table are, first of
21 all Lee Floyd of my office, and Don Tyler, Jr.,
22 from the law firm of Tyler-Cassell.

23 We will be this morning in opening statement
24 trying to give you a heads up to help you
25 understand this case. I was very glad to hear

1 Judge Russo remind you there is a big difference
2 between the way trials go on TV and the way they go
3 in real life. You watch a trial on TV and the
4 lawyer stands up, he gives a closing argument about
5 90 seconds long and that's it and people say,
6 "Well, good."

7 Well, that is entertaining and it is nice but
8 that is not the way it can work. It is my job to
9 give you a preview of this trial and I liken it to
10 the way my grandchildren come over and do a jigsaw
11 puzzle. They put all the pieces down there on the
12 table and then they put the box up there with the
13 lid that shows the picture. You've got to have
14 that up there in order to find out or figure out
15 where the pieces go, don't you? And an opening
16 sort of serves that same purpose in a jury trial.
17 That is a way for you to understand and fit those
18 pieces where they go when you hear them from the
19 witness stand.

20 Now, back in the year 2007 Mr. Lovelace who
21 has worked for another bank, First Palmetto Bank,
22 and who had a relationship with Mrs. Peggy
23 Wheeler-Cribb, she's the lady in the purple top
24 over here, and her son Darwin Wheeler, he is back
25 on the back row in the white shirt, he had a

1 relationship with them, he had done transactions
2 with them. Well, he came over and started work for
3 First South Bank.

4 By the way, I meant to tell you a little bit
5 more about First South Bank. They are a state
6 chartered bank, they are a small community bank
7 headquartered in Spartanburg, South Carolina with
8 branch offices in Greenville, Columbia and Bluffton.
9 It is a relatively small bank. Back in 2008 when
10 you heard about the big bank bailout First South
11 Bank didn't get a cent of that money. Those big
12 banks like Wachovia and Bank of America were bailed
13 out because they were involved in these risky
14 banking practices such as credit default swaps and
15 mortgage backed securities and things like that.
16 First South Bank never did do that, never has done
17 that, they are a bank that operates in the
18 traditional way, they loan money to people, they
19 service that loan themselves and they build
20 relationships with customers by giving them good
21 service.

22 When Mr. Lovelace came over he approached
23 Miss Cribb and said, "Would you like to let us work
24 with you, we can refinance for you that large tract
25 of land you recently bought on Highway 17," which

1 is referred to as the South Causeway property.
2 They discussed this and made a decision to do that
3 and started off with a smaller loan, \$550,000, made
4 by First South Bank to South Causeway and it was
5 secured by a beach house owned by Mr. Darwin
6 Wheeler. It is called lot 4 of 334 Myrtle Avenue.
7 That is a big issue in this case, is whether the
8 bank did something wrong with regard to that piece
9 of collateral. That \$550,000 loan was designed to
10 help them get started with infrastructure at this
11 19 acre tract of land along Highway 17.

12 Infrastructure means water and sewer, roads,
13 curbing. Things like that, that is infrastructure.

14 Well, there came a time when they decided to
15 refinance the whole thing with First South and they
16 did. There was a commitment letter sent out, and
17 you are going to see this document, it will be
18 presented in our case in chief. This commitment
19 letter sets out what the bank expects and requires,
20 and Miss Cribb got this letter in early June, well
21 before the June 25, 2008, closing. She was able to
22 study it, she sent an email saying, "Darwin and I
23 have been over this letter back and forth many
24 times, we have some questions."

25 You're going to see an email that she sent to

1 Mr. Lovelace asking certain questions. And one of
2 them was, "Why do we have to pledge lot 4 of 334
3 Myrtle Avenue as collateral for this loan, why
4 can't it just be the 19 acres?" And he patiently
5 wrote back and explained to her why that lot needed
6 to be at least for a time pledged as collateral for
7 this loan.

8 You're going to hear from the plaintiffs that
9 was grossly unfair, it was a big surprise, they
10 didn't know anything about it. Absolutely not so.
11 There was a discussion about it, there was email
12 exchange about it. When they came to the closing
13 it was listed as a collateral, as part of the
14 collateral for the loan, absolutely clear that that
15 was discussed and disclosed and which you have
16 allegations there was a big switch-a-roo done at
17 the closing to require that as additional
18 collateral I am sure the evidence you see will help
19 you understand and realize that that is just not
20 so.

21 Then there came a time in April of 2009 when
22 Miss Cribb and her son needed more financing,
23 needed more money and they were not able to borrow
24 any money from First South Bank. First South said,
25 "Listen, we have loaned you as much money as we're

1 comfortable loaning you and we just can't loan you
2 any more," so they hired this broker, I think he is
3 Mr. Motoene, to help them line up a lender, and an
4 outfit called Kennedy Funding up in New Jersey
5 comes in.

6 Well, in order for them to make the Kennedy
7 Funding loan they needed some collateral and so
8 First South Bank made a modification agreement with
9 them. You are going to see this agreement. It is
10 all laid out, they said, "We're going to release
11 lot 4 on this beach lot, beach property so you will
12 have some collateral to borrow money from Kennedy
13 Funding."

14 I forgot to tell you the amount. The first
15 South Bank loan that was closed in 2008, it was up
16 to 6.5 million, up to 6.5 million. Now, what was
17 that for? That was to pay off the big mortgage at
18 First Palmetto Bank and to generate other funds
19 that would be used for development and to fund an
20 interest reserve account. This is traditionally
21 done on a commercial loan, part of the loan
22 proceeds go into a special account to pay the
23 interest as the loan rolls along. This is a
24 routine thing that is done.

25 But this modification agreement in 2009 freed

1 up that beach lot so they could go to Kennedy
2 Funding and get some more financing. You are going
3 to hear allegations that was not properly done,
4 that somehow that was unfair to Miss Cribb and her
5 company called South Causeway, LLC, and part of
6 what is at issue in this case is whether or not
7 there was anything wrong with that.

8 You will see the documentation, you will see
9 it is clearly outlined, you will see that they made
10 a choice in connection with that loan, which was
11 option two presented to them, and option two meant,
12 "In exchange for us releasing this lot you need to
13 accelerate the due date of your loan," the due
14 date, maturity of this loan, and they went with
15 that option. It is all documented in emails, you
16 will see they elected to make that accelerated date
17 and therefore net a little bit more of the proceeds
18 from the Kennedy Funding loan.

19 So then the maturity date comes in July of
20 2010. They don't have the money, they can't
21 refinance, and I bet you know why, because what
22 happened in this country starting at about 2008 a
23 great recession descended upon us, didn't it?
24 First South Bank didn't cause that, Miss Cribb
25 didn't cause that. Nobody in this room caused

1 that. The economy is a complicated thing but
2 values started falling and people with assets such
3 as undeveloped real property had a big change of
4 circumstances. Prior to the time that all this
5 occurred Miss Wheeler-Cribb had opportunities
6 galore to sell this property. We're going to show,
7 I think she will admit all this, we won't have to
8 spend a whole lot of time on it, I'm just going to
9 tell you about a few of them.

10 In April of 2006 Crescent Retail offered her
11 \$11,500,000. She turned it down.

12 In April of 2006 Hughes Commercial Properties
13 offered her 9,000,000, she turned it down. She
14 would have made a fortune had she accepted that
15 offer.

16 Skipping over a number of others, in April of
17 2008 Ravenell Development Corporation offered her
18 \$9,500 an acre, excuse me, \$9,500,000 for 13.74
19 acres.

20 In July of 2008, before the collapse of the
21 market, Lincoln Harris offered her \$12,170,250.
22 She turned it down.

23 In March of 2009 Lumberton Ventures offered
24 her \$9,550,000. She turned it down.

25 Interface Properties, Inc., in June, 2009,

1 offered her \$10,000,000. She turned it down.

2 Now, that property, we have a photograph of
3 it, there's a sign on that property, you probably
4 pass by it, offering that property for sale for
5 seven and a half million, and now this. They will
6 only pay an agent three percent commission, that is
7 well below the market of ten percent.

8 Now, Miss Cribb and her company South
9 Causeway, LLC, still owns it, nothing the bank has
10 done has changed that fact, she still owns that
11 land and she could have had it listed with some big
12 real estate company. The bank has encouraged her a
13 number of times to do some things that would help
14 her along with this investment. They recommended
15 that she associate a developer that they knew who
16 is also a customer of their bank but they say, "Oh,
17 you tried to interfere with our business, you're
18 trying to meddle with our corporate affairs."

19 Well, the bank was doing what they should do
20 to protect their interest, their investment,
21 because after all they have loaned all this money.
22 She has not listed it with a national real estate
23 agency that we know of, there is no advertising
24 going on, there is nothing really being done in a
25 prudent way to sell this land.

1 So, we bring a foreclosure lawsuit in August
2 of 2010. Foreclosure lawsuits, ladies and
3 gentlemen, normally happen quickly, they normally
4 to the judge, or in this case, in the case of
5 Georgetown County you have a standing Master in
6 Equity named Joe Crosby. He takes the foreclosures
7 and processes them quickly, the bank receives the
8 collateral back, they are able to advertise it and
9 sell it, and that is the way foreclosures work.
10 Routinely that is the way they work.

11 But this isn't one that happened routinely
12 like that because after the bank brought its
13 mortgage foreclosure action Miss Cribb switched
14 lawyers, hired a new law firm, the law firm of
15 Turner Padgett where Miss Byrd and these other
16 lawyers work and they filed an amended answer, an
17 earlier answer had already been filed, they filed
18 an amended answer and counter-claim and
19 counter-claim with a demand for a jury trial.

20 Now, in the loan instrument they signed back
21 in 2008 there is a clause in there, you will see,
22 that says the borrower waives a jury trial. That
23 is routine in mortgages. But in this answer and
24 counter-claim she demanded a jury trial. You know
25 what that means? That slows things way down. Here

1 we are over two years later just finally getting to
2 this case. One way to buy time in a foreclosure
3 case is, it seems, is file a counter-claim, demand
4 a jury trial and see if the economy rebounds in the
5 meantime.

6 So, we get this lengthy document, answer and
7 counter-claim, and I'm going to tell you just a few
8 of the things that are in here but it is a doozy.
9 First they say, the first thing say, which is very
10 important, is this. They don't deny the note and
11 the mortgage are legally binding documents. They
12 simply say these are legal transaction documents
13 which speak for themselves and should be
14 interpreted by the Court.

15 So, nowhere in their answer do they say wait
16 a minute, that is not a valid note and mortgage.
17 They don't say that but they do go on to say later
18 on in their pleadings that the bank breached the
19 contract. Let me find it here. They say the bank
20 breached the contract because of some of the things
21 they did and they say that there was a freezing of
22 the loan.

23 Well, that is not a term bankers use, that
24 is not a term Mr. Chip Lyerly ever used, that is
25 not a term that Mr. Lovelace ever uses. They have

1 made it clear that they never froze that loan but
2 they did say, as per the loan document, "In order
3 for you to get more loan proceeds from this up to
4 six and a half million dollar loan you've got to
5 meet certain requirements." That is routine. You
6 can't just say please send me another check. There
7 were benchmarks, milestone requirements. You've
8 got to show you've got the zoning done correctly,
9 you have to show infrastructure is in place, you
10 have to show various things are done before you get
11 any more loan proceeds.

12 Furthermore, they never applied for any more
13 loan proceeds but in this pleading they filed they
14 make the wild claim, the unsubstantiated claim that
15 the bank froze the loan.

16 Here are all the defenses they allege. That
17 the bank is guilty of unclean hands, that the bank
18 should not be able to foreclose because of estoppel
19 and Laches. Estoppel means you have done something
20 that destroys your right to proceed. Laches is a
21 defense that says you have sat on your rights, you
22 saw the stalled process, you didn't act
23 appropriately.

24 We will show that the loan matured in July of
25 2010, foreclosure was brought in August of 2010,

1 how can you say Laches applies because the bank
2 didn't act properly? They say that the bank has
3 waived its rights and therefore may not recover.
4 Well, you will be the ones to decide if the bank
5 has waived its rights. I think you will find that
6 the bank has acted appropriately, fairly, promptly
7 in the handling of this matter.

8 Then they say that the bank failed to
9 mitigate its damages. In other words, the bank
10 didn't do what they could have done to minimize the
11 damages. That is another thing you will decide.
12 We say the bank did all the appropriate things that
13 they could do and acted promptly to enforce their
14 rights and therefore it cannot be said to have
15 failed to mitigate their damages.

16 Then they say for a sixth defense the bank
17 has not sustained any damages and therefore may not
18 recover on its claims. If you loan millions of
19 dollars to somebody and they don't pay it back how
20 can you say there is no damages?

21 Then they say for a seventh defense that the
22 bank is guilty of in pari delicto. That is a Latin
23 phrase which simply means criminal wrongdoing, that
24 the bank has done something so wrong that they
25 should not be able to foreclose. You will be the

1 ones to decide that. We respectfully submit to you
2 that it is absolutely untrue.

3 Then they say as an additional defense that
4 the bank has condoned, acquiesced and ratified, the
5 plaintiff's claims, if any, are barred by
6 condonation acquiescence and ratification.
7 Condonation means you condone this. Well, you're
8 not going to see any documentation or evidence that
9 the bank has condoned them not paying back their
10 loan. You are not going to see any evidence that
11 the bank acquiesced or went along with them not
12 paying back their loan and you are not going to see
13 any documentation that the bank ratified their
14 action in not paying the loan. These are
15 concoctions.

16 Then they say, another defense is there is a
17 lack of consideration, plaintiff's claims, that is
18 the bank, are barred because the mortgages and
19 loans are unenforceable for lack of consideration.
20 That means you didn't pay any money. Well, you're
21 going to see for yourself the bank did, they paid
22 off that prior loan at First Palmetto, they wrote
23 checks at the closing, that is consideration.
24 You're going to find and you're going to see for
25 yourself that indeed there was consideration.

1 And then they say for a ninth defense that
2 there was an agreement made and that the terms of
3 the parties' agreement and loan documents bar the
4 bank from recovery. The terms of the note and
5 mortgage established clear rights for the bank and
6 the bank is clearly allowed to enforce those
7 rights.

8 Now, let me interrupt my little recitation of
9 these defenses and tell you something here. You
10 are going to see in a few minutes in a Power Point
11 presentation done by my ace partner Lee Floyd all
12 these documents, we're going to try to streamline
13 it and make it go quickly, and you will see it on
14 your screen and you're going to see some clauses in
15 there. For example, you're going to see a clause
16 in the loan commitment and in the note and mortgage
17 that allows the bank to be protected by reliance on
18 the documents that are reduced to writing.

19 It says essentially this. "No oral side
20 agreements are allowed." You can't sign a note and
21 mortgage, clearly obligate yourself, and say, "Wait
22 a minute, I had an agreement with Wayne Lovelace,
23 he told me we would do this and that is the deal."
24 The law says whatever your agreement is it has to
25 be reduced to writing. We argue that they

1 shouldn't be able to come in here with all these
2 oral agreements but the Court has decided that they
3 are going to be able to present all that to you,
4 they are going to be able to tell you such things
5 as, "Wayne Lovelace told me we wouldn't have to put
6 up that lot 4, that beach lot as collateral."

7 It is clearly in there in writing but they
8 are going to testify, "Oh, he said you don't have
9 to do that." We believe that shouldn't even be a
10 part of this case because the document they signed
11 says everything has to be in writing.

12 Then there is another document that we have
13 to rely on that has to do with that modification
14 agreement I told you about. That modification
15 agreement has in it a clause that constitutes a
16 release, okay? In other words, in order to make
17 that loan the bank required Miss Cribb to say this.
18 "Look, we've got a new deal going here and you need
19 to clearly release us of any claim you have about
20 anything we did or failed to do up to that time,"
21 and she did, she signed it but now today she says,
22 "Wait a minute, I got tricked again, I came to that
23 closing, I was under duress and I signed that thing
24 but I'm not bound by that."

25 Well, we think she ought to be but the Court

1 has said you the jury are going to have to decide
2 whether or not those clauses required everything to
3 be in writing and that release of April 2010 is
4 enforceable. You are going to get to hear every
5 bit of the stuff that they have said that they have
6 come up with to support their counter-claims.

7 Let's go back to the answer. The last one I
8 said, told you about was the ninth defense where
9 they say the bank can't recover because of the
10 terms of the agreement. Nothing could be further
11 from the truth, ladies and gentlemen.

12 For a tenth defense, excuse me, for an
13 eleventh defense they say there was fraud in the
14 inducement, the bank fraudulently induced them to
15 enter into this mortgage. Wayne Lovelace and Chip
16 Lyerly are going to tell you about their extensive
17 experience in banks and both of them are going to
18 look you in the eye and say, "I have never been
19 accused of that in my life until this."

20 Bankers don't build businesses and
21 reputations by defrauding their customers. These
22 men did not commit any fraud. I believe you will
23 conclude at the end of this trial there was no
24 fraud in the inducement that caused these loans to
25 be made.

1 And then the twelfth defense is
2 unconscionability. They say this note and mortgage
3 can't be enforced because it is unconscionable.
4 Unconscionable means it is just offensive to the
5 conscience to think that people should be held to
6 the terms of a mortgage.

7 Well, ladies and gentlemen, banks make dreams
8 come true. Who do you know that hadn't had to
9 borrow money to buy a car or buy a house or go to
10 college or start a business or grow their business?
11 The difference between the United States of America
12 and a lot of third world countries is this. We
13 have banks. We have banks that help people do
14 things they otherwise never could have done. How
15 can it be unconscionable for a bank to loan money
16 and if they are not repaid, to foreclose on the
17 collateral, how can that be unconscionable?

18 And then here is the one I alluded to
19 earlier. They claim as a thirteenth defense that
20 these loan documents were procured while the
21 defendant, that would be Miss Cribb, was under
22 duress caused by the plaintiff. She showed up for
23 the closing, found out things she didn't like, they
24 claim lot 4 shouldn't have been collateral but she
25 had to close the loan because she's under duress,

1 she did it, but now she says, "Because of that
2 duress which you created you can't foreclose on me,
3 your note and mortgage are invalid."

4 Essentially, ladies and gentlemen, here is
5 what she's asking you to do. She's asking you,
6 after you hear all the evidence in this case, to
7 say, "Okay, you can't foreclose on the note and
8 mortgage, I own that property over there free and
9 clear, and not only that, you've got to pay me
10 millions of dollars in damages under my
11 counter-claims." That's what she thinks, thinks
12 you ought to do for her in this trial.

13 The next defense they plead is reservation
14 and nonwaiver of additional defenses, which means,
15 "If we come up with something else we're going to
16 allege that, too." About the only thing we don't
17 see is the kitchen sink defense in this answer.

18 Now let's go over here to the counter-claims.
19 They say that they get, that Miss Cribb and her
20 company South Causeway get to recover money from
21 the bank because the bank breached its contract.
22 Well, you are going to see the evidence and we are
23 going to, I believe, have an easy time showing that
24 the bank did exactly what it can do, should do, is
25 authorized to do, what every bank does.

1 You know, there have been a lot of
2 foreclosures down here along the coast in recent
3 years after the economy collapsed, you know, there
4 have been, unfortunately, unfortunately for Miss
5 Cribb her property is not worth as much as it was
6 before. You see where she's advertising it for
7 sale for seven and a half million, that is probably
8 a pie in the sky number, too. She hadn't gotten
9 any offers lately, at least we haven't heard of
10 any.

11 But she says the bank breached its contract
12 and then she says not only did the bank breach its
13 contract but it did so with fraudulent acts, and
14 there is a laundry list of things in here that they
15 say are fraudulent acts, such as First South Bank
16 said it would support South Causeway in its effort
17 to develop the property and would see the
18 development through to its completion.

19 Well, first of all that is an oral
20 representation, it never was made but if it was it
21 is something that was done orally, which shouldn't
22 even be in evidence, and that certainly wouldn't be
23 fraud.

24 They say First South Bank committed a
25 fraudulent act of advising them they would not

1 leave South Causeway without financial means to
2 complete the development of the property. How many
3 banks do you know that would go to a borrower and
4 say, "Look, we're going to let you use as much
5 money as you want and if you tell us you need more
6 money we're going to give it to you and we're going
7 to be obligated to you from now on and whatever you
8 say goes"? How many people think that is the way
9 banks operate or could operate? I won't read you
10 all these things they say were fraudulent acts but
11 I respectfully submit to you that they are
12 concoctions and untrue allegations.

13 The next thing they allege as a third
14 counter-claim is that the bank has violated a South
15 Carolina law known as the Unfair Trade Practices
16 Act, okay? And they say, under that heading they
17 say the actions of First South Bank are unfair in
18 that they are offensive to public policy, immoral,
19 unethical and oppressive. And they say this is an
20 unfair trade practice and that they should
21 therefore be given an award of damages, and under
22 that statute if you prove unfair trade practices
23 you can triple your damages plus attorneys fees.
24 That is what they want you to do, they want you to
25 find unfair trade practices here so they can have

1 this enormous windfall of recovery.

2 They allege in a fourth counter-claim that
3 the bank breached its fiduciary duty. Well, banks
4 owe no fiduciary duty to their customers. A
5 fiduciary duty is like the duty owed by a trustee
6 to a trust. These are very special relationships,
7 fiduciary duties. A customer of a bank and a bank
8 do not have a fiduciary relationship in our
9 judgment, and of course the Court will tell you
10 more about that.

11 And then they claim as a nineteenth defense
12 and fifth counter-claim that once again there was
13 fraud, constructive fraud and misrepresentation.
14 And they go on to say in a twentieth defense and
15 sixth counter-claim that the bank tortuously
16 interfered with the contract. Tort is a word we
17 use a lot, it means a wrong. You hit somebody in a
18 wreck, that's a tort, that is a wrong for which
19 there is a right to recover.

20 A tortuous interference with a contract, what
21 do they mean by that? I will tell you exactly.
22 Miss Cribb reached the point where she said, "I
23 think I'm going to auction off this property." She
24 had turned down all the big offers she had gotten
25 in the past, she decided that the best thing to do

1 was to action it off. The bank said they didn't
2 think that was a good idea, it is best to list it
3 with a real estate company and approach it that
4 way. People who buy at an auction are bottom
5 fishermen that are looking to buy something low
6 ball.

7 They proceeded with this auction and they
8 wanted to auction off parcels of land, not the
9 whole thing. They wanted to either sell the whole
10 thing or parcels and the bank said, "No, we're not
11 going to do that. We're not going to let you sell
12 off a parcel of this land and release that land
13 from the mortgage because we might be left with the
14 rest of the land that is not nearly as valuable."

15 For example, the land fronting Highway 17 is
16 going to be a whole lot more valuable than the land
17 in the back, so they made it clear they weren't
18 going to do partial releases. They also made it
19 clear they weren't going to renew this loan past
20 its renewal date because they were very
21 uncomfortable with the very poor judgment they saw
22 being exercised by Miss Cribb turning down all
23 these offers so they said, "We're not going to
24 renew this loan and we're not going to give you
25 partial releases."

1 Well, the action company didn't know about
2 the partial release so Mr. Lovelace contacted Mr.
3 Thomas with the auction company and said, "I need
4 to let you know something. We have made a decision
5 not to renew this loan and we have already told
6 Miss Cribb that we're not going to do a partial
7 release."

8 Miss Cribb says, "Oh, that's terrible, you
9 can't do that to me." Well, the bank had an
10 absolute right to do that and we have experts who
11 are going to testify in this case. Mr. Barksdale,
12 you see him right there with the yellow tie, he's
13 an expert that they hired and we asked him at his
14 deposition -- you know what a deposition is. You
15 sit down with a witness under oath, ask them
16 questions and they give answers. "Mr. Barksdale,
17 is there anything wrong with the bank telling the
18 auction company about this decision they had made
19 not to give partial releases?" He said, "No,
20 that's fine."

21 In fact Miss Cribb should hve told them that,
22 she shouldn't have had them operating under some
23 misunderstanding. So, the very allegation in this
24 complaint and counter-claim, I went through it with
25 Mr. Barksdale just like I have gone through it with

1 you, I asked him, "Is there anything to this, do
2 you see any evidence to support this defense?" He
3 told us in his deposition that every one of these
4 defenses was unfounded and every one of these
5 counter-claims was unfounded. And he will testify,
6 and if he doesn't we'll read you his deposition,
7 but he also said that he knew of nothing that would
8 cause this note and mortgage to be unenforceable.

9 Not only did they allege in their
10 counter-claim tortuous interference with contracts,
11 they said there was tortuous interference with
12 prospective contracts. That is, contracts that
13 might be entered into in the future.

14 Well, ladies and gentlemen, there are a
15 number of things you're not going to hear. Let's
16 talk about them. You're not going to hear anybody
17 come in here and say, "I was interested in bidding
18 at the auction sale, I was thinking about going and
19 bidding but when I found out about Mr. Lovelace
20 calling Mr. Thomas I changed my mind." You're not
21 going to hear that. In fact you're going to hear
22 Mr. Thomas say, "After I learned that from Mr.
23 Lovelace, that the bank wasn't going to renew and
24 wasn't going to take partial releases I didn't tell
25 anybody, I didn't think it was appropriate for me

1 to share that with anybody so I didn't tell
2 anybody."

3 So, there has been nothing done. Even if
4 that was wrong, which it wasn't, but even if he had
5 told others, and he didn't, there wouldn't be
6 anything wrong because that was the bank's right,
7 that was their choice not to take partial releases
8 and not to renew this loan. So, you're not going
9 to hear from a bidder who says, "I would have bid
10 that property in at the action sale." You're not
11 going to hear from anybody, from a company called
12 Lincoln-Harris -- let me tell you about that.

13 That is a company up in Charlotte,
14 Lincoln-Harris, that is one of the ones I read you
15 earlier made an offer, Lincoln-Harris. They became
16 interested in buying the note. Banks can sell
17 notes, they are negotiable instruments. If you
18 have ever read a promissory note it says pay to the
19 order of the bank. That makes it negotiable. That
20 bank or that holder of that note can sell that note
21 to anybody they want to, you don't have the right
22 to keep them from doing that.

23 In fact, banks can sell notes and mortgages
24 on property without even telling the people who own
25 the property. That's the way finance works.

1 Lincoln-Harris expressed an interest in buying this
2 note. They went to see First South Bank, they met
3 with Mr. Lyerly, they signed a confidentiality
4 agreement, they were shown documents from the file,
5 they elected not to buy the note but when Miss
6 Cribb found out about that she just blew up and
7 said, "You invaded my privacy, you did something
8 terribly wrong."

9 Well, no, they didn't. There is no law that
10 makes confidentiality apply to a commercial loan.
11 Now, admittedly there is a loan, consumer product
12 law that makes that privacy requirement for an
13 individual loan. For example, your credit card
14 company has an obligation to maintain some
15 confidentiality but in a commercial setting there
16 is no privacy requirement.

17 Lincoln-Harris had perfect right to go in and
18 look at those documents to make a decision whether
19 they were going to buy that note. But more
20 importantly, Lincoln-Harris didn't do anything
21 unfair or improper with that information. You're
22 not going to hear anybody from Lincoln-Harris come
23 in here and say, "Well, let me tell you about the
24 big headstart or advantage we had by going up there
25 and seeing all that documentation at First South

1 Bank." Nothing, nothing like that. Banks get to
2 show prospective note purchasers the file so they
3 can evaluate whether or not to buy the note.

4 You won't hear anything from a man named
5 Charles McCollum that supports the wild claim by
6 Miss Cribb that somehow there was an effort being
7 made by First South Bank to steer this property
8 into Mr. McCollum's hand. Mr. McCollum is a real
9 estate developer, a successful, reputable real
10 estate developer. He lives in Columbia but he also
11 has a home I think down here in Georgetown County,
12 might be DeBordeux, somewhere like that.

13 Mr. McCollum was hired by Lincoln-Harris as
14 an agent for them, he was assisting them. Mr.
15 Lyerly and Mr. Lovelace at one time said, "You
16 know, Miss Cribb, you might want to engage the
17 services of an experienced developer, we know one,
18 Mr. McCollum."

19 Well, she didn't hire him. He didn't try to
20 have the property steered his way. He is going to
21 testify, he is going to say, "I did absolutely
22 nothing like that and the bank did nothing to try
23 to encourage me or assist me along, there was no
24 advantage given to me, I didn't ask Wayne Lovelace
25 to steer this property in my direction."

1 Bear this in mind, ladies and gentlemen. If
2 Lincoln-Harris wants this land they can buy it from
3 South Causeway, they can buy it this morning, Miss
4 Cribb and her company still own it. Just as they
5 owned it the day they bought it, they still own
6 that property, they can sell it to anybody they
7 want to but instead of negotiating with these
8 companies that made these offers in the past Miss
9 Cribb was very rude to them, she stiff armed them
10 and recently when Lincoln-Harris made another
11 offer, a much lower offer, I think I told you about
12 it, something around four and a half million
13 dollars, her reply to them was, "I'm not even going
14 to dignify this offer with a reply offer, a
15 counter-offer," but you know real estate deals are
16 often made with negotiation, you know, an asking
17 price, an offer, another back and forth. People
18 arrive at a selling prices oftentimes through
19 negotiation but she was unwilling to even respond
20 to that.

21 You're not going to hear anybody come in here
22 and testify that they have done a calculation and
23 they have concluded that South Causeway has
24 suffered damages because of anything First South
25 Bank did or failed to do. You would be required to

1 have evidence like that in order for you to return
2 a verdict in favor of South Causeway.

3 There was another outfit involved for a time
4 and that is Lowe's Foods. There were negotiations
5 going on between Miss Cribb and Lowe's Foods. That
6 is a big food chain, Lowe's Foods was interested in
7 coming in and possibly being an anchor tenant in a
8 shopping center by building on that property. They
9 went back and forth. Then when the economy
10 collapsed Lowe's Foods lost interest,
11 understandably.

12 Miss Cribb may come in here and say to you
13 that somehow or other Lowe's Foods' deal was
14 interfered with by First South Bank but you won't
15 hear anybody from Lowe's Foods come in and say
16 anything to corroborate that, to substantiate that.
17 Nothing like that is going to come out.

18 Ladies and gentlemen, we're also going to
19 have evidence to submit to you to show you that Mr.
20 Wheeler and Miss Cribb are not credible people.
21 We're going to have evidence to show you that they
22 have been deceitful and dishonest. I'm not going
23 to go into the details of that right now because
24 I'm sure there are going to be big legal fights
25 about it, but we're prepared to show you that Mr.

1 Wheeler and Miss Cribb have been deceitful and
2 dishonest, and why would we do that? So you can
3 figure out for yourselves who's credible and who is
4 telling the truth..

5 One of the things that His Honor told you in
6 his opening remarks was your job is to decide
7 credibility. You get the best seat in the house,
8 the witness testifies right there. You have been
9 judging people's credibility all your life, haven't
10 you? We all do. We all have our own ways of
11 sorting out who is tell the truth and who is not,
12 and one of the strengths of the jury system is the
13 collective wisdom of twelve people who have no
14 stake in the outcome, no enemies to punish, no
15 friends to reward, are going to make the decision
16 and you get to decide, ladies and gentlemen, who's
17 credible, who is telling the truth, and we believe
18 therefore our evidence that shows the deceitfulness
19 of these people is properly presented to help you
20 along in that decision.

21 We believe that you will conclude that these
22 defenses and counter-claims were contrived,
23 designed to buy time, that they are not
24 substantial, that they are not true, that they are
25 not provable and we believe that when you come into

1 this jury service bringing your common sense with
2 you as you do you won't have a difficult time at
3 all sorting out where the truth lies in this case.

4 Bear in mind the defendant South Causeway has
5 the burden of proof and when it comes to proving
6 fraud His Honor is going to tell you they must
7 prove fraud by clear and convincing evidence, a
8 heightened burden of proof, and we believe that
9 when you hear the evidence in this case and
10 consider the credibility of these parties you won't
11 have any trouble at all concluding that South
12 Causeway is not entitled to recover.

13 This is a plat of that beachfront property
14 that corresponds to the house that sits on that
15 property where Mr. Wheeler and Miss Cribb live,
16 oceanfront property, there it is. It has to do
17 with that, you know, mortgaged property, this is on
18 Pawley's Island.

19 And we have another thing that bears on the
20 credibility here, and that is the affidavit Miss
21 Cribb gave at an earlier time in this lawsuit.
22 Miss Cribb was facing a motion for summary
23 judgment. A summary judgment is a stage in a legal
24 proceeding where one party says to the Court,
25 "Look, there are no genuine issues of material fact

1 here and we don't need a long drawn out process of
2 a jury trial, you should decide this as a matter of
3 law because there are no genuine issues of material
4 fact." Miss Cribb gave an affidavit in response to
5 that motion, in which she was trying to create some
6 genuine issues of material fact and in that
7 affidavit she said First South Bank scheduled the
8 closing June, 2008, that they sent documents
9 electronically by email and, "After reviewing the
10 documents I found the mortgage included additional
11 property owned by my son. I told Mr. Lovelace that
12 I object to including the additional property and
13 Mr. Lovelace assured me this would be corrected."

14 Well, there is that oral evidence. You see,
15 this is Miss Cribb saying unilaterally, it was
16 never reduced to writing, "During the closing my
17 son and I discovered that Lovelace had not
18 corrected the note and in order to close my son had
19 to agree to mortgage his individual property as
20 security for the loan. At that point we felt we
21 had no other choice since the First Palmetto loan
22 was coming due and Lovelace assured us that First
23 South Bank would see the development through to its
24 conclusion. Reluctantly we agreed to close."

25 Okay. She said, "My son and I discovered."

1 You're going to see, ladies and gentlemen, that in
2 the documentation that was exchanged, well before
3 that closing Miss Cribb was explained exactly the
4 fact that beach lot had to be included. She sent
5 an email to Mr. Lovelace saying, "If we understand
6 the wording of this, it is not acceptable, we'll in
7 no way secure this loan with our beach house and
8 lot."

9 His answer was, "It was never our intention
10 to make as part of our collateral package any
11 properties other than the 19.22 acres that is South
12 Causeway property and lot 4 at Myrtle Avenue.
13 Further, the reason for including lot 4 simply is
14 the fact we do not have a current appraisal upon
15 which to make a decision as to how much to allocate
16 toward our initial planned closing. The statutory
17 advance against unimproved property is 65 percent
18 of the appraised value of the real estate being
19 purchased or financed and a maximum of 75 percent
20 against the total value of the proposed property.
21 In the absence of a current land appraisal we
22 wanted to make sure we're sufficiently secured in
23 the event the property appraised for less."

24 He goes on to say, "As to a proposed release
25 later on of this lot 4, your understanding is

1 correct. Subject to the maximum advance
2 requirements stated above, once we receive a copy
3 of the engineers' certificate evidencing that all
4 the infrastructure improvements have been installed
5 and the development is complete and in compliance
6 with all applicable zoning requirements or we have
7 been furnished a final copy of a signed lease
8 between you and Lowe's Foods our collateral
9 interest in lot 4 will terminate and our mortgage
10 will be released."

11 Ladies and gentlemen, this makes it clear we
12 do expect and require lot 4 to be part of the
13 collateral of this loan. She knew all about that
14 but yet she comes up with this affidavit making
15 claim that she and her son discovered at the
16 closing that lot 4 would have to be part of the
17 collateral.

18 There are some other things in her affidavit
19 that are just absolutely not true, I won't take
20 time to show you all of it. The original of these,
21 these are just enlargements I have had done.

22 The issue about whether or not Miss Cribb was
23 represented by counsel is another issue in the
24 case. She says that as to that closing that
25 occurred, that modification agreement in April,

1 2010, she didn't even have a lawyer but we have
2 email exchanges that show she clearly did have a
3 lawyer and that lawyer, Mr. Gwin, acknowledged that
4 he represented Miss Cribb. We sent a document to
5 them in the discovery process, "We want you to
6 admit that the attorney, you had ample opportunity
7 to confer with a lawyer before you signed this
8 modification agreement and that you were
9 represented by a lawyer." And she wrote back, her
10 lawyer wrote back and said, "We admit that." But
11 that doesn't keep her from today coming in and
12 saying, "I didn't have a lawyer." She did have a
13 lawyer, she had a lawyer, Mr. Gwin, in 2008 at the
14 closing, she had a lawyer Mr. Gwin in 2010 when she
15 did the modification.

16 Here is her affidavit. This contention about
17 conversation that Mr. Lovelace had with Mr. Don
18 Thomas of the Vintage Real Estate, that is the
19 company that was going to do the action. "Lovelace
20 told Thomas the property could not be subdivided
21 and sold in lots, thereby limiting the options. As
22 a result we were forced to change the terms of our
23 auction agreement. Instead of subdividing the
24 lots, we were forced to set the reserves for all
25 four lots at the same price. The original auction

1 contract which was produced during the deposition
2 of Thomas clearly shows the initial reserves that
3 we set in the professional judgment of our agent
4 were marked out and reserve prices were all equal
5 of four million, was substituted for the original
6 amount set by us. 4,800,000 was the amount due on
7 the First South mortgage at the time, it is now
8 higher than that due to the accrual of interest.
9 Lovelace compromised our bargaining position with
10 intent to purchase by revealing confidential
11 information to Thomas which we had made a
12 deliberate decision not to disclose to anyone.
13 That is to say the amount due on the mortgage."
14 Totally made that up, okay?

15 First of all both the experts that that
16 testify in this case are going to tell you, the
17 gentleman to the right over here with a yellow tie
18 is another expert, both of them will tell you Mr.
19 Lovelace did nothing whatsoever wrong in telling
20 Mr. Thomas the situation about that property but
21 they say that he interfered with their opportunity,
22 "Compromised our bargaining position with potential
23 purchasers."

24 You are not going to hear any potential
25 purchaser come in here and testify, not one is

1 going to say, "Yes, you know, I probably did have a
2 huge advantage because of what I learned." Nothing
3 like that occurred, this is all made up to create
4 the impression that the bank did something wrong
5 that prejudiced Miss Cribb, somehow prejudiced Miss
6 Cribb. The contention is, "How much we owed on
7 that lot to First South Bank, how much was owed to
8 the bank was a big secret and we don't want anybody
9 to know that because that would create some
10 disadvantage to us."

11 So, you saw where it said, "We had made a
12 deliberate decision not to tell anybody how much
13 our mortgage balance was." Well, look here. Here
14 is an email from Mr. Wheeler and he sent this
15 before that auction, as I recall, he says, this is
16 to Wheeler-Cribb, Will Wheeler, that is Darwin,
17 from Darwin Wheeler, Wheeler-Cribb is his mother,
18 that is a copy to robbieinpawley's@AOA.com, that is
19 Robbie Buice. "Mom is waiting on an answer from
20 our banker approving your part. If we go with you
21 I want to stay with the same price and five percent
22 commission, six months term will be fine and we are
23 interested in subdividing the property to help
24 facilitate a sale for purchaser. If we sell twelve
25 acres, we owe \$5,000,000 on the tract." Okay? He

1 is telling Mr. Buice, who he hasn't even struck a
2 deal with yet, what the balance is on the loan. So
3 how can she say that there is some big deep dark
4 secret about how much she owes?

5 And you know what else, ladies and gentlemen,
6 if you know how to come to the courthouse and look
7 up the records you can look up somebody's mortgage
8 and if you know how to figure up the deed stamps,
9 you know, you can figure up what the price is
10 because it is based on the price, you can calculate
11 and learn really close to the net sum how much
12 somebody owes on a property. That is not a deep
13 dark secret and it is especially not a deep dark
14 secret on a commercial loan.

15 Ladies and gentlemen, I apologize for taking
16 so long but I believe it was necessary for me to go
17 over some of this stuff with you so that you can
18 understand as you hear the evidence come in where
19 the pieces of the puzzle fit and we respectfully
20 submit that after you hear the evidence and after
21 you evaluate the credibility of the witnesses this
22 is going to be one of the easiest cases for a jury
23 to decide I have ever tried in my 44 years of
24 practicing law. These defenses have no merit, the
25 note and mortgage are clearly enforceable, these

1 counter-claims are concocted, this is an elaborate
2 attempt to stall the process that ought to be and
3 normally is efficient and, ladies and gentlemen,
4 please bear in mind that when the day comes that
5 banks can't enforce their rights in Georgetown
6 County, when the day comes when jurors in
7 Georgetown County get so lost in the details, so
8 confused in what has been said that they destroy a
9 bank's right to foreclose on the property that they
10 have loaned money on and in fact expose themselves
11 to a huge judgment brought by an over reaching
12 property owner who counter-claims against them,
13 when that day comes there won't be any banks
14 willing to do business and loan money because only
15 if banks are secure in their collateral can they
16 continue to operate and do business. That is
17 common sense.

18 You've got common sense, you're the
19 conscience of the community. We respectfully
20 submit that when you hear the evidence in this case
21 you will all agree quickly that indeed these
22 defenses are unproven, these counter-claims are
23 unproven and that you should return a verdict for
24 First South Bank.

25 You will be given a verdict form, I believe

1 you will be asked to answer certain questions
2 instead of just voting for plaintiff or defendant.
3 You will be asked to fill out a form, His Honor
4 will give that to you and he will work and go over
5 it with you, he will help you understand it. If it
6 is done in time maybe I will be able to utilize it
7 when I address you again at the summation stage of
8 this trial.

9 We're going to start by presenting our
10 evidence of the note, mortgage and the loan
11 agreements, commitment letter and these kind of
12 things. These are the documents that are normally
13 only required in a foreclosure. We're going to
14 present that to you, His Honor is supposed to make
15 the decision about that, a foreclosure is an
16 equitable procedure that doesn't require a jury but
17 because there are these counter-claims and because
18 there was a jury demand you're going to hear next
19 from South Causeway and their lawyers. They are
20 going to present all their evidence. After they
21 present their evidence we get a chance to call
22 witnesses and present evidence to disprove or to
23 defend ourselves from these unwarranted but
24 nevertheless asserted counter-claims.

25 I hope what I have had to say has been

1 helpful to you. I thank you for your attention, we
2 appreciate your service in this case. It is said
3 that jury service is the highest peacetime service
4 a citizen can render his country and we thank you
5 for your time and attention.

6 Let me see if I have anything else I need to
7 add.

8 Thank you again.

9 THE COURT: Thank you, sir.

10 Miss Byrd.

11 MS. BYRD: May it please the Court?

12 THE COURT: Yes, ma'am.

13 MS. BYRD: Good morning, ladies and gentlemen
14 of the jury. Again I'm Audra Byrd and my firm
15 Turner Padgett, including Mark Goddard and Carlyle
16 Cromer, represent the defendant in this lawsuit and
17 its sole member Miss Peggy Wheeler-Cribb. She is
18 here today and will be here throughout the trial.

19 Ladies and gentlemen, every contract or
20 agreement that is entered into in the State of
21 South Carolina, whether it is written or oral,
22 requires that the parties act in good faith and to
23 deal fairly with one another. The law also
24 requires that if a bank enters into an agreement
25 with its customers it is required to keep the

1 private information of its customer private and if
2 it fails to do so and it causes harm to their
3 customer then the bank is responsible for all harm
4 that it causes. It cannot blame its customer.

5 And I want to tell you the story of this
6 case. As Mr. Collins explained to you, Mr. ,
7 Lovelace worked with First Palmetto Savings Bank
8 for awhile and during that time he developed a
9 close relationship with Miss Peggy Wheeler-Cribb
10 and her son Darwin and he was familiar with them
11 and their loans, including the loan that is the
12 subject of this case on 19 acres of commercial
13 property on South Causeway. He knew about the
14 loan, he knew it was a good loan, he will testify
15 it was a performing loan.

16 First South Bank, when he joined in 2007,
17 wanted that loan, they pursued that loan. Just
18 after Mr. Lovelace joined the bank he called Miss
19 Peggy Wheeler-Cribb and said, "Is there anything I
20 can do for you? I would love to be your banker, I
21 want to be your banker," and in April of 2008 Mr.
22 Lovelace and Mr. Lyerly, the president of the bank,
23 came down to Pawley's Island and took Miss Cribb
24 and her son to lunch, and that was a very important
25 meeting because two critical issues were discussed

1 at that meeting.

2 The first, Miss Peggy said, "I am not going
3 to move my loan to your bank unless you can promise
4 me that it will stand on its own." In other words,
5 "I'm not putting any other property in your bank
6 for this loan," and the reason she did that is
7 because she had worked for years and spent
8 unbelievable amount of time obtaining property from
9 loans that banks had required several pieces for
10 one loan and she didn't want that, she didn't want
11 to have one big loan that could tie up all her
12 property and it was most important in this case
13 because she knew that from the time development
14 started until the time it ended she was going to
15 need money and she needed those properties to
16 remain without a mortgage so that she could use
17 them to get a loan from some other banks, and the
18 bank, Mr. Lyerly and Mr. Lovelace, agreed to that.
19 They said that the South Causeway property would
20 stand on its own.

21 The second important issue that was talked
22 about during that meeting was the bank's
23 commitment. First South Bank told Miss Peggy and
24 her son that they would be with her through the
25 development of this property. She trusted them,

1 she believed them, she relied on them and as a
2 result she agreed to move her loan from First
3 Palmetto where it was current and performing, to
4 First South Bank and later, about a month or so
5 later, in May of 2008 First South Bank sent a
6 commitment letter to Miss Peggy and when she
7 reviewed it and saw it was totally different from
8 what they discussed, it included a mortgage on a
9 lot that was owned by her son.

10 Now, Mr. Collins showed you a picture of a
11 house, a beach house, and told you this is lot 4
12 that they were talking about. This is not lot 4.
13 This is not at issue in this case. Lot 4 doesn't
14 have any property on it. It is a bare lot.

15 In any event, the bank was going to require a
16 mortgage on that lot as well and when she received
17 that commitment letter she immediately called and
18 emailed Mr. Lovelace and said, "If I understand
19 what this letter says that is totally unacceptable,
20 we vowed we would never do that again and you
21 promised me that South Causeway would stand on its
22 own," and Wayne Lovelace told Miss Peggy that
23 before closing that would be fixed and that lot
24 would not be included in the loan documents.

25 When she got to closing a month later and

1 looked at the documents it was still there, the
2 bank was going to require a mortgage on that lot.
3 But Wayne Lovelace had an answer. He hand
4 delivered a letter to Miss Peggy at the closing
5 table that said, "Here are the conditions under
6 which we'll release your lot," he said, Miss Peggy
7 will testify, "It is just a formality," he will
8 testify that he did it as a way of comforting Miss
9 Peggy, and again she trusted him, she trusted the
10 bank, she relied on the bank and she signed.

11 Just over a month after this loan closed the
12 bank called Miss Peggy and told her that this loan
13 was terminated. You see, it was a development loan
14 and not all the money that was promised was
15 delivered at closing. There was still one and a
16 half million dollars that was left unadvanced that
17 the bank promised, funds to be used to develop the
18 property, and in just over a month they notified
19 her they were terminating it, no more money would
20 be forthcoming from the bank, and Miss Peggy didn't
21 understand why, because you will see the emails and
22 you will hear the testimony that she repeatedly
23 asked the bank, "Is there anything that we are not
24 doing under the loan, that we're supposed to be
25 doing?"

1 And you are going to hear Mr. Lovelace
2 testify the bank didn't respond, you're going to
3 hear him testify the reason they didn't respond it
4 is not their job, not their job to tell their
5 customer what they're doing and not doing under the
6 loan documents.

7 So, they froze the loan. Any development
8 plans that Miss Peggy might have had for that
9 property was gone and in November of 2008 what Miss
10 Peggy feared the most is that she would need
11 additional funds came to past and she went to the
12 bank and she asked if they would be willing to make
13 her a loan on other property owned by her son and
14 the bank said, "We can't help you."

15 So she looked around for another bank and she
16 finally found one, Kennedy Funding, and Kennedy
17 Funding agreed to make Miss Peggy the loan that she
18 requested but they needed the collateral that was
19 being held by First South Bank, that lot, lot 4.
20 So Miss Peggy called Mr. Lovelace and emailed, you
21 will see the emails, and said, "You're not going,
22 you terminated my loan, you won't give me a loan on
23 other property but I found someone who will, will
24 you please release that lot?"

25 And the bank responded and said, "Yes, we'll

1 release the lot but you've got to give us
2 \$500,000." So she worked with Kennedy Funding, she
3 proceeded with Kennedy Funding to get that loan and
4 as part of that process she was required to pay
5 Kennedy Funding \$50,000 in nonrefundable
6 application fee, which she did, and after she paid
7 that First South Bank came back and said, "We'll
8 release the lot for \$500,000 or we'll release it
9 for three but we're going to advance the maturity,"
10 and Miss Peggy is not going to deny she received
11 that email, she will tell you she did but she
12 didn't understand the difference between the two
13 other than the money dollar figure so she chose the
14 \$300,000 and when she read the agreement that First
15 South Bank sent down to be signed she realized what
16 they meant by advancing the maturity date.

17 They meant, "We're taking a year off your
18 loan, it is not going to be due in July of 2011
19 anymore, you have to, it is due in July, 2010."
20 And after she realized that she immediately began
21 to try and sell this property.

22 By the first of the year in 2010 she had
23 decided to conduct an auction and to do so she
24 hired Vintage Real Estate, Chuck Cooper and Don
25 Thomas, to help her develop this plan for the

1 auction and in their planning they decided that the
2 best way to sell this property would be to offer it
3 as a whole piece, all 19 acres, for seven million
4 dollars, which was sufficient to pay off First
5 South Bank, "Or we could subdivide it into smaller
6 parcels and we will set the prices of those parcels
7 based on their size and their location in the
8 larger piece," and again if added all up together
9 it was sufficient to pay off First South Bank.

10 And Miss Peggy communicated her plan to the
11 bank. Eighteen days before the auction Mr. Wayne
12 Lovelace called the auction company, Mr. Don
13 Thomas, and during that call Mr. Lovelace disclosed
14 to Mr. Thomas the exact amount that was owed on the
15 loan, that the bank would not be renewing this
16 loan, that the bank would not accept partial
17 payment and that the land could not be subdivided.

18 Mr. Thomas will appear before you and testify
19 that he has never in his career received a call
20 like that and that he was extremely uncomfortable
21 that the bank was calling him directly and giving
22 him what he considered and the experts will tell
23 you they consider and what Mr. Lovelace and Mr.
24 Lyerly will tell you they consider to be
25 confidential information.

1 As a result, the auction company and Miss
2 Peggy changed the prices on those four subdivided
3 lots so that they now all are going to be sold for
4 4.8 million dollars, which is what Mr. Lovelace
5 told Mr. Thomas was owed on the loan. They had an
6 auction where regardless of the size, whether it
7 was a three acre parcel or a seven acre parcel or
8 whether it was on the front of the property right
9 by the road or at the back of the property and not
10 visible, they were all going to be offered at 4.8
11 million dollars.

12 It doesn't make a lot of sense and Mr. Thomas
13 can tell you that. And obviously no sales were
14 made. Why would the bank do that? You might be
15 asking why would the bank do that. Well, the
16 reason is while Miss Peggy and her son and the
17 auction company were working hard to try to sell
18 this property the bank was working on its own deal.
19 It was negotiating to sell the loan and they
20 weren't going to sell the loan to another bank,
21 which happens all the time, they were selling it to
22 a development company Lincoln-Harris..

23 Lincoln-Harris is the same development
24 company that two years before had made an offer on
25 the property for twelve million dollars and when

1 Miss Peggy received that offer she forwarded it to
2 the bank, so the bank had it. They knew
3 Lincoln-Harris was not a potential loan sale
4 purchaser, they were trying to buy this property,
5 yet they proceeded and Lincoln-Harris said, "It
6 might be helpful to us, First South, if we come in
7 and look at your customer's bank file, we would
8 like to look at everything and, yes, we'll sign a
9 confidentiality agreement but we want to look at
10 all the documents," and they did.

11 But not only did Lincoln-Harris go in and
12 review all of the South Causeway's confidential
13 loan documents, at the same time they were telling
14 the bank, "We're meeting with county and city
15 officials about zoning and developing the property.
16 Not only that, we're talking to potential tenants,"
17 and this is all happening while South Causeway,
18 Miss Peggy, still owns the property and is trying
19 to conduct an auction and in fact you will see an
20 email from Lincoln-Harris to Mr. Lysterly that says
21 this pending auction isn't helping.

22 Eventually the loan sale between First South
23 and Lincoln-Harris didn't go through. Instead, in
24 July, 2010, after they had reviewed all the
25 documents, all the confidential files,

1 Lincoln-Harris came back to Miss Wheeler-Cribb and
2 said we'll give you four million dollars, eight
3 million dollars less than what they had offered two
4 years before and the bank documents that we'll
5 present to you that you can read for yourself are
6 going to establish that the bank filed this
7 foreclosure action to force the borrower, Peggy
8 Wheeler-Cribb, to accept an offer. You will see
9 the documents.

10 In response we did file counter-claims and we
11 believe they have significant merit and the
12 evidence in this case is going to establish that
13 the bank did not treat these people fairly, they
14 didn't act in good faith, they did commit fraud.
15 Our expert will testify that the bank violated the
16 standard of care in the industry by revealing the
17 private confidential information of its borrower,
18 it violated the standard of care by not including
19 all the material terms in the loan commitment
20 letter, it violated the standard of care by
21 becoming involved in the business of South
22 Causeway. Banks aren't allowed to do that.

23 And our expert will testify that the bank
24 violated the standard of care in the industry by
25 terminating that loan only a month after it was

1 made. The evidence will show that the bank acted
2 unfairly and it continues even today as the bank
3 stood before you and accused their own borrower,
4 their own customer of being untruthful.

5 And we did ask for a jury trial and Mr.
6 Collins is right, most of the time banks do just
7 push through but in this case a judge four times,
8 four times they asked for you not to be allowed to
9 hear this evidence, four times, and every time the
10 judge decided we were entitled to have you the jury
11 hear these claims and determine them and we believe
12 and are confident that you will make the right
13 decision.

14 I have just given you a summary of the
15 testimony and the evidence that we will present to
16 you but you, in our great system of justice you and
17 you alone are the finders of fact, you get to
18 decide what the facts are and in that way you are
19 one of the most powerful people in the world. As a
20 member of this jury you are one of the most
21 powerful people in the world and that is why most
22 countries don't allow trial by jury but we're glad
23 you're here and we want to thank you in advance for
24 your attention to the documents and the evidence
25 and the testimony and we appreciate your service.

1 Thank you.

2 THE COURT: Thank you, ma'am. Let me have
3 you come up real quick and ask you something.

4 (Unrecorded bench conference).

5 THE COURT: Ladies and gentlemen, I'm going
6 to give you just a short break, about a ten minute
7 break right now before we get started with the
8 witness. We have some things that need to be set
9 up and everything like that, so we're going to take
10 that time. If you need anything while you're back
11 there just let us know, we've got drinks and snacks
12 or whatever.

13 Now you know more now than you knew yesterday
14 so it is important as you retire to your jury room
15 that you have no conversation about this case. You
16 can talk about anything else you would like to talk
17 about but don't talk about the case. We're going
18 to take a few minutes and get some things set up
19 and then we'll get started, okay? So if you would,
20 please retire to the jury room.

21 (The jury was excused from the courtroom).

22 THE COURT: All right, we'll just take a few
23 minutes and you all can set up whatever you need to
24 set up.

25 MS. BYRD: Thank you.

1 (Recessed at 11:14 a.m.).

2 (Resumed at 11:35 a.m.).

3 THE COURT: Anything we need to take up
4 before we bring the jury out?

5 MR. COLLINS: I would like to call the
6 Court's attention to the fact there is a juror on
7 the back row who appears to be sleeping. I don't
8 know, I wasn't watching him all the time but he
9 slept a right good bit and I would ask that the
10 Court pay, take note of him and --

11 THE COURT: I will mention something to them,
12 I won't embarrass him but I will mention something
13 to them when they come out.

14 MR. COLLINS: Thank you, and can the
15 notebooks be made available to the jurors?

16 BAILIFF: They've got them, the ones that
17 wanted them.

18 MR. FLOYD: One other thing, Your Honor. I
19 discussed this with opposing counsel a moment ago.
20 We have the original of the note and mortgage and
21 I'm going to ask judicial notice be taken of the
22 fact we have the originals and enter copies into
23 evidence rather than putting the actual originals
24 in.

25 THE COURT: Any objection to that?

1 MS. BYRD: No. We just want to see the
2 original note, that is all we want, and they can
3 put in a copy.

4 THE COURT: In other words, what we'll enter
5 into evidence is the copy but just so you can
6 review the original?

7 MR. COLLINS: Let her see it now, Lee.

8 THE COURT: If you all don't mind, and again
9 I don't want to, I mean, I will try to, I will try
10 to say it so that I don't make any disparaging
11 remarks about our case here today but I may try to
12 just let them know that, you know, anytime you have
13 a case that involves numbers and finances it can
14 get tiring mentally and so I'm going to maybe say
15 that and let them know that, "I need you to stay
16 alert, so if you feel like you're getting fatigued
17 you need to let me know so I can give you a break."

18 MS. BYRD: Your Honor, Mr. Tyler and I talked
19 about this, he said in other cases that the Court
20 would mark the originals just because it is a
21 negotiable instrument, if you would mark the
22 original with the civil action number and they will
23 retain it for their records but just so it can't be
24 the subject of another --

25 THE COURT: Sure, I don't have a problem, it

1 can be marked but what we'll actually put into the
2 clerk's file is a copy so that the bank can retain
3 the originals.

4 MR. FLOYD: Right. In other cases I have
5 had the judge would actually write on there, the
6 case caption number on there so if the note is sold
7 somebody is aware to come look and they don't think
8 they are a holder in due course. She's concerned
9 if we foreclose and have the original and it gets
10 in the wrong hand something could happen.

11 THE COURT: Do you want to just write the
12 case number?

13 MR. TYLER: "Subject property due to
14 foreclosure, and put the case number and that is
15 all.

16 THE COURT: All right.

17 (Unrecorded bench conference).

18 THE COURT: All right, are we ready now?
19 Anything from the plaintiff before we get started?

20 MR. COLLINS: No, Your Honor.

21 THE COURT: The defense?

22 MS. BYRD: No, sir, Your Honor.

23 THE COURT: All right. Ask the jury to come
24 in.

25 (The jury returned to the courtroom).

1 THE COURT: All right, ladies and gentlemen,
2 let me tell a couple things before we recognize Mr.
3 Collins for his first witness. I noticed when you
4 came in, let me just say this, please feel
5 comfortable, as you go in and out of the courtroom
6 to just let it flow naturally, there is no assigned
7 seating in the jury box other than the two
8 alternates and the foreperson. I will talk about
9 the foreperson in a little while but when we have
10 the foreperson, the foreperson will occupy this
11 first seat, the alternate will have those two
12 seats. Everyone else just feel free to sit
13 wherever you naturally flow in and out so that you
14 don't have to crawl over each other.

15 Now, I know we're creatures of habit, my wife
16 and I have been attending the same church for
17 fifteen years and we walk in church and if somebody
18 is sitting in our seat we look at somebody like,
19 "Oh, my goodness, what are we going to do now?" We
20 don't have assigned seating in church, we're just
21 used to sitting in the same spot.

22 If you have a place there in the jury box and
23 you're comfortable and you've got just a hankering
24 to sit in that chair I don't mind you doing that
25 but don't feel like you have to, okay? Flow in and

1 out, however you normally do.

2 The other thing I want to mention is this.
3 This type of case, obviously it is going to be
4 involving numbers, financial things, documents,
5 things that you don't normally, some of you may but
6 most people don't normally on a day to day basis
7 deal with and so it can be, it can be complicated
8 dealing with numbers, it can be mentally draining.
9 It is very important that you stay alert and you
10 pay attention to everything that's going on.

11 If you get fatigued mentally don't hesitate
12 to raise your hand or get my attention and let me
13 know and I will take a break. We'll take a break
14 anytime you need it, okay, because it is important
15 that you stay mentally alert and pay attention to
16 everything that is going on so that when the time
17 does come for you to deliberate you will have heard
18 everything and be able to digest everything, okay?

19 And like I said, they did have paper and
20 pencil available to you so those of you that want
21 to do that please feel free to do that.

22 So, having said those things, it is important
23 to me as well as to the parties that you're
24 comfortable. If it gets too warm in here let me
25 know, we'll try to do something about it.

1 Can they control the temperature here?

2 THE CLERK: If you let us know we'll get it
3 done.

4 THE COURT: We have a wonderful courthouse in
5 Florence but to control the temperature in the
6 courthouse we have to call Virginia. I don't know
7 why you have to call up to someplace in Virginia
8 who relays it over to Atlanta and they finally
9 eventually get it done. I think we can control the
10 temperature here, so let me know if you're
11 uncomfortable. We want you to be comfortable. If
12 you need a break let me know, we'll take a break.
13 Okay?

14 All right, Mr. Collins.

15 MR. COLLINS: Thank you, Your Honor. Our
16 first witness will be presented by my able partner
17 Mr. Floyd who is better with the computers.

18 THE COURT: All right.

19 MR. FLOYD: Your Honor, may it please the
20 Court, First South Bank calls at this time Miss
21 Julie Cason.

22

23

24

25

1 JULIE CASON, after being first duly sworn,
2 testified as follows:

3 THE CLERK: Please take a seat and state your
4 full name for the record.

5 THE WITNESS: My name is Julie Cason.

6 DIRECT EXAMINATION BY MR. FLOYD:

7 Q Good morning, Miss Cason. Could you please
8 introduce yourself to the jury?

9 A Yes. I'm Julie Cason, I work for First South
10 Bank, I grew up in West Columbia, South Carolina, I
11 currently reside in Cayce, South Carolina, which is
12 right outside Columbia. I have been in banking
13 since 1988 when I joined a small community bank,
14 Lexington State Bank. My husband is military so we
15 moved around quite a bit. When we finally came
16 back to South Carolian I joined Southern National
17 Bank, which is now BB&T, and in 2000 I had an
18 opportunity to move from BB&T to First South Bank,
19 and I have been with First South Bank since 2000.

20 Q Miss Cason, have you ever testified in court
21 before?

22 A No.

23 Q Are you a little bit nervous?

24 A Yes. Is my voice shaking? Yes.

25 Q We'll do the best not to keep you up there

1 too long.

2 Miss Cason, does First South Bank keep
3 records?

4 A We do.

5 Q And are those records kept in the ordinary
6 course of business?

7 A Yes.

8 Q And are the entries or postings on these
9 records done contemporaneously with the events that
10 are recorded on the document?

11 A Yes.

12 Q Is there a file containing the records
13 regarding First South Bank's loan to South
14 Causeway, LLC?

15 A Yes.

16 Q And are those, are the records in the file
17 kept in the manner that you just described?

18 A Yes.

19 Q Who is the custodian of the records you just
20 described?

21 A I am.

22 Q Have the records you have in your file I
23 believe you brought with you today been altered or
24 changed?

25 A No.

1 Q Are those records kept in a safe place?

2 A They are kept in a safekeeping vault in the
3 bank and they are under control.

4 Q Do you have those records with you today?

5 A I do.

6 MR. FLOYD: May I approach, Your Honor?

7 THE COURT: Yes, sir.

8 Q I'm going to hand her what has been
9 pre-marked as Plaintiff's Exhibits 1 through 13.

10 MR. FLOYD: I would represent to the Court
11 that these are copies of the originals that we were
12 discussing earlier, that she has brought, they are
13 the First South Bank files.

14 Q Are the copies I just handed you, as you are
15 looking through them now, are those accurate and
16 complete copies?

17 A They are.

18 MR. FLOYD: Your Honor, at this time the
19 plaintiff would hereby move this record be admitted
20 in evidence as Plaintiff's Exhibits 1 through 13.

21 THE COURT: Any objection, Miss Byrd?

22 MS. BYRD: None, Your Honor.

23 THE COURT: All right. Plaintiff's Exhibits
24 1 through 13 are in evidence without objection.

25 MR. FLOYD: Thank you, Your Honor.

1 (Bank records marked and received in evidence
2 as Plaintiff's Exhibits 1 through 13).

3 MR. FLOYD: Let the record reflect I'm going
4 to hand counsel for South Causeway pre-marked
5 copies of these exhibits.

6 THE COURT: Thank you, sir.

7 MR. FLOYD: At this time, Your Honor, the
8 plaintiff would request that the Court permit use
9 of a Power Point presentation to just reflect
10 certain portions of these documents that she's
11 going to publish into evidence. I think it may
12 help streamline it.

13 THE COURT: All right. Does defense counsel
14 have access to that?

15 MR. GODDARD: Yes, Your Honor.

16 THE COURT: All right, that will be great.

17 BY MR. FLOYD:

18 Q Would you please identify what Exhibit 1 is?

19 A I have to take my glasses off because I
20 can't see far off and here at the same time.
21 Exhibit 1 is a commitment letter from First South
22 Bank addressed to Mr. Will Wheeler and Miss Peggy
23 Wheeler-Cribb in the maximum amount of \$6,500,000.

24 Q Now, Miss Cason, would you please publish to
25 the jury what this commitment letter says? I

1 believe it is in the first paragraph.

2 A "This letter constitutes the commitment of
3 First South Bank, the bank, in reliance upon the
4 financial information provided by you to make a
5 loan, the loan, in the principal amount not to
6 exceed \$6,500,000 to an entity herein referred to
7 as the borrower, to be formed by the two of you and
8 of which you will be the sole owners and principals
9 under the terms and conditions generally described
10 below. The terms and conditions contained in this
11 letter are not intended to be exhaustive. Final
12 documentation with respect to and supporting the
13 loan will require approval of the bank and its
14 counsel."

15 Q Miss Cason, would you please publish for the
16 Court what the commitment letter says as to the
17 principal amount of the loan?

18 A "Principal amount of the loan, \$6,500,000
19 maximum, the proceeds of which shall be advanced
20 and used solely in the amount and for the purposes
21 set forth in the loan purpose section of this
22 letter."

23 Q Would you please publish for the Court what
24 the letter states on page two as to the loan
25 purpose, paragraph A?

1 A "Loan purpose. The proceeds of the loan
2 shall be used solely to, A, up to \$3,600,000 of the
3 proceeds shall be disbursed at closing to satisfy
4 existing indebtedness covering real property, the
5 project property owned by Peggy Wheeler-Cribb and
6 Will Darwin Wheeler, fee simple title to which
7 property shall be conveyed to the borrower on or
8 prior to closing of the loan, consisting of two
9 tracts located on, at the intersection of South
10 Causeway Road and Highway 17 South in Georgetown
11 County, South Carolina, the first having TMS
12 numbers 04-164-30 and 04-169-1 and containing
13 approximately 17.54 acres and the second having TMS
14 number 04-169-03 and containing approximately 1.68
15 acres, comprising a total of approximately 19.22
16 acres."

17 MR. FLOYD: Your Honor, may I approach the
18 witness?

19 THE COURT: Yes, sir.

20 Q Miss Cason, would you like a glass of water
21 in a minute or two?

22 Now, Miss Cason, would you please publish for
23 the Court what the commitment letter says under
24 paragraph B? Same page, please.

25 A "Up to 550,000 of the proceeds shall be

1 disbursed at closing to satisfy existing
2 indebtedness owed to banks and after application by
3 bank upon such indebtedness of funds on deposit
4 with bank as interest reserve for said existing
5 indebtedness encumbering the real property and
6 improvement of each property by Peggy Wheeler-Cribb
7 and Will Darwin Wheeler, having an address of 334
8 Myrtle Avenue, Pawley's Island, Georgetown County,
9 South Carolina, having TMS number 42-1670-42.3 and
10 designated as lot 4 on a plat prepared by the Earth
11 Works Group dated July 9th, 2006."

12 Q Miss Cason, would you please publish for the
13 Court what page two of the commitment letters says
14 in paragraph C?

15 A "Up to \$100,000 of the proceeds shall be
16 disbursed at closing to pay costs associated with
17 closing of the loan approved by bank."

18 Q Now would you please publish for the Court,
19 Miss Cason, what page two of the commitment letter
20 says under paragraph D?

21 A "\$300,000 of the proceeds shall be disbursed
22 at closing into a restricted access demand deposit
23 account, interest reserve account maintained with
24 bank funds from which shall be disbursed by bank
25 monthly to make required interest payments due by

1 borrower upon the loan."

2 Q Miss Cason, would you please publish for the
3 Court what the commitment letter says under
4 paragraph E of the loan purpose?

5 A "Disbursement of funds for the categories set
6 forth in A through D above shall not exceed the
7 sums set forth with respect to the respective
8 categories without written approval of the bank.
9 If less than \$4,550,000 is disbursed at closing of
10 the loan the difference between 400," excuse me,
11 \$4,550,000 and the amount disbursed shall not be
12 advanced at closing of the loan but shall be held
13 as an undisbursed contingency reserve and advanced
14 for only such purposes as shall be expressly
15 approved by bank in writing."

16 Q Miss Cason, would you please publish for the
17 Court what page 2, paragraph F says, of the
18 commitment letter?

19 A "An additional \$550,000 of proceeds of the
20 loan shall be disbursed by bank into the account to
21 fund monthly interest payments due upon the loan
22 upon the earlier of what occurs. Completion of the
23 infrastructed and six months from the date of loan
24 closing."

25 Q Miss Cason, would you please publish for the

1 Court what the loan commitment letter says on page
2 three, paragraph E?

3 A "Up to \$1,400,000 for construction of roads,
4 drives, common areas, stormwater-sewer system,
5 utilities to the lot lines of proposed retail lots
6 within the project property and other
7 infrastructure for the project property
8 collectively pursuant to construction contract
9 hereafter defined. Disbursement of funds for use
10 in these categories will not exceed the sum of
11 \$1,400,000 without written approval of the bank.
12 If less than 1,400,000 is disbursed for these
13 categories the difference between \$1,400,000 and
14 the amount disbursed shall not be advanced but
15 shall be held as an undisbursed contingency reserve
16 and advanced for only such purposes as shall be
17 expressly approved by bank in writing."

18 Q Miss Cason, would you please publish for the
19 Court what page three of the commitment letter says
20 under paragraph level payment terms?

21 A Repayment terms. The loan shall be repayable
22 interest only payable monthly on the same date of
23 each month such date as to be selected by bank
24 during the term of the loan. The entire principal
25 amount of the loan plus all unpaid accrued interest

1 thereon shall be due and payable in full on the
2 date which is 36 months from the date of closing of
3 the loan."

4 Q Miss Cason, would you please publish for the
5 Court what the page 4 of the commitment letter says
6 under the paragraph, under paragraph two, real
7 estate mortgage?

8 A "Real estate mortgage. The note and all
9 other obligations of the borrower with respect to
10 the loan collectively, the obligations shall be
11 secured by first lien real estate mortgage and
12 security agreement whether one or more than one
13 mortgage upon the project property and the beach
14 property and all appertinances " I'm sorry.

15 MR. COLLINS: Appertinances, I believe is
16 what that is.

17 A Thank you. "Thereto collectively on the
18 property. The mortgage shall contain terms,
19 conditions and provisions typical of commercial
20 security instruments, including without limitation
21 a due on sale and due on encumbrance clause and
22 indemnification against liability or loss resulting
23 from hazardous or toxic waste and prohibition
24 against transfer. The foregoing is not intended to
25 be exhaustive and the mortgage will contain

1 additional terms, provisions, requirements and
2 other clauses as are typically required by bank of
3 loans of this type and amount or which bank
4 otherwise determines it requires with respect to
5 the loan. The mortgage will require the borrower
6 to waive right to seek an appraisal in the event of
7 of," excuse me, "in the event a deficiency is
8 sought upon foreclosure of the mortgage."

9 Q Miss Cason, would you please publish for the
10 Court page 5, Paragraph 6(E), I believe paragraph
11 labeled loan agreement? Did you need your glasses?

12 A Well, this is blurry, so -- "Loan agreement.
13 Borrower and bank shall enter at closing a loan
14 agreement setting forth certain obligations and
15 warranties of borrower in event of a default and
16 certain rights and remedies of the bank, which
17 shall be in number and substance approved by the
18 bank and its counsel."

19 Q Miss Cason, would you please publish for the
20 Court the portion on page five that concerns loan
21 agreement and final advance for infrastructure
22 cost?

23 A "The loan agreement shall also provide that
24 at no time prior to the final advance for
25 infrastructure cost shall the amount of advance

1 under the loan during the construction period
2 exceed a sum equal to 90 percent of actual cost of
3 construction under the construction contract."

4 Q Miss Cason, would you please publish for the
5 jury the portion of the commitment letter on page
6 six that begins the final advance shall require?

7 A "The final advance shall require for
8 construction costs --" I'm sorry. "The final
9 advance shall require, for construction cost shall
10 require in addition to other matters evidence of
11 final approval or acceptance as the case may be of
12 the improvements comprising the infrastructure by
13 appropriate governmental authority and utilities
14 providers."

15 Q Miss Cason, would you please publish for the
16 Court what the commitment letter says on page six,
17 of paragraph eight, construction contract and
18 assignment thereof?

19 A "Construction contract and assignment
20 thereof. The infrastructure shall be constructed
21 on and under the project property by licensed
22 contractor, the contractor selected by borrower and
23 acceptable to bank pursuant to a construction
24 contract, the construction contract which contains
25 in all respects both as to form and substance

1 acceptable to the bank."

2 Q Miss Cason, would you please publish for the
3 Court what the commitment letter says on page
4 eight, paragraph 17?

5 A "Guaranty agreement. Each guarantor will be
6 jointly and severally liable for the entire amount
7 of the loan and for all costs and expense to the
8 bank in making the loan and if collection is
9 required collecting the loan, including without
10 limitation the cost of collection from guarantor.
11 Usual cost includes without limitation the bank's
12 attorneys fees. Each guarantor will execute an
13 additional guaranty, a guaranty guaranteeing the
14 payment of the foregoing and the performance of all
15 obligations by the borrower. Each guarantor will
16 be required to waive the right to require an
17 appraisal in the event deficiency is sought as a
18 result of foreclosure."

19 Q Would you please publish for the Court on
20 page ten of the commitment letter the paragraph L
21 that is labeled cost?

22 A "Cost. The loan shall be closed without cost
23 to the bank and all expenses incurred in connection
24 with the closing of the loan, including without
25 limitation the bank's counsel's fees, are to be

1 paid by the borrower. Such expenses shall be paid
2 by the borrower and the addresses hereof whether or
3 not the loan closes."

4 Q Miss Cason, would you please publish for the
5 Court page ten of the commitment letter concerning
6 modification and refinance fees?

7 A "Modification and refinance fees. Any
8 modification or refinance of the loan may be
9 conditioned by the bank on the payment by the
10 borrower by nonrefundable fee which shall be in
11 addition to any other fee or cost paid by the
12 borrower to the bank in connection to the loan.
13 Nothing in this paragraph shall obligate the bank
14 to modify or refinance the loan and the bank
15 reserves the right to require the loan to be repaid
16 strictly in accordance with the terms and
17 conditions contained in the note and the other loan
18 documents."

19 Q Miss Cason, would you please publish for the
20 Court page 11 of the commitment letter, the portion
21 all the provisions incorporated in this commitment?

22 A "All the provisions incorporated in this
23 provision shall survive the loan closing and the
24 loan documents shall be deemed to contain the
25 following provisions. All the terms and conditions

1 of the commitment upon which the loan hereby
2 secured was predicated or incorporated herein by
3 this reference and made a part hereof and should
4 borrower default with respect to any term or
5 provision thereof such default shall constitute a
6 default in event of default hereunder and under the
7 note hereby secured. In the event of a conflict
8 between the terms and conditions of this commitment
9 and the loan documents used to close the loan the
10 loan documents used to close the loan shall
11 prevail."

12 Q Miss Cason, would you please publish page 13
13 of the commitment letter, starting with the
14 foregoing commitment?

15 A "The foregoing commitment and the loan to be
16 made thereby subject to the terms set forth in the
17 above commitment letter are accepted this the 6th
18 day of June, 2008."

19 Q Miss Cason, does that page contain signature
20 lines?

21 A Yes, sir.

22 Q Is it signed?

23 A They are signed.

24 Q Does it identify who signed them?

25 A Yes.

1 Q Would you please identify for the Court
2 Exhibit 2, Plaintiff's Exhibit 2, excuse me?

3 A This is the loan agreement between First
4 South Bank and South Causeway, LLC.

5 Q Miss Cason, would you please publish for the
6 Court the portion of page one of the loan agreement
7 that begins for valuable consideration?

8 A "That for valuable consideration the receipt
9 and sufficiency of which is hereby acknowledged and
10 in consideration of the mutual promises herein made
11 bank and borrower intending to be legally bound
12 agree as follows."

13 Do you want me to continue with the --

14 Q That's fine, Miss Cason. Would you please
15 publish for the Court page one of the loan
16 agreement, the paragraph entitled section 1.1?

17 A "Bank hereby agrees to lend up to the
18 principal sum of \$6,500,000, the loan, the amount
19 of which loan or such part thereof as shall be
20 advanced to borrower in installment advances within
21 bank's reasonable discretion and," excuse me, "and
22 for the purposes herein after provided. Borrower's
23 obligations to repay the loan and the interest
24 therein shall be evidenced by a promissory note,
25 the note, in form and substance satisfactory to

1 bank.

2 Q Miss Cason, would you please publish to the
3 Court section 1.2 of the loan agreement?

4 A "Borrower agrees to pay interest on the loan
5 at the rate on the date and calculated by the
6 method set forth in the note. Interest shall be
7 calculated on the basis of a 360 day year."

8 Q Miss Cason, would you please publish for the
9 Court what it says in section 1.3?

10 A "Borrower shall make to bank such payments of
11 principal and interest on the loan as are required
12 by the terms of the note."

13 Q Would you please publish for the Court what
14 the loan agreement says in article 2, section 2.1?

15 A "The repayment of borrower of indebtedness
16 under the loan and the note and performance by the
17 borrower of all obligations under this agreement
18 shall be secured by every mortgage, every security
19 agreement, each assignment and every agreement
20 collectively, the security documents and
21 individually each security document which secures
22 or guarantees payment and/or performance of
23 obligations so defined as to include the loan or
24 the note and by all property of borrower or comes
25 back in the possession, custody or control of bank

1 or which the bank hereafter acquires a lien,
2 security interest or otherwise individually and
3 collectively the collateral, including without
4 limitation the following. Number one, security
5 documents listed in schedule one."

6 Q Would you please publish for the Court page
7 two of the loan agreement, subparagraph 2?

8 A "The collateral described in schedule 2."

9 Q Would you please publish page two, section
10 3.3?

11 A "Each of these agreements, the note, and
12 every document is assumed legal, valid and binding
13 agreement of borrower enforceable against borrower
14 in accordance with its respective terms."

15 Q Would you please publish to the Court page
16 three of the portion with the heading article 4,
17 conditions precedent to?

18 A The obligation of bank to make the loan and
19 advances thereunder is subject to the compliance by
20 borrower with all the conditions set forth in the
21 commitment hereafter defined and with the following
22 conditions precedent."

23 Q Would you please publish section 4.2 under
24 that heading?

25 A "In addition to the afore, it shall be a

1 condition precedent of each subsequent advance."

2 Q Would you please publish for the Court
3 subparagraph two under?

4 A Borrowers have provided to bank the executed
5 construction contract assignment defined in
6 schedule one acknowledged by the contractor,
7 assuring the bank of continued performance of the
8 contractor without any cost increases which result
9 solely by reason of bank or as designee taking
10 possession of the project property or taking over
11 construction. The construction contract shall
12 provide for retainage from each draw request 10
13 percent prior to completion of the improvements
14 retainage."

15 Q Would you please publish to the Court
16 paragraph seven of subparagraph ten?

17 A "Borrower shall have furnished to bank the
18 request for advance herein defined and wherever
19 required the contractor certificate and the other
20 certificates and materials referred to in section
21 4.4."

22 Q Would you please publish for the Court
23 section 4.3?

24 A "In addition to the foregoing, it shall be a
25 condition precedent with respect to the final

1 advance that the bank shall have received, number
2 one, evidence acceptable to bank that the
3 improvements have been fully completed. Number
4 two, all requirements and conditions for the final
5 advance must be satisfied in full in order for the
6 final advance to be made no later than March 1,
7 2009 completion date."

8 Q Would you please publish to the Court section
9 4.4?

10 A Subject to the terms of this agreement bank
11 shall make advance to borrower on account of the
12 loan in an aggregate principal amount of up to but
13 not more than \$6,500,000. The initial advance
14 shall be made upon accomplishment as determined by
15 bank with the conditions precedent set forth in
16 section 4.1 hereof and shall be used for the
17 purposes --" do you want me to continue?

18 Q That's okay. Please finish that portion.

19 A -- "shall be used for the purposes of
20 satisfying existing indebtedness encumbering the
21 project property and the beach property, i.e., the
22 mortgaged property, \$300,000, and restricted access
23 limited to bank only until the loan has been repaid
24 and satisfied in full. Demand deposit, interest
25 reserve account of borrower maintained by and with

1 bank to be used to make monthly interest payments
2 due upon the loan and paying the cost of closing
3 and otherwise incurred in connection with the loan
4 as approved by bank. Except for the final advance
5 herein, defined advances subsequent to the initial
6 advance shall be made from time to time as
7 construction of the project progresses but no more
8 frequently than once each month in a sum equal to
9 the total expenditures incurred by the borrower and
10 approved by the bank for fees and costs incurred in
11 connection with the loan, funding the interest
12 reserve, the satisfaction of existing indebtedness
13 encumbering the mortgaged property and interest
14 payment upon the loan and construction of the
15 improvements, such total in expenditures incurred
16 by borrower being referred to as the project cost,
17 less retainage through the end of the period
18 covered by the request to advance, less the
19 aggregate," excuse me, "the aggregate amount of all
20 advances theretofore made on account of the loan
21 and the amount, if any, the project cost of any
22 category except any amount allocated thereto
23 subject to in each case, however, to the further
24 provision of this article for anything to the
25 contrary herein notwithstanding advances for

1 project cost shall not exceed the sum of 6,500,000
2 in the aggregate. After the initial advances shall
3 be made advances shall be based upon percentage of
4 completion of the improvement subject in each case,
5 however, to the provisions of this article 4. The
6 final advance. The final advance shall be made
7 only upon completion, upon completion in full of
8 the improvements and in the applicable cases
9 approval or acceptance by services of appropriate
10 governmental authority. Final advance may include
11 to the extent of funds available retained and due."

12 Q Miss Cason, would you please publish for the
13 Court section 4.5, section 1(A) and 1(B)?

14 A "Not less than seven business days prior to
15 the making of each advance, A, borrower shall
16 submit to bank a request for such advance in such
17 form as bank may require the request for advance,
18 setting forth the total amount for which such
19 advance is requested broken down by categories and
20 if requested by bank request for advance shall be
21 accompanied by bills, paid invoices, payroll
22 records and other evidence satisfactory to bank
23 supporting each item covered by such request for
24 advance or, B, in the case of request for advance
25 for or including construction costs bank shall have

1 received as to each such request for advance a
2 fully completed application and certificate for
3 payment AIA document N702 executed and acknowledged
4 by the contractor and certified by the architect."

5 Q Would you please publish for the Court page 9
6 of the loan agreement, paragraph beginning with
7 paragraph 5?

8 A "Bank shall have no obligation to lend if at
9 anytime in the reasonable judgment of bank all
10 permits and agreements necessary for the
11 construction of the improvement are not in full
12 force and effect or in the reasonable judgment of
13 bank may not be immediately available when needed."

14 Q Would you please publish for the Court page
15 11, section 5.9?

16 A "Borrower shall reimburse bank for any out of
17 pocket expenses, including attorney fees in
18 collecting the loan and any other sums due under
19 the note or this agreement."

20 Q Would you please publish for the Court page
21 12, section 5.13?

22 A "Use the proceeds of the loan only to pay
23 project costs and such other uses as bank shall
24 specifically approve in writing."

25 Q Would you please publish on page 12 the

1 sentence above Section 6.1.

2 A So long as any indebtedness remains
3 outstanding under any loan no proceeds of the loan
4 may be used except for the purposes stated in
5 section 5.13."

6 Q Would you please publish for the Court page
7 13 of the loan agreement, section 6.87?

8 A "Any lien or security interest in or
9 otherwise encumbering any of the property or
10 assets, including without limitation the
11 collateral, and except for liens for taxes not yet
12 due and payable or which are being actively
13 contested in good faith by appropriate proceedings
14 and for which adequate reserves are being
15 maintained by borrower, borrower shall not permit
16 to exist any lien, security interest or other
17 encumbrance other than easements such as for
18 utilities which solely serve the project on any of
19 its properties or assets."

20 Q Miss Cason, would you please publish for the
21 Court article seven on the loan agreement, section
22 7.1?

23 A "Any one or more of the following shall
24 constitute an event of default, an event of default
25 hereunder by borrower. Number one, failure to pay

1 any payment of principal or interest due on the
2 note or any other sum due hereunder when due, or
3 two, failure to pay when due any payment of
4 principal or interest due on any other obligation
5 for money borrowed on for the deferred purchase
6 price of goods or services, or three, default under
7 the note, any security document, any guaranty or
8 any other document, note, agreement, mortgage,
9 security agreement, instrument or understanding
10 with, held by or executed in favor of bank with
11 respect to the loan, not cured within the cure
12 period therein granted, if any."

13 Q Miss Cason, would you please publish for the
14 Court on page 15, the paragraph 13, additional
15 conditions of default.

16 A 13, start there?

17 Q Yes.

18 A Okay. "Borrower shall abandon construction
19 of the improvent with the intent not to resume
20 construction for a period of five consecutive
21 days."

22 Q Would you please publish for the jury on
23 page, for the Court on page 15, section 7.2.

24 A "Upon the occurrence and continuation of an
25 event of default bank may terminate all obligations

1 of bank to borrower including without limitation
2 all obligations to lend money under this agreement,
3 declare immediately due and payable without
4 presentment, demand, protest or any other notice of
5 any kind all of which are expressly waived, the
6 note and any other note or obligation of borrower
7 held by bank, including without limitation
8 principal, accrued interest and costs of collection
9 including without limitation attorneys' fee if
10 collected by or through an attorney, in bankruptcy
11 or in other judicial proceedings and pursue any
12 remedy available to it under this agreement, under
13 the note, under any security document, under any
14 other note of borrower held by bank or available at
15 law or in equity."

16 Q Would you please publish for the Court page
17 16, section 9.1 of the loan agreement.

18 A "No delay or failure on the part of bank in
19 the exercise of any right, power or privilege
20 granted under this agreement, the note, each of the
21 security documents or available at law or in equity
22 shall impair any such right, power or privilege or
23 be construed as a waiver of any event of default,
24 of any --"

25 Q Acquiescence.

1 A "Acquiescence," thank you, "therein. No
2 single or partial exercise of any such right, power
3 or privilege shall preclude the furer exercise of
4 such right, power or privilege. No waiver shall be
5 valid against bank unless made in writing and
6 signed by bank and then only to the extent
7 expressly specified therein."

8 Q Miss Cason, would you please publish for the
9 Court page 17, section 9.3 of the loan agreement.

10 A "Borrower shall pay, one, all out of pocket
11 expenses of bank in connection with the
12 preparation, execution and delivery of this
13 agreement, the note, the security documents, the
14 guaranties, any amendments thereto and any consent
15 or waivers hereunder or thereunder, including the
16 fees and expenses of bank's counsel. Two, all
17 taxes, except bank's income taxes, fees or other
18 assessments, including stamp taxes if any upon any
19 documents or transactions contemplated hereby in
20 connection with the recording and filing of the
21 borrower mortgage, the guarantor mortgage, the
22 financing statement and any other security
23 documents. And three, cost of collection including
24 the bank's legal costs and fees if default is made
25 in the payment of the loan or any other sums

1 payable to the bank hereunder or under the security
2 documents. Borrower's obligations under this
3 section 9.3 shall survive the payment of the loan.
4 Borrower's obligation to make such payment shall
5 exist whether or not any advances are made
6 hereunder unless bank wrongfully and intentionally
7 refuses to make such advances."

8 Q Would you please publish section 9.5 of the
9 loan agreement.

10 A "All payments and prepayments of principal,
11 interest and other amounts payable to bank
12 hereunder under the note or under any security
13 document shall be made in immediately available
14 funds at bank's principal office in Columbia, South
15 Carolina not later than 12:00 o'clock noon Columbia
16 time on the date on which such payment shall become
17 due. Borrower hereby authorizes bank to charge
18 principal, interest or any other amounts payable by
19 borrower hereunder, under the note or any security
20 document as and when the same become due and
21 payable directly against the interest reserve
22 account or any general deposit account maintained
23 by borrower with bank up to the credit balance
24 thereof but bank shall not be required to effect
25 any such debit. If any principal of or interest on

1 the loan or any other amount payable by borrower
2 hereunder falls due on a Saturday, Sunday or public
3 holiday at the place of payment then such due date
4 shall be extended to the next succeeding full
5 business day at such place and interest shall be
6 payable in respect to each such extension of
7 principal."

8 Q Please publish to the Court page 18, section
9 9.9 of the loan agreement.

10 A "Neither this agreement nor any provision
11 hereof may be changed, waived, discharged or
12 terminated except by an instrument in writing
13 signed by the party against whom enforcement of the
14 change, waiver, discharge or termination is
15 sought."

16 Q Please publish section 9.10 of the loan
17 agreement.

18 A "The terms, conditions and provisions of the
19 commitment are incorporated herein and made a part
20 hereof by reference. To the extent that any
21 specific inconsistencies exist between the
22 commitment and this agreement, the note or any of
23 the security documents, provisions of this
24 agreement, the note, or such security document
25 respectively shall govern. To the extent that any

1 specific inconsistencies exist between this
2 agreement and the note or any other security
3 documents the provisions of this agreement shall
4 govern."

5 Q Please publish for the Court section 9.15.

6 A "Time is of the essence in the payment and
7 performance of every term and covenant of this
8 agreement, the note and each of the security
9 documents."

10 Q Please publish for the Court section 9.16?

11 A "This agreement may be amended or modified
12 and borrower may take any action herein prohibited
13 or omit to perform any action required to be
14 performed only if borrower shall obtain the prior
15 written consent of bank to such amendment,
16 modification, action or omission to act and no
17 course of dealing between borrower and bank shall
18 operate as a waiver of any right."

19 Q Please publish for the Court on page 19,
20 beginning with this agreement.

21 A That continues from the other page. "Power
22 or privilege granted under this agreement, under
23 the note or the security documents or available at
24 law or in equity. This agreement, the note, the
25 security documents and the commitment contain the

1 entire agreement between borrower and bank
2 regarding the loan and the colateral. No oral
3 representations or statements shall be binding on
4 bank and no agent of bank has the authority to vary
5 the terms of this agreement except in writing on
6 the face hereof or on a separate page attached
7 hereto."

8 Q Would you please turn to page 20 of the loan
9 agreement and tell the court who signed the
10 agreement.

11 A Borrower South Causeway by, and it is signed
12 by Peggy Wheeler-Cribb, its member.

13 Q Would you please publish for the Court on
14 schedule one of the loan agreement paragraph lower
15 case A.

16 A "Mortgage of real estate, first, given by
17 borrower in the original principal amount of
18 \$6,500,000 and covering the project property which
19 consists of two tracts located at the intersection
20 of South Causeway Road and Highway 17 South in
21 Georgetown County, South Carolina. The first
22 having TMS numbers 04-164-03 and 04-169-1 and
23 containing approximately 17.54 acres and the second
24 having TMS numbers 04-169-03 containing
25 approximately 1.68 acres, comprising a total

1 approximately 19.22 acres real estate," excuse me,
2 "real property and more particularly described on
3 exhibit A of schedule 2, together with the
4 improvents, located in Georgetown County, South
5 Carolina, the borrower mortgage."

6 Q Would you please publish to the Court
7 schedule one under subparagraph A.

8 A "Mortgage of real estate, first, given by the
9 guarantor Will Darwin Wheeler in the original
10 principal amount of \$6,500,000 encumbering the
11 beach P, having an address of 334 Myrtle Avenue,
12 Pawley's Island, Georgetown County, South Carolina,
13 having TMS number 42-1670-42.3 and designated as
14 lot 4 on a plat prepared by the Earth Works Group
15 dated July 9, 2006, and more particularly
16 described, described on Exhibit A of schedule two,
17 located in Georgetown County, South Carolina, the
18 guarantor mortgage."

19 Q Miss Cason, the provision you just read, lot
20 4, I believe, designated as lot 4 on plat by the
21 Earth Works Group July 9, 2006, is that the lot 4
22 we talked about earlier today, we heard about here?

23 A Yes.

24 MS. BYRD: I object to the form of the
25 question, Your Honor. I'm not sure she can testify

1 that's the same lot we talked about earlier today.
2 I understand she's just a records custodian
3 verifying the --

4 THE COURT: Sustained.

5 Q Do you know what parcel of property schedule
6 one, subparagraph B is referring to?

7 A It is referring to lot 4, having an address
8 of 334 Myrtle Avenue, Pawley's Island, Georgetown
9 County, South Carolina, having TMS number
10 42-1670-42.3.

11 Q Miss Cason, were you present at the closing
12 of the loan between First South Bank and South
13 Causeway, LLC?

14 A I was.

15 Q And did you witness the signatures of some of
16 the documents?

17 A I did.

18 Q Was attorney Doug Hinds present?

19 A Yes, he was.

20 Q Did you observe anything which, or anything
21 around you that led you to believe Miss Cribb was
22 acting under duress?

23 A No.

24 Q To your knowledge did South Causeway, LLC,
25 ever submit an application pursuant to the terms or

1 section 4.5 that you just went through of the loan
2 agreement?

3 A I'm not aware of receiving any.

4 Q Would you please identify what Exhibit 3 is,
5 Plaintiff's Exhibit 3?

6 A It's a promissory note between First South
7 Bank and South Causeway in the amount of \$6,500,000
8 dated June 25th, 2008.

9 Q Is this the promissory note referred to in
10 the loan agreement?

11 A Yes.

12 Q Would you please publish for the Court the
13 portion beginning, highlighted, for value received?
14 I know it is a bad copy.

15 A "For value received I promise to pay to you
16 or your order at your address listed above the
17 principal sum of \$6,500,000."

18 Q The provision beginning multiple advances,
19 will you read that, publish that for the Court,
20 please.

21 A Multiple advances checked. "The principal
22 sum shown above is the maximum amount of the
23 principal I can borrow under this note on
24 6/25,2008. Thereafter I will receive the amount
25 of," and that line is blank, and "future principal

1 advances are contemplated. Conditions. The
2 conditions for future advances are terms and
3 conditions of commitment letter dated May 30, 2008,
4 and of loan agreement between borrower and lender
5 of even date herewith or incorporated herein and
6 made a part hereof."

7 Q Miss Cason, would you please publish for the
8 Court the portion on page one beginning, beginning
9 post maturity rate?

10 A "Post maturity rate. I agree to pay interest
11 on the unpaid balance on this note owing after
12 maturity and until paid in full as stated below,"
13 and it is checked, "on the same fixed or variable
14 rate basis in effect before maturity, as indicated
15 above."

16 Q Miss Cason, would you please publish for the
17 Court the highlighted provisions begins purpose.

18 A "Purpose. The purpose of this loan is
19 acquisition and development, financing of 19.22
20 plus/minus acres for infrastructure to be developed
21 for commercial shopping."

22 Q Would you please publish the provision for
23 the Court on page two of the note beginning deposit
24 accounts?

25 A Could I refer to my original because this is

1 so blurry I can't see it?

2 Q Absolutely.

3 MR. FLOYD: Any problem with that?

4 MS. BYRD: No.

5 A I'm sorry, where were we?

6 Q Would you hold that up and actually publish

7 it, show what it looks like. Is that clearer than

8 what is on the computer?

9 A Yes.

10 Q Are you able to read it?

11 A I can read it, yes.

12 Q Is that -- you were present at the closing.

13 Was that document presented to Miss Wheeler-Cribb?

14 A Yes.

15 Q Would you please publish on page two of the

16 note the provision beginning deposit accounts and

17 then the provision beginning specific property

18 description?

19 A Deposit accounts is checked or x'd out. "All

20 deposit accounts including but not limited to

21 demand, time savings, passbook and similar

22 accounts." Also x'd was specific property

23 description. "The property includes but is not

24 limited by the following. FREM," which in banking

25 we use that as first real estate mortgage. "The

1 19.22 plus/minus acre tract located at the corner
2 of Ocean Highway and South Causeway, Georgetown
3 County, Pawley's Island, South Carolina 29585, and
4 the proposed improvements to be constructed
5 thereon. The property also includes the personal,
6 personalty described on schedule A hereto and
7 FREM," which again stands for first real estate
8 mortgage, lot 4, 334 Myrtle Avenue, Pawley's
9 Island, South Carolina 29585, as shown on a plat by
10 the Earth Works Group dated July 9, 2006, as
11 further described and mortgage to be executed at
12 closing." Q Would you please publish on page
13 three of the note the selected provision beginning
14 default."

15 A "Default. I will be in default if any one or
16 more of the following occur. Number one, I fail to
17 make a payment on time or in the amount due.
18 Number two, I fail to keep the property insured if
19 required."

20 Continue?

21 Q No, that's fine. Miss Cason, would you
22 please publish for the Court on the same page the
23 paragraph beginning remedies, subparagraph one?

24 A "Remedies. If I am in default of this note
25 you have but are not limited to the following

1 remedies. One, you may demand immediate payment of
2 all I owe under this note under principal, accrued
3 unpaid interest and other accrued unpaid charges."

4 Q Would you please read the provision, the
5 highlighted provision collection of costs and
6 attorneys' fees and publish that to the Court.

7 A "Collection of costs and attorneys' fees. I
8 agree to pay all costs of collection, replevin or
9 any other or similar type of costs if I am in
10 default. In addition, if you hire an attorney to
11 collect this note I also agree to pay any fee you
12 incur with such attorney plus court costs except
13 where prohibited by law. To the extent permitted
14 by the United States Bankruptcy Code I also agree
15 to pay the reasonable attorney fees and costs
16 incurred to collect this debt as awarded by any
17 court exercising jurisdiction under the Bankruptcy
18 Code."

19 Q Would you please identify for the Court what
20 Plaintiff's Exhibit 4 is?

21 A This is the real estate mortgage between
22 South Causeway, LLC, and First South Bank on
23 property kown as 19.22 plus/minus acres, Ocean
24 Highway and South Causeway.

25 Q Would you please publish for the Court the

1 parenthetical provision under the title real estate
2 mortgage?

3 A "Real estate mortgage with future advance
4 clause."

5 Q Would you please publish for the Court on the
6 mortgage, page two, the paragraph beginning three,
7 and maximum obligations?

8 A Can I refer back to the originals?

9 Q Absolutely. Do you have any objection?

10 MS. BYRD: No objection.

11 A "Number three, maximum obligation limit. The
12 total principal amount of the secured debt
13 hereafter defined secured by this mortgage at any
14 one time shall not exceed \$6,500,000."

15 Q Would you please publish for the Court the
16 paragraph number five, payment?

17 A "Payment. Mortgagee agrees to make all
18 payments on the secured debt when due and in
19 accordance with the terms of the debt or this
20 mortgage."

21 Q Would you please publish for the Court on
22 page three of the mortgage, I believe, paragraph
23 12, property conditions.

24 A Do you want me to read the entire section?

25 Q Actually could you read the highlighted

1 provisions that begins such? Have you got that?

2 A Okay. Under property condition, alterations
3 and inspection. Such replacement of personal
4 property with a deed subject to the security
5 interest created by this mortgage. Mortgagor shall
6 not partition or subdivide the property without
7 lender's prior written consent. Lender or lender's
8 agent may at lender's option enter the property at
9 any reasonable time for the purpose of inspecting
10 the property. Any inspection of the property shall
11 be entirely for lender's benefit and mortgagor will
12 in no way rely on lender's inspection."

13 Q Do you know the personalty or entity that was
14 the mortgagor under the real estate mortgage?

15 A The mortgagor is listed as South Causeway,
16 LLC.

17 Q Would you please publish for the Court on
18 page four of the mortgage you have been referring
19 to, paragraph beginning default, just the
20 highlighted provisions.

21 A "Default. Mortgagor will be in default if
22 any of the following occur."

23 Q Would you please publish on that same page I
24 believe paragraph 17, remedies on default?

25 A "Remedies on default. In some instances

1 federal and state law will require a lender to
2 provide mortgagor with notice of the right to cure,
3 mediation notices or the notices that may establish
4 time schedules for foreclosure action, subject to
5 limitations may accelerate the secured debt and
6 foreclose this mortgage in a manner provided by the
7 law if the mortgagor is in default. At the option
8 of lender all or any part of the agreed fees and
9 charges, accrued interest and principal shall
10 become immediately due and payable after giving
11 notice as required by law upon the occurrence of a
12 default or anytime thereafter. In addition, lender
13 shall be entitled to all the remedies provided by
14 law, the evidence of debt, other evidence of debt,
15 this mortgage and any related documents. All
16 remedies are deemed cumulative and are exclusive
17 and the lender is entitled to all remedies provided
18 at law or equity whether expressly set forth or
19 not. The acceptance by lender of any sum in
20 payment or partial payment on the secured debt
21 after the balance is due or is accelerated or after
22 foreclosure proceedings are filed shall not
23 constitute a waiver of lender's right to require
24 full and complete cure of any existing default by
25 not exercising any remedy on mortgagor's default

1 and does not waive lender's right to later consider
2 a default if it continues or happens again."

3 Q All right. Would you please publish for the
4 Court on page six of the real estate mortgage
5 you're referring to the sentence this mortgage,
6 that begins this mortgage. It's highlighted,
7 excuse me.

8 A What paragraph or subparagraph would they be?

9 Q It is on the screen, if you could publish
10 that for us.

11 MS. BYRD: It is difficult to see.

12 MR. FLOYD: Yes, it is very difficult to see.
13 I was going to hand it up.

14 MS. BYRD: No objection.

15 MR. FLOYD: May I approach?

16 THE COURT: Yes.

17 MR. FLOYD: I'm sorry.

18 THE WITNESS: It appears to read, "This
19 mortgage is complete and fully integrated. This
20 mortgage may not be amended or --" I'm sorry.

21 BY MR. FLOYD:

22 Q It's a bad copy.

23 A It is.

24 Q Can you find it on the original? Take your
25 time.

1 A This mortgage, is it under item 25, where it
2 says applicable laws? It says, "This mortgage is
3 complete and fully integrated. This mortgage may
4 not be amended or modified by oral agreement. Any
5 section or clause in this mortgage, attachment or
6 any agreement relative to secured debt that
7 conflicts with applicable law will not be effective
8 unless that law expressly permits variations by
9 written agreement."

10 Q Would you please publish for the Court page
11 seven of the mortgage, the entity that signed?

12 A On page seven, at the bottom, entity named is
13 South Causeway, LLC.

14 Q Is that document signed?

15 A Yes.

16 Q Would you recognize that signature?

17 A It's signed by Peggy Wheeler-Cribb.

18 Q Will you please publish for the Court Exhibit
19 A to the mortgage. I believe it begins legal
20 description.

21 A "All those certain pieces, parcels of land in
22 the County of Georgetown, South Carolina and
23 designated as parcel A, containing 11.66 acres and
24 parcel B containing 0.91 acres and parcel C
25 containing 4.92 acres on the plat entitled plat of

1 17.49 acres at the southeastern intersection of
2 U. S. Highway 17 and the South Causeway to Pawley's
3 Island, surveyed for Peggy Wheeler-Cribb, said plat
4 prepared by Trico Engineering dated October 5,
5 2005, and recorded in the office of the Register of
6 Deeds for Georgetown County in slide 564, at page
7 two, all of which will more fully appear by
8 reference to the aforesaid plat which is
9 incorporated herein and made a part and parcel
10 hereof by reference thereto." Also, "All rights,
11 title and interest in and to the east of the
12 reserved and indentures deed from Ruth Oliver Bell
13 to C. B. Foster as trustee for the RBP trust dated
14 January 31, 1989, recorded on April 23, 1989, in
15 deed book 332 at page 125. Also all that certain
16 piece, parcel or tract of land situated, lying and
17 being in tax district number four, County of
18 Georgetown, State of South Carolina, shown and
19 designated as 1.68 acres on a map prepared for
20 James N. Lewis by Samuel M. Harper, RLS, dated June
21 4, 1982, recorded in the office of the clerk of
22 court for Georgetown County in plat book two at
23 page 30, said parcel measuring and containing 1.68
24 acres and bounding as follows. To the northeast a
25 distance of 473.1 feet on lands designated C. W.

1 Seiner, to the southeast a distance of 379.9 feet
2 on lands of H. Parcells Kateel, to the northwest a
3 distance of 50 feet by U. S. Highway 17 and to the
4 southwest a distance of 140 feet on lands of A. H.
5 Parsons Kateel, all of which are more fully
6 identified and appear by reference to said map.
7 This being the same property conveyed to South
8 Causeway LLC, by Peggy Wheeler-Cribb by deed dated
9 June 25, 2008, recorded in the office of the
10 Register of Deeds for Georgetown County on June 25,
11 2008, in record book 990 at page 242."

12 Q And this real estate mortgage, Plaintiff's
13 Exhibit 4, is this the current real estate
14 mortgage?

15 A Yes.

16 Q Would you please identify Exhibit 5 for the
17 Court?

18 A Exhibit 5 is a borrower's closing
19 certificate.

20 Q Would you please publish for the Court
21 beginning with the paragraph that starts whereas?

22 A "Whereas South Causeway, LLC, a South
23 Carolina limited liability company herein referred
24 to as the borrower has accepted a loan in the
25 maximum principal amount of \$6,500,000, the loan

1 from First South Bank, lender."

2 Q Okay. Would you please publish the selected
3 provision on this first page that begins whereas,
4 inducement.

5 A "Whereas, as an inducement for lender to make
6 the loan to the borrower the borrower makes the
7 following representations and warranties in favor
8 of the lender now therefore to the borrower
9 represents the warranties, covenants and states as
10 follows."

11 Q Would you please publish for the Court
12 Paragraph 6 under that portion.

13 A "The borrower acknowledges that except as
14 expressly set forth in the loan document no
15 representations of any kind or character have been
16 made to borrower by the lender to induce borrower
17 to execute and deliver this document and the loan
18 documents. The borrower further acknowledges that
19 the borrower has had an adequate opportunity to
20 have this document--"

21 Q Would you please publish for the Court, go on
22 to the next page?

23 A "Each of the loan documents and any other
24 documents executed and delivered by the borrower in
25 connection with the loan reviewed by an attorney or

1 representative of the borrower's choice acting on
2 the borrower's behalf, that the content of this
3 document, the loan documents and any other
4 documents executed and delivered by borrower in
5 connection with the loan have been explained to the
6 borrower, that the borrower understands the
7 contents hereof and thereof and that the borrower
8 signed this document, each of the loan documents to
9 which the borrower is a party and any other
10 documents executed and delivered by the borrower in
11 connection with this loan voluntarily."

12 Q And is this document, does it have a
13 signature line?

14 A It does.

15 Q And who is the borrower identified?

16 A The borrower is South Causeway, LLC.

17 Q Do you recognize the signature below that?

18 A The signature reads Peggy Wheeler-Cribb.

19 Q Would you please identify for the Court
20 Plaintiff's Exhibit 6?

21 A It is an unlimited guaranty from Will Darwin
22 Wheeler for the account of South Causeway, LLC.

23 Q Will you please identify what Plaintiff's
24 Exhibit 7 is?

25 A The guarantor's closing certificate of Will

1 Darwin Wheeler.

2 Q Will you please publish for the Court the
3 provision beginning whereas, on page one?

4 A "Whereas as an inducement for lender to make
5 the loan to the borrower the undersigned guarantor
6 makes the following representations and warranties
7 in favor of the lender."

8 Q Would you please publish for the Court
9 paragraph seven on page two of that document.

10 A "The guarantor acknowledges that except as
11 expressly set forth in the loan documents no
12 representations of any kind or character have been
13 made to guarantor by the lender to induce guarantor
14 to execute and deliver this document and
15 guarantor's guaranty. The guarantor further
16 acknowledges that the guarantor has had an adequate
17 opportunity to have this document and the loan
18 documents reviewed by an attorney or representative
19 of the guarantor's choice acting on the guarantor's
20 behalf, that the contents of this document and the
21 loan documents have been explained to the
22 guarantor, that the guarantor understands the
23 content hereof and thereof and that the guarantor
24 signed this document, the guaranty, and all other
25 documents executed by the guarantor in connection

1 with this loan voluntarily."

2 Q Is that document signed?

3 A It is.

4 Q Do you recognize that signature?

5 A It's signed Will Darwin Wheeler.

6 Q Would you please identify for the Court
7 Plaintiff's Exhibit 9.

8 THE COURT: All right, hold on. Let me get
9 the lawyers up here.

10 (Unrecorded bench conference):

11 THE COURT: All right, ladies and gentlemen,
12 we're going to break at this time for lunch.
13 Please have no conversations about the case with
14 anyone, just enjoy your lunch, give your mind a
15 break and just relax, have a good lunch. I'm going
16 to ask you if you would to please be back here at
17 2:15, okay? That gives you about an hour and 20
18 minutes, so everyone else please remain seated.
19 Ladies and gentlemen, we'll see you back here at
20 2:15.

21 (Jury excused from the courtroom).

22 THE COURT: All right, anything we need to
23 take up before we break?

24 MR. COLLINS: No, Your Honor.

25 MS. BYRD: No, sir, Your Honor. He gave us

1 premarked exhibits except we're missing, we do not
2 have 10 through 13.

3 THE COURT: They'll get that for you.

4 Ma'am, obviously during lunch break you are
5 free to go and do whatever you want to do at lunch.
6 You are just not allowed to talk about your
7 testimony with anybody, okay?

8 All right, we'll recess, then, and we'll
9 start back at 2:15.

10 MS. BYRD: Thank you, Your Honor.

11 (Recessed at 12:59 p.m.).

12 (Reconvened at 2:20 p.m.).

13 THE COURT: Thank you, ladies and gentlemen,
14 please be seated.

15 Okay, let's bring them in.

16 (The jury returned to the courtroom).

17 THE COURT: All right, ladies and gentlemen,
18 welcome back. I hope everyone had a good lunch
19 break, and we're going to resume. If you recall,
20 when we broke for lunch the plaintiff was
21 presenting their case and we'll resume at that
22 point.

23 I recognize Mr. Floyd.

24 MR. FLOYD: Thank you, Your Honor, if it
25 please the Court.

1 THE COURT: Yes, sir.

2 BY MR. FLOYD:

3 Q Okay, we'll try to speed this up just a
4 little bit and do the bare minimal that we're
5 comfortable with as far as these documents, so bear
6 with me.

7 I believe when we left you were on Exhibit 9,
8 Plaintiff's Exhibit 9. Do you have that in front
9 of you?

10 A I do.

11 Q Can you identify this document for the Court?

12 A It's the guarantor's closing certificate for
13 Peggy Wheeler-Cribb.

14 Q Okay. And would you turn to page three of
15 that document. Can you identify that page?

16 A Page three is the signature page.

17 Q Okay. And do you recognize the signature on
18 page three?

19 A It's signed by Peggy Wheeler-Cribb.

20 Q Okay. And would you please look at
21 Plaintiff's Exhibit 10.

22 A Okay.

23 Q Will you please publish for the Court what
24 this letter is, what this exhibit is.

25 A It's a letter from the law offices of Hinds,

1 Cowan, Strange & Geer, to First South Bank
2 regarding the \$6,500,000 development loan of First
3 South Bank to South Causeway, LLC.

4 Q What is the date of this letter?

5 A June 25th, 2008.

6 Q Will you please publish for the jury the
7 first paragraph, or for the Court, the first
8 paragraph on Exhibit 10.

9 A "We refer to the loan agreement, the
10 agreement of even date herewith between the bank
11 and the borrower. With respect to the loan unless
12 otherwise defined herein or the context otherwise
13 requires this opinion utilizes capitalized terms
14 with respect to being described to them in the
15 agreement. We have acted as counsel to the
16 borrower and the guarantors in connection with the
17 loan. This opinion is delivered to you pursuant to
18 the requirement of the purchase pursuant to the
19 agreement and direction of our client."

20 Q Will you publish the second paragraph of page
21 one of Exhibit 10.

22 A "We have examined the agreement, the note,
23 the security agreement, the borrower mortgage, the
24 financing statement and each and every one of the
25 other security documents to be answered or given by

1 borrower, collectively the loan documents and the
2 guarantor mortgage from each of guarantors. We
3 have made inquiry of the borrower and the guarantor
4 and have also examined, reviewed and relied upon
5 the extent we deem appropriate such other
6 documents, records, abstracts, reports, papers and
7 indices, books, certificates, both public and
8 private, and other instruments and matters of law
9 and have made such investigation as we deem
10 necessary or relevant for the rendering of this
11 opinion."

12 Q Would you please publish for the Court page
13 three, the paragraph nine.

14 A "The loan documents constitute legal, valid
15 and binding obligations of borrower and enforceable
16 against the borrower in accordance with their
17 terms."

18 Q Would you please publish for the Court
19 paragraph 12 on that same page.

20 A "The note is entitled to the benefit and
21 security afforded by the guarantor mortgage and the
22 borrower mortgage and the other security
23 documents."

24 Q Would you please publish for the Court the
25 first sentence of paragraph 14 on that same date.

1 A "The execution and delivery of the security
2 documents and the recording of the borrower
3 mortgage, the guarantor mortgage and the financing
4 statement creates a valid and perfected security
5 interest in the bank in the collateral."

6 Q Miss Cason, would you please identify
7 Plaintiff's Exhibit 11.

8 A This is a modification agreement dated April
9 10th, 2009, between First South Bank and South
10 Causeway as well as the guarantors Peggy
11 Wheeler-Cribb and Will Darwin Wheeler.

12 Q Okay. Would you please publish for the Court
13 paragraph three on page two.

14 A "Borrower and each guarantor hereby and by
15 these present does on its, his and her behalf
16 respectively and on behalf of its, his and her
17 respective legal representatives and successors
18 assigns --"

19 Q It's hard to read.

20 A I'm sorry. I'm referring back to the
21 origianl, is that okay?

22 Q That's fine.

23 A Okay. I will start back, "Borrower and each
24 guarantor hereby and by these present does on its,
25 his and her behalf respectively and on behalf of

1 its, his and her respective legal representatives,
2 heirs and assigns release and forever discharge
3 back its successors, assigns, officers, directors,
4 shareholders, employees, attorneys, agents and
5 servants collectively and individually the released
6 party of any and all manner of actions and causes
7 of actions, suits, debts, sums of money, accounts,
8 reckonings, bonds, bills, specialties, covenants,
9 contracts, controversies, agreements, promises,
10 variances, trespass and trespasses, damage and
11 damages, judgments, executions, claim and claims
12 and demand and demands whatsoever both at law and
13 in equity which against the said release parties
14 and any of them borrower and each guarantor have
15 had," excuse me, "ever had, now has or' which
16 borrower, each guarantor or its, his or her
17 respective personal representative, heirs,
18 successors and assigns hereafter can, shall or may
19 have for upon or by reason of any matter, cause or
20 thing whatever from the beginning of the world up
21 to the day our amended execution of these present,
22 including without limitation with respect to the
23 loan and any matter or thing whatever arising out
24 of the same either known or unknown at this time,
25 apparent or not apparent and both present and

1 future."

2 Q Miss Cason, could you please publish for the
3 Court the date of this agreement on page one?

4 A April 10th, 2009.

5 Q Could you please publish for the Court
6 paragraph, I believe Paragraph 6 labeled on page
7 three of the agreement.

8 A "Bank and borrower do hereby amend and modify
9 the note and each of the other loan documents as
10 applicable such that the term of the note shall be
11 reduced and all indebtedness under and with respect
12 to the note and borrower's other obligations with
13 respect to the loan shall be due and payable in
14 full July 5, 2010."

15 Q Could you please identify page 5 of the
16 agreement?

17 A Page 5 is the signature page.

18 Q Okay. Could you please publish for the Court
19 what this page says.

20 A "Number 14. This agreement may be executed
21 in one or more parts all of which shall be
22 collectively comprised of one and the same
23 instrument in witness whereof the parties hereto
24 have executed this agreement under seal as of the
25 effective date. It is signed by Miss Peggy

1 Wheeler-Cribb as member of South Causeway and it
2 has Mr. Will Darwin Wheeler's signature and Mr.
3 Wayne Lovelace's signature as senior
4 vice-president, First South Bank, all of the
5 signature have been witnessed.

6 Q Could you please identify for the Court what
7 Plaintiff's Exhibit 12 is.

8 A This is a formal demand letter from First
9 South Bank to Miss Peggy Wheeler-Cribb for the
10 South Causeway loan.

11 Q Could you please publish the date of this
12 letter.

13 A July 16th, 2010.

14 Q And could you please publish for the Court
15 the first paragraph of the letter.

16 A The first paragraph?

17 Q Yes, ma'am.

18 A "You are familiar with our previously stated
19 position regarding extensions or renewals of the
20 above referenced promissory note. The note matured
21 for payment on Monday, July 5, 2010, and is
22 currently past due for principal, accrued interest
23 and late charges."

24 Q Could you please identify for the Court what
25 Plaintiff's Exhibit 13 is.

1 A 13 is a payoff quote that I prepared for
2 First South Bank dated June 11, 2012, to the law
3 firm of Collins & Lacey, PC.

4 Q And what does this payoff quote, what is this
5 pay off quote in reference to?

6 A The payoff quote is in reference to the South
7 Causeway, LLC, loan with First South Bank, note
8 number 8134802.

9 Q Is that the note that you identified earlier
10 as I believe Plaintiff's Exhibit 3?

11 A It is.

12 Q Okay. And in this letter does it set forth a
13 per diem amount?

14 A It does.

15 Q What is the per diem amount?

16 A \$563.61.

17 Q Okay. And is that amount, I guess per diem
18 keeps moving into the future?

19 A It does, that is the daily interest on the
20 loan, it goes until the loan pays off.

21 Q Has this loan been paid off, to your
22 knowledge?

23 A It has not.

24 Q Could you please look at Plaintiff's Exhibit
25 2, page 20?

1 A Exhibit 2, I'm sorry, page two?

2 Q Page 20.

3 A Page 20, okay.

4 Q Could you please publish for the Court the

5 first complete sentence on that page.

6 A "Borrower expressly waives any and all rights

7 to trial by jury."

8 Q And this Exhibit 2, you identified that

9 earlier as the loan agreement?

10 A Yes, sir.

11 Q Between South Causeway, LLC, and First South

12 Bank?

13 A Yes, sir.

14 MR. FLOYD: May I approach, Your Honor?

15 THE COURT: Yes, sir.

16 Q Miss Cason, I have handed you a document that

17 has been previously marked Plaintiff's Exhibit 4.

18 Are you familiar with this document?

19 MR. COLLINS: 14.

20 Q 14, excuse me.

21 A It is a real estate mortgage from Will Darwin

22 Wheeler to First South Bank on the property at lot

23 number 4, 334 Myrtle Avenue, Pawley's Island.

24 Q And does this document appear to be a

25 certified, true and correct copy of that?

1 A It does.

2 Q Okay.

3 MR. FLOYD: Your Honor, at this time
4 plaintiffs would move Exhibit 14 be placed into
5 evidence.

6 MS. BYRD: No objection, Your Honor.

7 THE COURT: Without objection, Plaintiff's 14
8 is in evidence.

9 (Mortgage marked and received in evidence as
10 Plaintiff's Exhibit Number 14).

11 BY MR. FLOYD:

12 Q Plaintiff's Exhibit 14, what is the date of
13 this document?

14 A 6/25/2008.

15 Q Is that the same date as the day the loan
16 agreement was executed that you identified earlier,
17 Exhibit 2?

18 A Yes, sir.

19 MR. FLOYD: May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 Q Mrs. Cason, I have just handed you a document
22 that has been pre-marked as Plaintiff's Exhibit 15.
23 Have you had a chance to review that?

24 A I have.

25 Q Okay. And what does this appear to you to

1 be?

2 A The first page of a mortgage from Will Darwin
3 Wheeler to First South Bank on the property at lot
4 4, 334 Myrtle Avenue, canceled and satisfied the
5 10th day of April, 2009, and I was a witness to the
6 cancellation, my signature does appear as a witness
7 on it.

8 Q Okay. And this document, does it appear to
9 you to be a certified and true copy from the
10 Register of Deeds of Georgetown County?

11 A Yes.

12 Q Okay.

13 MR. FLOYD: At this time, Your Honor, the
14 plaintiffs would move for this document Plaintiff's
15 Exhibit 15 to be admitted in evidence.

16 MS. BYRD: No objection, Your Honor.

17 THE COURT: Without objection, Plaintiff's
18 15.

19 (Canceled mortgaged marked and received in
20 evidence as Plaintiff's Exhibit Number 15).

21 MR. FLOYD: Beg the Court's indulgence just
22 for one moment.

23 THE COURT: Yes, sir.

24 MR. FLOYD: Thank you, Your Honor. The
25 plaintiff rests at this time.

1 THE COURT: Thank you, ma'am. You may step
2 down.

3 Excuse me, I apologize.

4 Miss Byrd.

5 MS. BYRD: Thank you, Your Honor.

6 THE COURT: I absolutely apologize, ma'am.

7 MS. BYRD: If it please the Court.

8 THE COURT: Yes, ma'am.

9 CROSS EXAMINATION BY MS. BYRD:

10 Q Good afternoon, Miss Cason.

11 A Good afternoon.

12 Q Could you tell me again what is your position
13 with First South Bank?

14 A Yes, ma'am. I am, currently I'm a banking
15 officer with First South Bank. I am also the
16 executive assistant to the president.

17 Q And what is your official title?

18 A Banking officer, executive assistant to the
19 president.

20 Q Okay. You are an officer of the bank?

21 A Yes, ma'am.

22 Q Okay. And did you have any participation in
23 the drafting of any of the documents that have been
24 presented into evidence?

25 A No, ma'am.

1 Q I'm going to ask you to refer to Plaintiff's
2 Exhibit 1, please.

3 A Okay, yes, ma'am.

4 Q Okay. And could you tell me, is this, was
5 this commitment letter, this is dated May 30, 2008,
6 this is the commitment letter for the loan that
7 brings us here today, is that right?

8 A Yes, ma'am.

9 Q And on the first page of Exhibit 1 the term
10 of the loan indicates that it is 36 months. Is
11 that right?

12 A Yes, ma'am.

13 Q Three years, is that correct?

14 A Yes.

15 Q And do you know when the present foreclosure
16 was filed?

17 A Myself personally, I do not.

18 Q All right, if you will flip to the second
19 page of Exhibit 1 and I will draw your attention to
20 numeral F, and I believe you read that into the
21 record and I won't have you do that again but
22 essentially that provides that \$500,000 of the
23 proceeds of the loan will be disbursed by the bank
24 in an interest reserve account to fund monthly
25 interest payments due upon the earlier to occur of

1 the completion of the infrastructure and six months
2 from the date of the loan closing, is that correct?

3 A Uh-huh (Affirmative).

4 Q Do you know if that was done?

5 A I do not believe it was done. We never
6 received anything to show completion of the
7 infrastructure, that I'm aware of.

8 Q Do you remember when the loan closed?

9 A June 25th, 2008.

10 Q And what would six months from the date of
11 closing be?

12 A Christmas day, 2008, or December 25th, 2008.

13 Q Do you know why, then, the \$500,000 was not
14 deposited by the bank in the interest reserve
15 account?

16 A I would assume because we never received the
17 completion of the infrastructure or proof of the
18 completion of the infrastructure.

19 Q But let's refer back to the document. Does
20 it not say upon the earlier to occur of completion
21 of the infrastructure and six months from the date
22 of closing?

23 A Yes, ma'am, it says and, it doesn't say or,
24 so I'm not sure.

25 Q Okay. Upon the earlier, would that lead you

1 to believe that one or the other?

2 MR. FLOYD: Your Honor, I'm going to object
3 to this. She's a records custodian, she hasn't
4 offered any testimony as to the nature of the,
5 documents or really what they mean or paraphrasing
6 or anything like that.

7 THE COURT: Sustained.

8 MS. BYRD: Thank you.

9 BY MS. BYRD:

10 Q But to your knowledge \$500,000 of proceeds
11 were never deposited into an interest reserve
12 account?

13 A No, ma'am.

14 Q And I will ask you to flip to the next page,
15 please, and under numeral G; the second paragraph,
16 nonrefundable loan fee, and it indicates there is a
17 one percent loan fee in the total amount of
18 \$65,000. Is that right?

19 A Yes, ma'am.

20 Q And the \$65,000 is one percent of six and a
21 half million dollars, is that correct?

22 A Yes, ma'am.

23 Q And was six and a half million dollars loaned
24 to South Causeway, LLC?

25 A It was available per the loan documents so it

1 was loaned, however it may not have been advanced
2 as of that time.

3 Q Do you know if the bank received \$65,000?

4 A I believe they did.

5 Q And on that same page, the final paragraph,
6 loan documentation required for closing. To your
7 knowledge were all these documents provided for
8 closing?

9 A I do not keep all these actually in our
10 vault, I would not be able to definitely say that
11 everything was there.

12 Q You just can't say one way or another?

13 A Honestly I cannot say that every single item
14 was there because I do not have every document from
15 the loan file because it is very big. We keep the
16 important documents in safekeeping.

17 Q And where do you keep the remaining
18 documents?

19 A They are sent to our home office in loan
20 operations in Spartanburg, they are there
21 essentially imaged and then kept in safekeeping
22 there or if they are not actual hard copies, since
23 we have been told it is legal to have legal copies
24 or electronic copies, then some of those documents
25 are shredded but they are imaged before any

1 destruction and they are checked under dual
2 control.

3 Q And you would have access as an officer of
4 the bank to any and all those documents
5 electronically, is that correct?

6 A Yes, ma'am, I should have access
7 electronically through our Synergy system.

8 Q And would Mr. Lovelace have the same access
9 to the loan documents as you would electronically?

10 A Yes, ma'am.

11 Q How about Mr. Lyerly?

12 A Yes, ma'am.

13 Q I'm going to ask you about Plaintiff's
14 Exhibit 3, please.

15 A I'm referring back to the originals.

16 Q Fine. And can you just identify for the
17 jury's benefit what that document is?

18 A Yes, ma'am. It's a promissory note between
19 South Causeway, LLC, and First South Bank.

20 Q And in the top portion of that document, the
21 promissory note, it provides this is a multiple
22 advance loan, is that correct?

23 A Yes, it does.

24 Q And indicates that South Causeway will
25 receive a principal amount on 6/25/08 in the amount

1 of blank. Is that correct?

2 A Yes, ma'am.

3 Q Can you tell the jury today how much South
4 Causeway received on 6/25/08?

5 A I do not have the closing statement with me,
6 so I cannot verify it.

7 Q And would that be important to you in
8 calculating the amount of the debt to be paid off?

9 A Yes, ma'am.

10 Q In the next section it indicates the interest
11 rate, is that correct?

12 A Yes, ma'am.

13 Q And it says that they agree to pay for one
14 day from 6/25, the day of closing, until the next
15 day six percent interest. Is that right?

16 A Yes, ma'am.

17 Q And then after that time the interest rate
18 was to change, is that correct?

19 A The interest rate could change if, the way
20 this reads, the six percent but that it could
21 change effective the next day should the Wall
22 Street Journal prime plus one change.

23 Q Okay. And so if the Wall Street Journal, if
24 it were to change, then it becomes a variable rate
25 based on one percent above the Wall Street Journal

1 prime. Is that right.

2 MR. FLOYD: Your Honor, I object to this.
3 She just read the document in evidence, she hasn't
4 given any opinions on what happened or what affect
5 it may have.

6 THE COURT: Sustained. It is asking for her
7 opinion.

8 Q Okay. I will just ask you, then, if you
9 could read into the record under variable rate,
10 underneath that, where it says index rate, if you
11 could just read that into the record?

12 A Okay. "Variable rate. This rate may then
13 change as stated below. The index rate, the future
14 rate will be one percent above the following index
15 rate, the highest prime rate published in the money
16 section of the Wall Street Journal."

17 Q Thank you. And further down in the document
18 it provides for a post maturity rate. Isn't that
19 correct?

20 A Yes, ma'am.

21 Q And the post maturity rate provides that it
22 is the same rate that was in effect before
23 maturity. Is that correct?

24 A It provides it's the same fixed or variable
25 rate basis in effect before maturity, yes, ma'am.

1 Q And before maturity of this loan was there a
2 fixed or variable rate in place?

3 A It appears there was a variable rate.

4 Q And finally I would like to direct your
5 attention to Plaintiff's Exhibit 13. And for the
6 record, I believe you testified early that this is
7 a payoff quote that you prepared?

8 A Yes, ma'am.

9 Q And what information did you use to prepare
10 this?

11 A What we get is, we go on our computer system
12 which calculates our, keeps our loans of record, I
13 would take the printout of that as well as we have
14 a spread sheet so I add in any fees or information,
15 any fees or taxes or anything we have paid outside
16 of the loan itself, that haven't been added to the
17 loan amount itself, and calculate the payoff that
18 way.

19 Q And in this document, Plaintiff's Exhibit 13,
20 you provide -- I'm sorry.

21 A I'm sorry. I accidentally hit the mike.

22 Q Okay. It indicates that the current balance
23 is \$4,774,112.73. Is that correct?

24 A Yes, ma'am.

25 Q Where did you get that number?

1 A That would have been from our computer
2 system?

3 Q And would that be the amount that was
4 advanced to South Causeway on 6/25/08?

5 A I'm not sure whether that would be the exact
6 to the penny amount or whether, you know, something
7 had been advanced after that to pay for taxes or
8 something, without having the actual printout in
9 front of me to see what was actually advanced on
10 that date.

11 Q The basis of that number is -- what is the
12 basis for that number?

13 A My computer printout at the bank. Whenever
14 we pull up our system that is how we quote a
15 payoff, the computer printout will show the
16 client's name, the account number, maturity, the
17 rate, the current balance, the current accrued
18 interest, any late charges, things like that.

19 Q But I guess, maybe I'm not wording it
20 carefully enough, but I want to understand what
21 could comprise the number listed beside current
22 balance. Is that a principal that was advanced,
23 because there is delineated interest, late charges,
24 escrow, prepayment penalties, appraisal fees,
25 property taxes, miscellaneous fees, and so what I

1 want to understand is what is the basis of the
2 current balance figure?

3 MR. FLOYD: Your Honor, objection. She gets
4 information from the system. That is what she put
5 into the letter. It would be speculation for her
6 to say exactly what went into it.

7 MS. BYRD: Your Honor, a critical element of
8 their ability to prevail in a foreclosure claim is
9 to be able to establish the amount of damages or
10 the amount of the debt owed and I'm asking the
11 witness who they have called to prove that, to
12 explain the basis for that figure.

13 THE COURT: Has she given you a figure?

14 MS. BYRD: The figures in the document, yes,
15 sir.

16 THE COURT: All right. And you're asking her
17 what?

18 MS. BYRD: Just what that, what that number
19 encompasses, is that the principal that was
20 advanced or just how that number was arrived at.

21 THE COURT: And her response was she was not
22 familiar with that. Correct?

23 MS. BYRD: I'm not sure. She prepared the
24 document.

25 THE COURT: Well, you can answer that

1 question.

2 THE WITNESS: The current balance would be
3 the current principal balance outstanding on the
4 loan at the time I pulled the payoff.

5 BY MS. BYRD:

6 Q Okay. So the principal is what has been
7 advanced?

8 A It could be what's advanced. That does not
9 mean it was the initial advance because advances
10 could have been made after that or principal
11 reductions could have been paid to principal
12 balance. The only thing I can quote is what the
13 principal balance shows when I pulled the payoff.

14 Q And Mr. Floyd asked you a moment ago about
15 the per diem rate. That is the bank's per diem per
16 day?

17 A Yes, ma'am.

18 Q The figure you have indicated, \$563.61. Is
19 that correct?

20 A Yes, ma'am.

21 Q And that indicates that \$563.61 is the amount
22 of interest that accrues per day on this loan. Is
23 that correct?

24 A Yes, ma'am.

25 Q And how would it be possible for you to

1 determine a per diem interest rate on a variable
2 rate loan? Wouldn't it vary from day to day?

3 A We use the computer system. I'm sorry, I do
4 not do the calculations myself.

5 Q But are you familiar with what a variable
6 interest rate means as an officer of the bank?

7 A Yes, ma'am.

8 Q And do you understand that it changes daily?

9 A Uh-huh (Affirmative).

10 Q Is that yes?

11 A Yes. I'm sorry.

12 Q Okay. And based on that, is it possible to
13 have a per diem rate?

14 MR. FLOYD: Your Honor, I'm going to object.
15 She testified what is in the numbers, she doesn't
16 do the calculations.

17 THE COURT: She can answer the question.

18 A I'm sorry, what was the question again?

19 Q Is it possible to calculate a per diem rate
20 if you have a variable rate interest loan?

21 MR. FLOYD: Your Honor, it is still
22 speculation and calling for things --

23 THE COURT: It is not speculation if she
24 knows. She can answer either she knows or she
25 doesn't know.

1 MR. FLOYD: Thank you.

2 THE WITNESS: The computer calculates it
3 based on the amount outstanding and then it is
4 updated nightly, so the computer would calculate
5 that for us.

6 MS. BYRD: Your Honor, may I approach?

7 THE COURT: Yes, ma'am.

8 BY MS. BYRD:

9 Q I show you what has been pre-marked as
10 Defendant's Exhibit 1 and could you tell me if you
11 recognize that document?

12 A Yes, ma'am, a closing statement for the
13 borrower, South Causeway, LLC, and the lender First
14 South Bank.

15 Q And is that the closing, is that the closing
16 statement for the loan that is the object of this
17 foreclosure action?

18 A Yes, ma'am.

19 Q And can you tell the jury, please, how much
20 was advanced to South Causeway, LLC, according to
21 that HUD statement?

22 A There are no funds directly labeled as South
23 Causeway, LLC.

24 Q So based on the closing statement is it your
25 testimony that no funds were provided to South

1 Causeway, LLC?

2 A They were not provided directly to South
3 Causeway, LLC. They were used to pay off other
4 mortgages, flood insurance, origination fee,
5 attorney fees, funds to the Secretary of State, for
6 surveys, environmental, and reimbursement to Miss
7 Peggy Wheeler-Cribb.

8 Q So, those were funds provided on behalf of
9 the bank that were used maybe not paid directly to
10 South Causeway but on their behalf. Is that what
11 your testimony is?

12 A Yes, ma'am.

13 Q Okay. Can you tell me the amount of funds
14 maybe not paid directly to South Causeway but for
15 their benefit?

16 A The first draw against the loan was
17 \$4,769,725.23.

18 Q Does that amount match the balance indicated
19 in Plaintiff's Exhibit 13?

20 A No, ma'am.

21 Q I'm sorry?

22 A No, ma'am. I'm sorry.

23 Q Plaintiff's Exhibit 13, does it indicate
24 miscellaneous fees? Do you know what those fees
25 were for?

1 A Miscellaneous fees of 127.75? I believe
2 those were copies of documents from the Horry
3 County Clerk of Court, is what it is listed as.

4 Q And do you know what those documents were?

5 A No, ma'am.

6 Q How about the appraisal fee that has been
7 charged as an amount owed by South Causeway, LLC,
8 do you know what the basis for that appraisal was,
9 who ordered that appraisal?

10 A I do not know.

11 MS. BYRD: I think that may be all the
12 questions I have for you. I will just check real
13 quick with my boss.

14 May I beg the Court's indulgence?

15 THE COURT: Yes, ma'am.

16 MS. BYRD: Thank you, Miss Cason, I have no
17 further questions.

18 THE COURT: Anything on redirect?

19 MR. FLOYD: Nothing, Your Honor.

20 THE COURT: Thank you very much, ma'am. You
21 may step down.

22 (Witness excused).

23 MR. COLLINS: Your Honor, may this witness be
24 excused?

25 THE COURT: Any objections?

1 MS. BYRD: No objection, Your Honor.

2 THE COURT: You're free to go, ma'am. Thank
3 you very much. Just make sure that any exhibits,
4 make sure any exhibits are left.

5 MR. FLOYD: I will take care of that, Your
6 Honor, if that is okay. They were marked, she's
7 going to sort them out, if that is okay?

8 THE COURT: That's fine.

9 All right.

10 MR. COLLINS: As you know, we rest.

11 THE COURT: The plaintiff rests. All right,
12 ladies and gentlemen, the plaintiff has rested
13 their case as to the foreclosure action. I'm going
14 to ask you, if you would, to step back in the jury
15 room. I need to take up some matters of law at
16 this point. Please have no conversations about the
17 case, okay? We'll start back in a little bit.

18 (Jury excused from the courtroom).

19 THE COURT: All right. I will take up any
20 motions at the close of the plaintiff's case.

21 MS. BYRD: Your Honor, at this time we would
22 like to make a motion for directed verdict. As the
23 Court is aware, in order to establish a cause of
24 action in foreclosure of a mortgage the plaintiff
25 must establish three elements. The existence of

1 the debt, ownership of the debt and the amount of
2 the debt. Your Honor, while they have established
3 the documents which have been admitted to this
4 Court into evidence, they have not established the
5 amount of damages, Your Honor, and they brought a
6 witness in that testified that she had no idea of
7 the basis for the numbers, that she pulled them off
8 a computer.

9 The current balance listed on the payoff
10 report was not even the same number that was
11 advanced on the HUD statement that we introduced
12 and she had no explanation for the difference. She
13 also did not have any information, I attempted to
14 ask her to explain how those numbers were
15 calculated, she could not do so. So, the plaintiff
16 has failed to establish that all just credits were
17 given to our client, specifically with regard to
18 \$550,000 interest reserve account, Miss Cason could
19 not even testify as to whether that had been done.
20 Your Honor, we do not believe the plaintiff has in
21 any way met their burden of establishing to this
22 Court or to the jurors the amount of the debt due.

23 THE COURT: All right.

24 MS. BYRD: Thank you, Your Honor.

25 THE COURT: Mr. Collins.

1 MR. COLLINS: First of all, Judge, it's
2 inappropriate for her to be asking for a directed
3 verdict because you are the one who decides whether
4 or not the mortgage is foreclosed, it is an
5 equitable proceeding, there is no jury decision
6 made, therefore no directed verdict to be imposed.

7 The existence of the debt is abundantly
8 proven. Ownership of the debt, the debt is still
9 owned by First South Bank. The amount of the
10 payoff letter shows the amount of the debt. She
11 argues, Miss Byrd argues Miss Cason had no idea how
12 it was calculated. She had a very good idea, she
13 said the computers at the bank are updated nightly,
14 they factor in any changes in the interest rate,
15 they are to the penny with how much money has been
16 expended, how much has been received back and what
17 the daily accrual of interest is. How could it be
18 any more accurate, Your Honor? The argument we
19 have not proven the amount of the debt due is
20 absurd and we submit that this motion is not even
21 proper and if you think it is, it ought to be
22 denied.

23 MS. BYRD: Your Honor, may I just briefly?

24 THE COURT: Yes.

25 MS. BYRD: With regard to the appropriateness

1 of the motion, I believe that the rules of civil
2 procedure provide there is but one type of action,
3 whether law or equity, and the rules of civil
4 procedure apply regardless if it is a legal or
5 equitable action, so I believe the motion is most
6 certainly appropriate.

7 But I also say that she could not establish
8 the amount and didn't testify to any of what Mr.
9 Collins just said, that it updated daily. She
10 didn't even testify that was records kept, the
11 computer software itself were ordinary business
12 records. And further, the Court, while she may not
13 have been able to testify, the Court surely is
14 aware that you could not have a per diem set rate
15 of interest on a variable rate loan. It is just
16 not possible and so, Your Honor, they have not
17 proven their damages.

18 THE COURT: I think it is an appropriate
19 motion but I'm going to respectfully deny it. I
20 think that there is evidence in the record that
21 could support those elements, so I respectfully
22 deny the motion.

23 Anything further, Miss Byrd?

24 MS. BYRD: Your Honor, nothing further on the
25 motion.

1 THE COURT: Okay. What else, I mean, go
2 ahead.

3 MS. BYRD: Because of the timing, and we quite
4 frankly expected their case to last a little
5 longer, we have a witness and he should be here
6 within ten minutes, he would be our next witness
7 and I think he will be, Don Thomas, the real estate
8 agent, and he should take up the balance of the
9 day. The reason why we called him somewhat out of
10 order is because he has got a doctor's appointment
11 on Thursday, tomorrow, and hopefully we can get him
12 in today.

13 MR. COLLINS: Judge, you recall when we were
14 in chambers I asked her if she could tell me who
15 the first witness would be?

16 THE COURT: Yes.

17 MR. COLLINS: She said it would either be Mr.
18 Lovelace or Mr. Lyerly. It has been my custom
19 throughout my many years of practice, Your Honor,
20 for lawyers to tell each other who is going to be
21 called so there won't be these kind of problems. I
22 always tell the opposing counsel who we will call
23 the next morning or whatever, and we were told that
24 this witness would be either Mr. Lyerly or Mr.
25 Lovelace. They are here, time is precious,

1 certainly counsel has the opportunity to get her
2 witness here on time. This is the kind of problem
3 we have, Your Honor, in this case.

4 MR. GODDARD: Your Honor, I would briefly
5 like to respond. I certainly appreciate his 44
6 years of practice. What we're faced with is it is
7 now 3:30, we have two witnesses that we do not
8 think we could get in in the time period to
9 effectively get the jury out by the time period we
10 set back in the back. We think both Mr. Lyerly and
11 Mr. Lovelace, their direct and their cross
12 examination will go past the time you're talking
13 about and when we came back and evaluated that, and
14 I will take the blame for that, that after our
15 evaluation I could have and should have walked over
16 and told him we're going to call Mr. Thomas but the
17 reason we did so is we cannot, in the interest of
18 what we don't want to happen is to, one, either
19 call Mr. Lyerly and then allow a break in between
20 for the jury before cross-examination or anything
21 else. We think before the jury would be excused
22 for the day they would want to hear the entirety of
23 the testimony.

24 Also, Your Honor, while I understand his
25 position, there is no rule and we certainly were

1 told who their witnesses were today before the day
2 started, we appreciate that but I think we have the
3 ability to call the witnesses in the order we would
4 like and we are planning on moving forward with Mr.
5 Thomas.

6 THE COURT: I appreciate both sides'
7 positions. You are absolutely correct, you don't
8 have to tell them anything, they don't have to tell
9 you anything. However, you all are good lawyers
10 and, I mean, I don't need to tell you usually to
11 the extent you can help things proceed more
12 efficiently do that, but I understand you've got a
13 witness who has a physician's appointment tomorrow
14 and his availability is questionable tomorrow, you
15 want to call him now, I've got no problem with any
16 of that. I don't want to sit here and wait 20
17 minutes for a witness to show up, so is there a way
18 to reach him and find out his ETA?

19 MR. GODDARD: I contacted him as soon as we
20 left your office, Your Honor, he said he should be
21 here in no more than an hour. That was an hour ago
22 so we expect him any minute.

23 THE COURT: Let's get back in touch with him.

24 MR. GODDARD: We'll call him again right now.
25 We appreciate that. I do want to take that blame,

1 that was my call and I apologize for --

2 THE COURT: That's all right, I mean --

3 MR. GODDARD: -- for not telling Mr. Collins
4 that we were not going to go forward with Mr.
5 Lysterly or Mr. Lovelace.

6 THE COURT: Let's find out because we may be
7 going forward with them. He may have gotten
8 delayed. If he is delayed, you're just going to
9 have to work with something else.

10 MS. BYRD: May we take a short break, Your
11 Honor?

12 THE COURT: Yes, go ahead.

13 (Recessed at 3:30 p.m.).

14 (Resumed at 3:40 p.m.).

15 THE COURT: Anything we need to take up
16 before we get started?

17 MR. COLLINS: No, sir.

18 THE COURT: All right, let's bring the jury
19 in.

20 (The jury returned to the courtroom).

21 THE COURT: All right, ladies and gentlemen,
22 thank you for your patience. We have taken up any
23 matters of law that we needed to take up at the
24 close of the plaintiff's case and so now we're
25 ready to proceed, so I would recognize Miss Byrd on

1 behalf of the defense.

2 MS. BYRD: Thank you, Your Honor.

3 THE COURT: Yes, ma'am.

4 MS. BYRD: The defense calls Mr. Don Thomas.

5 THE COURT: All right, Mr. Thomas, if you
6 would please come forward and be sworn, sir.

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1 DON STANLEY THOMAS, after being frist duly sworn,
2 testified as follows:

3 THE CLERK: Thank you. Please be seated and
4 state your full name for the record.

5 THE WITNESS: My name is Don Stanley Thomas.

6 DIRECT EXAMINATION BY MS. BYRD:

7 Q Good afternoon, Mr. Thomas.

8 A Yes.

9 Q Thank you for being here on short notice. We
10 understood you had a doctor's appointment tomorrow
11 so we wanted to try as best we could to get you in
12 and get this moving, so I appreciate that. Thank
13 you.

14 Mr. Thomas, if you could, please just
15 introduce yourself to the jury and tell them a
16 little bit about your personal and professional
17 background.

18 A Okay. My name is Don Thomas and I am
19 currently the sales manager for Lachicotte Company,
20 Real Estate Sales Company formerly. I have been in
21 the real estate business off and on for about
22 fifteen years and I have been in this area about 25
23 years, married, three children.

24 Q And could you tell us the name of the company
25 that you worked with in 2010?

1 A Vintage States Realty.

2 Q Did they also have an auction company?

3 A We didn't have a separate company. We
4 operated under the Vintage States Realty but we did
5 have a licensed auctioneer who would help us with
6 our auctions.

7 Q Tell me how you came to know Miss Peggy
8 Wheeler-Cribb.

9 A Well, as the broker in charge I'm usually
10 privy to every transaction as far as listings and
11 especially with the auction aspect of it, which was
12 something we tried to do for some of our clients in
13 that time of the real estate market. It was just
14 another way, another avenue to try and market some
15 properties.

16 So, Mr. Chuck Cooper who was with our company
17 was -- I'm not even sure, I assume he was contacted
18 by either Darwin or Miss Peggy and they decided
19 they wanted to participate in the auction that we
20 proposed.

21 Q And did Miss Peggy eventually contract with
22 Vintage Real Estate to do the auction for the South
23 Causeway properties?

24 A Yes, that's right.

25 Q And did that include other pieces of

1 property?

2 A Yes. We had a couple of our beach properties
3 on Pawley's Island as well as the numerous
4 individual pieces of property that were in South
5 Causeway that were commercial properties.

6 MS. BYRD: May I approach the witness?

7 THE COURT: Yes, ma'am.

8 Q Mr. Thomas, I show you what has been marked
9 as Defendant's Exhibit 2. Can you tell me if you
10 recognize that document?

11 A Yes.

12 Q Please tell the jury what that is.

13 A It's basically a listing agreement
14 specifically for an auction, for this particular
15 auction as a matter of fact.

16 Q And this is the auction of the South Causeway
17 property which is 19 acres, is that correct?

18 A Yes.

19 Q And what is the date of this listing
20 agreement?

21 A April 12th, 2010, is on the face of it. Are
22 you talking about the date it was signed?

23 Q On the first page of the document it
24 indicates April the 12th, 2010. Is that right?

25 A That's what's on it, yes.

1 Q Mr. Thomas, do you have the original copy of
2 this listings agreement in your file?

3 A I should. Yes.

4 MS. BYRD: Your Honor, may I approach and
5 have that exhibit marked as Exhibit Number 3?

6 THE COURT: Three?

7 MS. BYRD: Yes, sir.

8 (Listing agreement marked as Defendant's
9 Exhibit Number 3).

10 BY MS. BYRD:

11 Q Mr. Thomas, does it appear that there were
12 different types of pens used to complete that
13 original document?

14 A Yes.

15 Q And specifically can you tell me where the
16 markings on that document appear to be different?

17 A Well, on the first line just after the date
18 which was written in, the South Causeway, LLC, was
19 written in black ink and Wheeler in blue ink was
20 crossed out and then most of the rest of the
21 document, the front page is in blue ink and then
22 when you get to the basis of sale there is some
23 additional writing in there that is in black ink.

24 How specific do you want me to get?

25 Q Does it appear, based on the type and color

1 of pen, that there were changes made at length to
2 the basis of the sale, is that correct?

3 A Right.

4 Q And that includes the prices set for the
5 different lots within the 19 acres, is that
6 correct?

7 A Yes.

8 Q Do you recall a meeting with Miss Peggy
9 regarding the strategy that you all had developed
10 to auction the property?

11 A I don't specifically remember sitting in on
12 that meeting.

13 Q Are you aware of whether your company met
14 with Miss Peggy?

15 A I believe, yes, one of our associates
16 originally --

17 MR. TYLER: Objection, Your Honor,
18 speculation.

19 THE COURT: All right. If he knows. If he
20 doesn't --

21 A Yes, one of our associates met with Miss
22 Wheeler, which I believe when you see the blue ink
23 on there, I think that was the original meeting on,
24 I would assume April 12th.

25 MR. TYLER: Your Honor, again I object to

1 speculation. He wasn't there when it was signed.

2 THE COURT: Sustained as to any speculation.

3 A Yes, I was aware of that, one of our agents
4 met with her.

5 Q And you were involved in the marketing and
6 development of the auction, is that right?

7 A Yes, that's correct.

8 Q And do you recall whether the plan, the
9 auction plan was to offer all 19 acres as one
10 parcel or to subdivide the 19 acres and offer four
11 separate parcels?

12 MR. TYLER: Your Honor, object to leading.

13 THE COURT: Sustained as to the leading.

14 Q Can you please tell me whether there were any
15 options offered potential purchasers with regard to
16 the 19 acres?

17 A Well, I can tell you definitely where we
18 ended up as far as date of auction. We had offered
19 it as a whole piece, whole parcel, and we also
20 offered options, and I think that is on the front
21 of the page here, the different lots which were
22 different acreages, we had packets designated for
23 each one, how much it was and how many acres. And
24 the way that we did the auction we originally
25 offered the first parcel, being the entire parcel,

1 and when we did not get any bids on that, then we
2 went down to each parcel individually, and that is
3 how we basically conducted the auction.

4 Q And would it be a general business practice
5 of your company to assist your customer in setting
6 the prices?

7 A In an advisory capacity, yes.

8 Q And do you know whether or not in April of
9 2010 there were prices set with Miss Peggy and your
10 company?

11 A Just what is on here, what is on the face of
12 this. I have to be refreshed as far as how we came
13 to dividing out the lots and prices we came up
14 with, though.

15 Q Generally do you as the auction company offer
16 professional advice on that type thing?

17 A Yes.

18 Q And based on this document, and I will ask
19 you to refer to Exhibit 3 because it's the original
20 copy and I believe easier.

21 A Okay.

22 Q What are the prices for the lots?

23 A All right. Seven million for, seven million
24 for the entire parcel, 4.8 reserve. Individual
25 lots are as follows, and it is smudged to the point

1 I can't see how many million lot one was. Lot 2,
2 4.8. Lot three 4.8. Lot 4 4.8. Oh, I see now.
3 Lot one, 4.8 is written above it, so it looks like
4 each individual lot 4.8.

5 Q And --

6 A A total of four lots.

7 Q And for all, for the entire parcel it was
8 seven million, is that correct?

9 A Yes.

10 Q And it appears that the initials PWC are
11 underneath the pricing, is that correct?

12 A Yes.

13 Q And is there a date beside that?

14 A 5/31/10.

15 Q And do you know who PWC is?

16 A Peggy Wheeler-Cribb.

17 Q And is that your initials at the bottom as
18 the broker?

19 A Yes.

20 Q Did your company advertise or in any way
21 market this auction?

22 A Yes.

23 Q Mr. Thomas, I will show you what has been
24 marked as Defendant's Exhibit 4. Can you tell me
25 if you recognize that document?

1 A Yes.

2 Q Can you please tell the jury what that
3 document is.

4 A It's basically covering the cost of how the
5 property would be marketed and what would be
6 included with the marketing.

7 Q And do you know whether South Causeway paid
8 your company any fee for its effort?

9 A For the marketing, you're talking about?

10 Q Yes, sir.

11 A I cannot really recall if we took the money
12 and spent it out or if we sent them the bills, so I
13 cannot, I can't specifically remember at this
14 point.

15 Q Do you recall whether it was invoiced as a
16 whole or you were reimbursed, whether South
17 Causeway paid you?

18 A That is what I can't recall, I'm sorry. I
19 guess I can look back at my notes.

20 Q You can't recall whether they paid you or how
21 you --

22 A Well, and here is why I'm stumbling a little
23 bit, is some of the commercials that were produced
24 were produced by Miss Cribb's grandson and I'm not
25 sure if he was paid by them or if he did it for his

1 grandmother or we paid him, I would have to go back
2 and look and see.

3 Q Is there any amount that is outstanding and
4 owed to your company from South Causeway?

5 A None to my knowledge.

6 Q Do you recall whether the four parcels that
7 we talked about with regard to Exhibit 3, whether
8 they were the same size?

9 A I believe they were not, they were different
10 sizes.

11 Q Obviously in different locations?

12 A Yes, that's correct.

13 Q And it is your -- do you recall a telephone
14 call from Mr. Wayne Lovelace?

15 A I do.

16 Q And do you recall -- I will show you the
17 document. I will show you what has been marked
18 Exhibit Number 4 -- I'm sorry, Exhibit 5.

19 MR. TYLER: Your Honor, could we have a side
20 bar for a moment, please?

21 THE COURT: Yes, sir.

22 (Unrecorded beach conference).

23 THE COURT: Ladies and gentlemen, I have
24 learned, I have a new button up here I'm going to
25 try out so don't let this scare you or anything,

1 you're going to hear a little noise, okay?

2 How irritating was that to you? You know,
3 sometimes it is really not an advantage to have
4 technological advances. I apologize, that was my
5 first foray into using that button. I can assure
6 you I won't do it again.

7 What I am going to do, because I do need to
8 take up a matter of law, I'm going to get you to
9 step back into your jury room. Have no
10 conversation about the case, please, and I will get
11 you back out here shortly after I deal with this
12 matter of law.

13 (The jury was excused from the courtroom).

14 THE COURT: All right. I thought this was a
15 good time, Mr. Tyler, I'm going to hear from you
16 with regard to your objection. We agreed that we
17 were about to head into this subject so I think it
18 is a timely objection. Go ahead.

19 MR. TYLER: Excuse me, Your Honor. I think,
20 Your Honor -- may it please the Court, Donald Tyler
21 for First South Bank. What I believe the
22 testimony, where we're leading to is a statement by
23 Mr. Thomas based on a conversation he had with Mr.
24 Lovelace where Mr. Thomas is going to say something
25 to the effect of, "I have never had a discussion

1 like this before," which we view it as a very
2 inflaming, potentially very prejudicial statement
3 from Mr. Thomas. Our position is it is not
4 probative to the issue. The issue here really is,
5 with Mr. Thomas, is that there was a contract with
6 Vintage Real Estate or Christy's, I can't remember.

7 THE WITNESS: Vintage.

8 MR. TYLER: With Vintage, and the allegations
9 are that First South Bank tortuously interfered
10 with that contract. Your Honor, the elements of
11 that, I don't believe are going to be did they
12 breach or did they tortuously breach with that
13 interference. I don't believe Mr. Thomas'
14 characterization of that conversation goes to that
15 issue, Your Honor. This characterization is really
16 intended solely to inflame the jury and create a
17 prejudicial statement.

18 THE COURT: All right.

19 Miss Byrd?

20 MS. BYRD: Your Honor, what we believe Mr.
21 Thomas, and again, he has not testified to it yet
22 but what his deposition testimony is, that he had
23 never in his career received a call like that
24 before from a mortgage company, that he was
25 uncomfortable, he felt that Mr. Lovelace had

1 disclosed confidential information to him, that he
2 should not have done that.

3 Your Honor, that goes directly to our claim
4 of their breach of good faith and fair dealing. It
5 goes to South Carolina Unfair Trade Practices Act.
6 We think that it is highly relevant to our claim
7 and to exclude this testimony that that has never
8 happened before --

9 THE COURT: Let me ask you this. The issue
10 is a tortuous interference with contract. Is that
11 not the issue?

12 MS. BYRD: That is one, Your Honor, that is
13 one claim. The second is that they have repeatedly
14 made disclosures to third parties about
15 confidential information. I talked about it at
16 length in my opening and this is one such time that
17 they breached the confidentiality of their own
18 client, Your Honor, so it goes directly to unfair
19 trade practices because this is not the only time
20 this was done, it was done with Lincoln-Harris, and
21 that is a critical element of my South Carolina
22 Unfair Trade Practices Act claim because I have to
23 show the possibilities of repetition and I have to
24 show it happened more than once.

25 MR. TYLER: Your Honor, I will just point out

1 I'm not objecting to him repeating the conversation
2 he had with Mr. Lovelace, which is the disclosure
3 that they are wanting to get in. It is really his
4 reaction.

5 THE COURT: His characterization of it?

6 MR. TYLER: Yes, Your Honor.

7 THE COURT: I don't know what he is going to
8 say. Miss Byrd, I don't know what was said in the
9 deposition but what wouldn't be relevant is
10 comments such as, "It shocked me, this isn't
11 anything I have ever had to deal with before,"
12 because that is his characterization of it. What
13 you're trying to get in is that they disclosed
14 confidential information, correct, that goes to the
15 issue?

16 MS. BYRD: It does but, Your Honor, he must
17 be allowed to testify that this isn't just
18 something that everybody does all the time.

19 THE COURT: He can testify to that.

20 MS. BYRD: That is what I'm going to ask him,
21 "Has this ever happened to you before in your
22 career," and he is going to say no. I mean, I
23 expect, based on his deposition, that that is what
24 he will say and that is what I understand he is
25 trying to prevent.

1 MR. TYLER: Your Honor, I'm okay if he says,
2 "No, I have never had this," but about the
3 inflammatory, "I was shocked, I was outraged."

4 MS. BYRD: I believe obviously I can ask
5 whether --

6 THE COURT: You can ask the question and you
7 all listen to the response and if you want to
8 object, do so. It is a proper question. I don't
9 know what response we're going to get. Obviously I
10 can't get inside a witness' head before they answer
11 the question. But it's a proper question, I think
12 you can ask the question.

13 MS. BYRD: Thank you, Your Honor.

14 THE COURT: All right. The exhibit, I think
15 we discussed the exhibit earlier, the email. My
16 understanding is that it is an email from Mr.
17 Thomas, that he wrote to someone?

18 MS. BYRD: Yes, Your Honor.

19 THE COURT: And obviously he is here, he is
20 subject to cross-examination, so I think it's fine.

21 (Thomas to Cooper Email marked and received
22 in evidence as Plaintiff's Exhibit Number 5).
23 Plaintiff's Exhibit Number 5).

24 All right, anything further before we bring
25 the jury out?

1 MS. BYRD: No, sir, Your Honor.

2 MR. TYLER: Could you tell us what the
3 Exhibit is?

4 MS. BYRD: The email is Exhibit 5.

5 THE COURT: All right. Ask the jury, if they
6 are ready, to come back.

7 (The jury returned to the courtroom).

8 THE COURT: All right, ladies and gentlemen,
9 we'll continue now with Miss Byrd's direct
10 examination.

11 MS. BYRD: Thank you, Your Honor.

12 BY MS. BYRD:

13 Q Mr. Thomas, we were just about to talk about
14 Exhibit Number 5 which I have handed up to you.

15 A Okay.

16 Q If you could, tell me if you recognize that
17 document.

18 A Yes.

19 Q Can you tell the jury what that document is?

20 A It's a copy of an email from me to Chuck
21 Cooper.

22 Q And again, who is Chuck Cooper?

23 A Chuck Cooper is really basically the agent
24 that was handling the auction for Miss Cribb and
25 also he is the owner of the company.

1 Q And what is the date of the email?

2 A May 15th, 2010.

3 Q And could you please read to the jury what
4 your email says?

5 A It says, "Chuck, I received a call from Mr.
6 Wayne Lovelace, senior vice-president with First
7 South Bank in Columbia, with regard to their
8 position as lienholder for the property on South
9 Causeway. He wanted us to know what they, that
10 they would not accept anything less than the amount
11 owed on the property which is just shy of 4.8
12 million. In other words, no short sale would be
13 considered. He said he noticed on our auction
14 website that the property was showing divided up
15 into four different lots. Mr. Lovelace wanted us
16 to know that they would not be willing to release a
17 portion of the property to a buyer and they are
18 only interested in selling the entire 19 acres
19 together as one whole parcel. Since we had
20 discussed that possibility, we are going to have to
21 address this with Miss Peggy and make sure we are
22 all on the same page as we proceed with the action.
23 Thanks, Don Thomas."

24 Q And do you recall whether the telephone call
25 that you had received from Mr. Lovelace was on that

1 same day as your email, May 15th?

2 A It was either that day or the following day
3 because I remember trying to convey that
4 immediately. I would say it was that same day.

5 Q And why were you trying to convey that
6 immediately?

7 A Well, like I said, Chuck was basically
8 handling that part of the auction, working with the
9 client and I wanted to make sure that he was aware
10 of everything that was going on and also to convey
11 it to our client because we had an obligation to
12 relay that information because we were representing
13 Miss Peggy.

14 Q What information do you mean you had an
15 obligation to relay?

16 A Basically the statement that Mr. Lovelace
17 made.

18 Q And do you recall whether you took notes
19 during the telephone call that you had with Mr.
20 Lovelace?

21 A I did.

22 Q Mr. Thomas, I will show you what has been
23 marked as Exhibit Number 6. Are those a copy of
24 the notes you took during your telephone call with
25 Mr. Lovelace?

1 A Yes.

2 Q And do you, can you please tell the jury what
3 information Mr. Lovelace disclosed to you during
4 your telephone call on or about May 15th, 2010?

5 A Basically mostly what was in that email, that
6 First South Bank who had the loan and was 4.8
7 million dollar principal balance, he gave me his
8 direct line phone number and he said that, yes,
9 South Causeway, LLC, but he also said it was a
10 single member and just specifically Miss Cribb,
11 Miss Peggy Wheeler-Cribb and the note matures July
12 5th of that year, which was soon after the auction
13 was going to take place, and they were not going to
14 renew the note and the bottom note says not
15 interested in partial payment, South Bank not
16 interested in partial payment.

17 Q So to summarize, Mr. Lovelace told you the
18 amount that was due on the loan, is that correct?

19 A Yes.

20 Q That the bank did not plan to renew the loan.
21 Is that correct?

22 A Correct.

23 Q That the note would mature July the 5th of
24 2010?

25 A Yes.

1 Q And that they were not willing to accept
2 partial payment?

3 A Correct.

4 Q And is that information that you would
5 consider confidential?

6 A Yes, I would think, I mean, if I was on the
7 other --

8 MR. TYLER: Your Honor, object to
9 speculation.

10 A Yes, I guess I would.

11 THE COURT: Overruled.

12 A I guess I was surprised to hear the
13 information.

14 Q And how long have you been in real estate,
15 Mr. Thomas?

16 A A total of about fifteen years.

17 Q Has a mortgage company or a bank officer ever
18 called you directly and disclosed this type
19 information?

20 A I can't recall one.

21 Q You can't recall a time that has ever
22 happened?

23 A Well, not in the sense where it was a call
24 out of the blue. If a client had contacted their
25 mortgage lender and allowed, that you can talk to

1 me about that, or had signed a document ahead of
2 time saying I was allowed to hear this information
3 on behalf of the client that would be a different
4 scenario.

5 Q And is that why you contacted, you felt it
6 was necessary to immediately let Miss Peggy know?

7 A Well, it was, she was my client and I have an
8 obligation to keep her abreast of anything that is
9 going on that would, you know, affect her property
10 and sale of her property, I thought this was
11 something.

12 Q And were you aware or are you aware of
13 whether or not Miss Peggy authorized Mr. Lovelace
14 to call you?

15 A I was not aware.

16 Q And as a result of that telephone call were
17 the prices for the four different lots changed?

18 MR. TYLER: Objection, Your Honor. I think
19 earlier he discussed he wasn't involved in those
20 meetings where those discussions were made.

21 THE COURT: If he knows he can answer but he
22 can't speculate or reflect what someone else told
23 him. He has to have personal knowledge.

24 A Well, I'm sorry, that is a deeper question
25 than I can answer I think in one sentence. This

1 whole process prior to the auction and the pricing
2 and the way we divided the properties up, some of
3 that was at the direction of Darwin and Peggy
4 Wheeler, some of that was as we all had talked
5 about it either in person in a meeting or as we
6 discussed, you know, on the phone or in person and
7 what we ended up with I can't say was a direct
8 result of this but it probably had some effect on
9 our thinking process.

10 Q And just so I'm clear, there was a change
11 made in the pricing of the lots, is that correct?

12 A From the original seven million for the whole
13 parcel, yes.

14 Q As an experienced real estate agent does it
15 make sense to you to have the same price assigned
16 to parcels that vary in acreage and locality?

17 A Well, in this situation I understand why we
18 did that.

19 Q Why is that?

20 A Because if the 4.8 million was the bottom
21 they would take, then whatever parcel that would be
22 sold would have to be a minimum of that if that is
23 what the client wanted. The client, though, would
24 have an option to make up the difference if they
25 wanted to. So as far as what the bank gets for

1 their note, for instance, if they got \$3,000,000
2 for one parcel the client could decide not to take
3 it or could take it and pay the other million
4 eight, make up the difference and have the rest of
5 the property to sell.

6 So there are a lot of parts to selling this
7 particular piece of property since there were
8 different options.

9 Q And in general, in your experience would you
10 assign the same price to property that varied in
11 acreage and locality?

12 A Well, again, you're talking about what are
13 the different sizes and locations. If you had a
14 prime location of a property that is smaller but
15 you have a bigger acreage that is not, you could
16 assign the same price. Commercial property, if
17 it's commercial it probably affects it more than
18 anything else. With residential property, probably
19 not as much.

20 Q Do you recall during your conversation with
21 Mr. Lovelace whether there was any discussion about
22 Darwin Wheeler?

23 A With Mr. Lovelace? Yes.

24 Q What was that discussion?

25 A Well, I mentioned that we were talking to

1 Darwin and that is when, that is what my note says,
2 South Causeway, LLC, being a single member, Peggy
3 Wheeler, he said something to the effect that,
4 "We're really dealing with Miss Peggy, that Darwin
5 doesn't really have anything legally to do with the
6 property or the LLC."

7 Q And did he question why you were talking with
8 Darwin?

9 A I can't -- well, other than for that reason.

10 Q And did the auction go forward?

11 A It did.

12 Q And was it successful?

13 A We did not receive any bids so I would say it
14 was not successful.

15 Q Does the reserve price that you set for a
16 parcel affect how the auction is conducted?

17 A Well, there are a couple different ways you
18 can use reserve price but in this case none of the
19 buyers were privy to what the reserve price was and
20 per the rules of the auction which were given out
21 to everybody who not only participated but in
22 advance, the owners will have the right to accept
23 or reject any offer that did not meet the reserve
24 price, so in that sense, no. It could have effect
25 as far as if somebody thought, well, if they don't

1 know what the reserve price is, the only thing that
2 might effect what we know the reserve price is, we
3 have to start it at a certain price above that to
4 get started.

5 Q And that is really my question, so it does
6 affect the auctioneer's process, what the reserve
7 price is, doesn't it?

8 A Yes, I guess it would.

9 Q And in this case the parcels ranged in size
10 from three to seven acres, is that right?

11 A I believe so. I have to look back at my
12 notes for the specific sizes but I think there were
13 some as small as three and some as large as seven.

14 Q And some were toward the front of the
15 property, on the road?

16 A That's correct.

17 Q Is that right?

18 A Yes.

19 Q But regardless of that, they were all set at
20 a price of 4.8 million dollars, isn't that right?

21 A Yes.

22 Q And the total amount for all four pieces, if
23 you bought them individually was more than buying
24 the entire parcel, isn't that right?

25 A That's correct.

1 Q Does that make sense to you?

2 A Well, we offered the whole parcel first and
3 so it wasn't maybe the best case scenerio, but it
4 wasn't necessarily how we would want to have done
5 it.

6 MS. BYRD: I think that that may be all the
7 questions I have for you. If you could, just give
8 me one moment.

9 I beg the Court's indulgence, Your Honor.

10 THE COURT: Yes, ma'am.

11 MS. BYRD: I have no further questions, Your
12 Honor.

13 THE COURT: All right.

14 Cross?

15 MR. TYLER: Thank you, Your Honor.

16 CROSS EXAMINATION BY MR. TYLER:

17 Q Mr. Thomas, I'm D. J. Tyler, we have met
18 before. Other than Chuck Cooper and anyone else in
19 your firm, did you ever disclose the information
20 that Mr. Lovelace provided to you to anyone
21 outside, any third party?

22 A No.

23 Q Do you know of any third party that ever knew
24 that information?

25 A I don't know of anybody.

1 Q Mr. Thomas, can you look at what has been
2 marked as Exhibit 2, please, the listing agreement.

3 A Okay.

4 Q Does that listing agreement, or doesn't that
5 listing agreement form the basis of your
6 obligations to South Causeway?

7 A Yes.

8 Q Did you comply with or meet all the
9 obligations of that, or your company?

10 A I hope we did. We didn't sell it but I don't
11 think that was necessarily -- I would have to look
12 through everything just to make sure if there was
13 anything specific.

14 Q Isn't it true that in your opinion you didn't
15 breach any of your, Christy breached, I'm sorry,
16 that Vintage didn't breach any of the terms of the
17 agreement?

18 A No, to the best of my knowledge we did not.

19 Q Tell me about, can you just explain what a
20 reserve price is?

21 A Basically it's the bottom line that the
22 seller will take to sell the property.

23 Q Okay.

24 A The bottom number.

25 Q And the jury is probably familiar with Ebay

1 where reserve prices may or may not be disclosed.

2 Are reserve prices typically disclosed at an
3 auction?

4 A Typically not but sometimes.

5 Q In this auction, we mentioned a little bit
6 about bidding, were there any bids placed at the
7 auction?

8 A No.

9 Q Do you know how many, do you know how many
10 people signed up to actually bid at the auction?

11 A There was two or three. I believe one person
12 dropped out before we even started bidding.

13 Q Okay. You mentioned the auctioneer. Do you
14 know how low he offered each one, the whole
15 property or how he started the bidding on different
16 parcels?

17 A I do not remember that.

18 Q In your opinion should Miss Cribb have
19 disclosed the information that Mr. Lovelace
20 provided to you?

21 MS. BYRD: Objection to the form of the
22 question, Your Honor, asking him if she should have
23 disclosed it. I don't think he testified to about
24 an obligation that a borrower has.

25 MR. TYLER: Your Honor, I'm just asking under

1 their agreement with South Causeway should she have
2 been required to disclose, should South Causeway
3 have been required to disclose the information that
4 Mr. Lovelace in fact disclosed to them.

5 THE COURT: I think it's proper.

6 MS. BYRD: Thank you, Your Honor.

7 THE WITNESS: I'm sorry, let me make sure I
8 understand. Your question is did Miss Cribb have
9 the obligation to disclose to me what I already
10 knew?

11 BY MR. TYLER:

12 Q Not what you already knew, absent what Mr.
13 Lovelace said?

14 A If that conversation with Mr. Lovelace took
15 place would it have been her obligation to tell me,
16 no.

17 Q And why is that?

18 A Well, she's, even though she's our client,
19 just as any client, they may say they have a bottom
20 line but they may have a different bottom line or
21 may have other reasons or other assets or other
22 ways to go and all I do is go by what they are
23 going to eventually tell us to do.

24 Q Isn't it true that South Causeway has the
25 right to set whatever reserve price they want to

1 set?

2 A Yes.

3 Q So in this, notwithstanding the disclosure,
4 South Causeway could have set the reserve price at
5 any number they wanted to?

6 A Yes.

7 Q Is Robbie Buice, was he a realtor with
8 Vintage at the time?

9 A He was.

10 Q Are you aware of any offers that were made,
11 other than the auction, were you aware of any other
12 offers that were made on the property?

13 A Are you talking prior to our --

14 Q Post the auction.

15 A Post auction?

16 Q Yes.

17 A No.

18 Q Okay. Would it be your opinion that the real
19 estate market plummeted around 2008 and all
20 commercial values, residential values started to
21 drop?

22 A That's pretty much documented.

23 Q Mr. Thomas, can you turn over to what I
24 believe is marked as Exhibit 5?

25 A Yes.

1 Q Can you read that last sentence of your
2 email, please?

3 A "Since we had discussed that possibility we
4 are going to have to address this with Miss Peggy
5 and make sure we are all on the same page as we
6 proceed with the action."

7 Q What, in what context is that?

8 A What was the possibility?

9 Q Yes.

10 A I believe we're talking about auctioning
11 either as a single or individual parcels.

12 Q So you all had already identified that as a
13 potential issue?

14 A We did in the sense of what would be the best
15 way to market it, individually or as one whole
16 piece.

17 Q Now, were you asked or requested to draft
18 this or prepare this email?

19 A No.

20 Q Do you know, you mentioned earlier that you
21 thought that this information was confidential, is
22 that in the realm of the real estate broker world?

23 A Yes, because it all goes back to
24 representation, you know, if you are representing a
25 buyer or seller you have certain obligations, some

1 information you may or may not want revealed to the
2 other side.

3 Q Do you know if that same duty or
4 responsibility would apply to a commercial bank in
5 a commercial lending, in a commercial loan?

6 A Specifically do I know? I do not know.

7 MR. TYLER: Your Honor, if I may have a
8 moment.

9 THE COURT: Yes, sir.

10 Q Mr. Thomas, were you aware prior to the
11 auction that South Causeway had had numerous offers
12 on the property?

13 A I was not.

14 Q Okay. Back on the, on the reserve, the
15 reserve price is not a true price, correct?

16 A Define true price.

17 Q It's not what, it is not a price in the sense
18 of they are offering to sell the property for 4.8?

19 A I think they would have sold the property for
20 4.8 million.

21 Q Sure, but it is not like going to Walmart and
22 the price on the sticker is 4.8 million?

23 A No.

24 Q In fact, if at the auction someone had bid
25 less than 4.8 million would that offer have still

1 been taken to South Causeway?

2 A Yes.

3 Q And at that point it would have been South
4 Causeway's ability or their judgment on whether or
5 not to accept that offer?

6 A That's right.

7 MR. TYLER: I have nothing further, Your
8 Honor.

9 THE COURT: Anything on redirect?

10 MS. BYRD: Yes, sir, briefly, Your Honor.

11 THE COURT: All right.

12 MS. BYRD: Your Honor, first may I ask to
13 publish the original contract to the jury?

14 THE COURT: Yes, ma'am.

15 MS. BYRD: Thank you.

16 REDIRECT EXAMINATION BY MS. BYRD:

17 Q Mr. Thomas, Mr. Tyler asked you about whether
18 you had made any disclosures to other people about
19 the disclosures Mr. Lovelace made to you. Is that
20 right?

21 A Right.

22 Q And you testified, I believe, that you did
23 not tell anybody what --

24 A He said outside our company, right.

25 Q How many people were in your company at the

1 time?

2 A At the time, it fluctuates but probably about
3 twelve.

4 Q And Georgetown is a pretty small community,
5 isn't it?

6 A It is.

7 Q And Mr. Tyler also asked you about how many
8 bidders there were, is that right?

9 A Yes.

10 Q I will show you what has been marked, I will
11 show you what has been marked as Exhibit Number 7.
12 Can you identify that document?

13 A Yes.

14 Q Will you please tell the jury what that
15 document is?

16 A It's the sign in sheet for the day of the
17 auction for anybody who wanted to bid.

18 Q And how many bidders are listed on that?

19 A Four.

20 Q Could you read the name of the first bidder,
21 please?

22 A It looks like Greg Curry.

23 Q Are you familiar with Mr. Curry's business,
24 Lincoln-Harris?

25 A I am not.

1 Q And Mr. Tyler asked you about the reserve
2 price and I just want to make sure that we're clear
3 on that. You testified that it does affect the
4 price at which the auctioneer starts the auction,
5 is that right?

6 A Yes.

7 Q So in that way the reserve price does affect
8 the auction?

9 A Yes.

10 MS. BYRD: I have no further questions, Your
11 Honor.

12 Thank you, Mr. Thomas, I appreciate your
13 time.

14 May Mr. Thomas be excused from his subpoena,
15 Your Honor?

16 THE COURT: Anything further?

17 MR. TYLER: Can I have one more quick
18 question, Your Honor.

19 THE COURT: Yes, sure.

20 RECROSS EXAMINATION BY MR. TYLER:

21 Q Mr. Thomas, I will be real quick. Miss Byrd
22 insinuated that employees of your company, because
23 there are twelve of them in the community, they may
24 be going out and telling things that are
25 confidential. Do you have any reason to believe

1 that would be true?

2 A I have no knowledge of that happening.

3 Q Would that be a violation of the real estate,
4 realtor's ethical duty not to disclose that
5 information?

6 A Well, I guess it might depend on how they
7 might have heard that information, whether they
8 really believed it was true or not.

9 Q But, Mr. Thomas, in this case it ultimately
10 didn't make any difference because there were no
11 bids at the auction?

12 A As far as I know.

13 MR. TYLER: Thank you. And I will release
14 the witness.

15 THE COURT: All right. Thank you very much,
16 sir, you are free to go.

17 THE WITNESS: Thank you.

18 (Witness excused).

19 THE COURT: Can I get you all to step up here
20 real quick, please?

21 (Unrecorded bench conference).

22 THE COURT: Ladies and gentlemen, I was just
23 trying to get a feel for the next witness, how long
24 it might take, and I think we're going to stop for
25 today and go ahead and pick back up first thing in

1 the morning.

2 As I told you the other day, please continue
3 to protect your ability to be fair and impartial
4 and do not have any conversation with folks about
5 the case, tell any family, friend or loved ones
6 that, ask them to remain patient and that when it
7 is over you will tell them whatever they want to
8 know.

9 There is no way of predicting the length of a
10 witness, how long it will take because one side may
11 say, "Judge, we've got an idea what our direct
12 examination may be," but then the other side, their
13 cross-examination may be affected by what is said
14 on direct and then of course you've got redirect,
15 so it is hard to judge. But what I will tell you
16 is I don't know, we're finishing a little early
17 today, we try to look at that 5:00 o'clock time
18 frame and shoot for that as a stopping point but
19 I'm probably going to back that up a little bit and
20 so I say that to you now, I don't know if anyone on
21 the jury has, sometimes folks have to pick up
22 children from a daycare or something like that but
23 I would tell you that I'm not saying that we will
24 go later than 5:00 tomorrow but I anticipate we
25 might, so I just want to give that heads up if you

1 need to make any arrangements or anything like
2 that. Okay?

3 Trials are living, breathing things, it
4 changes every 15 minutes, we may be done at noon
5 tomorrow, I just don't know, but I do want to tell
6 you that I want to get as much done as we can get
7 done so if we need to go a little longer tomorrow
8 we probably will do that, depending on our
9 situation. For example, we have still got more
10 time today but based on the next witness that the
11 defense is going to call, that testimony would take
12 us well beyond where we want to be, so we're going
13 to go ahead and stop today but I just want to give
14 you that heads up in case you need to make any
15 arrangements tomorrow.

16 If you would, please be back here at -- I
17 tell you what, let me ask you, if you would, to be
18 here at 9:00 o'clock, we'll go ahead and start a
19 little earlier which may help us on the back end if
20 we need that time on the back end, okay? So, I ask
21 if everyone would please be here ready to go at
22 9:00, we'll get started at that point and continue.

23 Okay, so if everyone else -- oh, I probably
24 don't need to tell you this after your first full
25 day here but try to get a good night's rest if you

1 can because as you probably experienced today jury
2 trials can be physically taxing, not necessarily
3 from a physical standpoint but they can be from a
4 mental standpoint, so obviously you're better
5 prepared to sit and listen and comprehend what is
6 going on if you are well rested, so to the extent
7 you can get to bed early and get a good night's
8 sleep try to do it, okay?

9 MR. COLLINS: Your Honor, might I inquire
10 what your practice is with regard to appointing a
11 foreman?

12 THE COURT: We're going to take care of that
13 tomorrow, and I have the jury select the foreperson
14 among yourselves. I used to appoint the foreperson
15 for a jury and what I found, we'll talk more
16 tomorrow about what the role of a foreperson is,
17 but it is not a difficult job at all but I had a
18 trial and I asked this young lady if she would be
19 willing to serve as the forelady of the jury and
20 she respectfully declined to do it. Well, that was
21 fine because I had a backup, so I asked the backup
22 if this gentleman would do it. Well, he
23 respectfully declined to do it. And I didn't have
24 a backup to my back up so I just kind of randomly
25 looked down the list and picked another person, I

1 said, "Ma'am, would you be willing to?" She didn't
2 want to do it either, so I said, "Okay, here's the
3 deal. We're going to have one, you all go back
4 there and select one," and from that point on I
5 think it is probably better to have you as a panel
6 decide or elect a foreperson because then what ends
7 up happening is the person who is serving in that
8 capacity actually is willing to do it and they are
9 not doing it because somebody asked them to do it,
10 so we'll do that tomorrow after we get started.
11 During one of our early breaks tomorrow I will get
12 you to take care of that but before you do that I
13 will explain to you a little bit more about the
14 forepersn's role and everything, so we will take
15 care of that tomorrow.

16 Have a wonderful evening and we'll see you
17 back here at 9:00 o'clock. Okay?

18 (The jury was excused from the courtroom).

19 THE COURT: Anything we need to take up this
20 afternoon?

21 MR. COLLINS: No, Your Honor.

22 THE COURT: All right. We're going to start
23 at 9:00 tomorrow, okay?

24 MS. BYRD: Yes, sir.

25 THE COURT: So let's get here then and be

1 ready to go.

2 MS. BYRD: Yes, sir.

3 THE COURT: You all have a wonderful evening,
4 we'll see you tomorrow morning.

5 MS. BYRD: Your Honor, may we approach?

6 THE COURT: Yes.

7 (Unrecorded bench conference).

8 MR. GODDARD: Can we put that on the record?

9 MR. FLOYD: I represent First South Bank, we
10 have no problem consenting, taking judicial notice
11 those are in.

12 THE COURT: There were a couple documents
13 that Miss Byrd intended to move in with Mr. Thomas,
14 she thought she had done it, she had not done it,
15 the plaintiffs looked at those documents and agree
16 that had she moved them in with Mr. Thomas sitting
17 there they would have not objected because they are
18 appropriate, so rather than have Mr. Thomas come
19 back here solely for that purpose they are going to
20 go ahead and agree that or consent that those are
21 in evidence without objection.

22 MR. GODDARD: Thank you.

23 MS. BYRD: Thank you very much.

24 MR. FLOYD: No problem.

25 (Closing Statement marked and received in

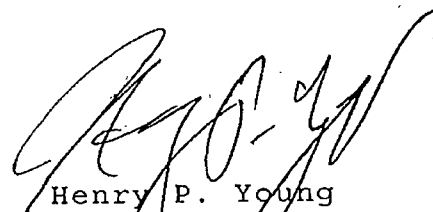
1 evidence as Defendant's Exhibit Number 1).
2 (Auction expenses marked and received in
3 evidence as Defendant's Exhibit Number 4).
4 (Recessed at 4:50 p.m., September 19, 2012).
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth 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 Georgetown County, South Carolina, on the 19th day of September, 2013.

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

March 8, 2013



Henry P. Young
Court Reporter

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2010-CP-22-1233

Appellate Case No. 2012-213524

First South Bank,

Respondent,

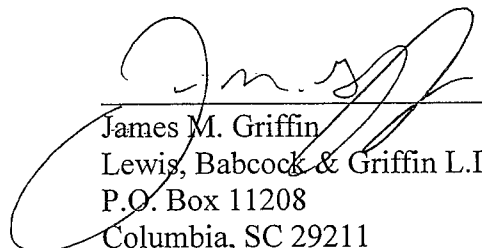
v.

South Causeway, LLC,

Appellant,

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



James M. Griffin
Lewis, Babcock & Griffin L.L.P.
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Attorney for Appellant

November 19, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
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Thomas A. Russo, Circuit Court Judge

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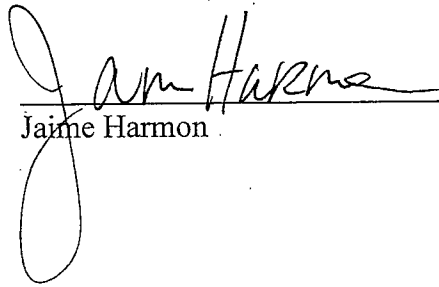
South Causeway, LLC,

Appellant,

PROOF OF SERVICE

I, Jaime Harmon, the undersigned employee of Lewis, Babcock & Griffin L.L.P, attorney for Appellant South Causeway, LLC, do hereby certify that I have served a copy of the foregoing **Record on Appeal**, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Joel W. Collins, Jr.
Christian Stegmaier
James L. Floyd, III
Collins & Lacy, P.C.
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Jaime Harmon

Columbia, South Carolina
November 19, 2013