

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master in Equity, Lexington County

CASE NO. 2009-CP-32-5373

Regions Bank Plaintiff

vs.

William S. Owens, David S. Hostetler,
Roland G. Paddy and Greer State Bank..... Defendants

OF WHOM:

William S. Owens is.....Appellant
and

Regions Bank, Roland G. Paddy
and Greer State Bank are.....Respondents

RECORD ON APPEAL – VOLUME I

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

2011 APR 14

IN THE COURT OF COMMON PLEAS

REGIONS BANK,

Plaintiff,

vs.

WILLIAM S. OWENS, DAVID S.
HOSTETLER, ROLAND G. PADDY, and
GREER STATE BANK,

Defendants.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Case No. 2009-CP-32-5373

**MASTER-IN-EQUITY'S ORDER AND
JUDGMENT OF FORECLOSURE AND
SALE**

Pursuant to Rules 53 and 71, SCRPC, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the cause.

Pursuant to the said reference, a hearing was held and attended by the following persons:

Bruce Wallace – Attorney for Plaintiff

Wes Johnson – Attorney for Defendant Roland G. Paddy

John Hilliard and Lex Gardner – Attorney for Defendant William S. Owens

Brook Fowler, attorney for Defendant Greer State Bank, was notified of the final hearing but told the court he would not attend the final hearing. Testimony was taken, which is reported herewith, and from the testimony and evidence, I hereby find, conclude and order as follows:

FINDINGS OF FACT

1. The Summons and Complaint were filed on December 1, 2009.
2. Service was made upon the Defendants in this action, as is shown by the proofs of service filed herein.
3. Defendant Roland G. Paddy filed an answer. The remaining Defendants have failed to answer the Complaint herein, and their defaults are a matter of record.

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4. Defendants and all attorneys of record were notified of the date, time and place of the numerous hearings in this matter.

5. Regions Bank loaned the sum of Seven Hundred Thousand and no/100 Dollars (\$700,000.00) to Defendants William S. Owens, David S. Hostetler, and Roland G. Paddy ("Borrowers") to refinance the existing loans on the subject property.

6. In consideration of the loan from Regions Bank, Borrowers executed that certain Promissory Note dated June 24, 2005, in the principal amount of Seven Hundred Thousand and no/100 Dollars (\$700,000.00) in favor of Regions Bank. The terms and conditions of the Promissory Note are incorporated herein by reference (hereafter, the "Promissory Note").

7. To secure the indebtedness evidenced by the Promissory Note, Borrowers, on or about June 24, 2005, made, executed and delivered to Regions Bank, that certain written mortgage whereby Borrowers mortgaged the subject property. The Mortgage was recorded on July 1, 2005 with the Register of Deeds for Lexington County in Book 10261 at Page 186.

8. Plaintiff herein is the sole owner and holder of the Promissory Notes, Mortgage, and all other related loan documents pertaining to the subject loan.

9. The Promissory Note provided for a maturity date of July 8, 2007.

10. On or about July 18, 2007, Plaintiff and Borrowers entered into that certain written extension agreement, which, in part, extended the maturity date of the Promissory Note until November 5, 2007.

11. On or about November 26, 2007, Plaintiff and Borrowers entered into that certain written extension agreement, which, in part, extended the maturity date of the Promissory Note until January 4, 2008.

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CLERK OF COURT
J. A. CAMPBELL

12. On or about January 25, 2008, Borrowers executed that certain Promissory Note (the "Second Promissory Note") in favor of Plaintiff which, in part, renewed the obligations of the original Promissory Note and extended the maturity date of the indebtedness until July 25, 2008.

13. On or about July 25, 2008, Plaintiff and Borrowers entered into that certain written extension agreement, which, in part, extended the maturity date of the loan until October 23, 2008.

14. On or about November 20, 2008, Plaintiff and Borrowers entered into that certain written extension agreement, which, in part, extended the maturity date of the loan until January 25, 2009.

15. On or about January 25, 2008, Borrowers executed that certain Promissory Note (the "Third Promissory Note") in favor of Plaintiff which, in part, renewed the obligations of the Promissory Note and the Second Promissory Note and extended the maturity date of the indebtedness until July 1, 2009.

16. Borrowers defaulted under the terms of the Promissory Note, Second Promissory Note, and Third Promissory Note, by among other things, failing to pay the entire outstanding balance of the loan upon maturity on July 1, 2009.

17. Borrowers have been duly notified, in writing, of the outstanding defaults and given the right to cure said defaults.

18. Borrower have failed and refused to cure said defaults under the subject loan documents.

19. I hereby find and conclude that Plaintiff is entitled to foreclosure of its Mortgage.

20. The Court received testimony regarding Plaintiff's total debt. Defendants challenged Plaintiff's right to recover, under the Notes and Mortgage, the following expenses: (1) appraisal fees; and (2) environmental investigation fees.

21. Plaintiff incurred appraisal fees in the amount of \$2,500.. The Mortgage, executed June 24, 2005, specifically provides for the recovery appraisal fees:

If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sums as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. ... [A]ll reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. *Expenses covered by this paragraph include, without limitation ... appraisal fees* Exhibit 2, page 4 (emphasis added).

22. Plaintiff incurred \$2,250 to obtain an environmental Phase I report. Witness for the Plaintiff testified the Bank requested the investigation because the property had a lake and underground aquifers. Witness for the Plaintiff confirmed the investigation included only a * "paper search" to ensure there was no reason to conduct a further, more in-depth investigation of the property.

23. The Mortgage grants Plaintiff the right to inspect the Subject Property for environmental compliance by Defendants. Specifically, the Mortgage provides:

Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's Interests and to Inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage. Exhibit 2 at 2.

24. The Assignment of Rents grants broader rights to Plaintiff to "visit and inspect" the subject property and for Defendants to pay for the costs of such inspections:

Grantor shall permit representatives of Lender from time to time to visit and inspect the collateral, ... the premises upon which the

collateral is located, ... to verify the amount, quantity, value and condition of ... the collateral, all at such reasonable times and intervals as Lender may desire. *Such inspections shall be conducted at Grantor's cost and expense.* Exhibit 9 at 3 (emphasis added).

25. I find the Plaintiff is entitled to recover the expenses related to appraisals and the environmental inspections, and that they are reasonable in scope, amount, and purpose.

26. Witness for Plaintiff testified that, under the circumstances then existing, the Bank processed an internal charge down of the principal balance of the loan, so the book value of the loan reflected the collateral value, and the Bank thereafter charged Defendants contract interest on the charged down amount. Witness for Plaintiff explained the charge down was required by federal banking authority. After a review of the relevant banking authority, the Court finds that such a charge down may be warranted, in certain circumstances, pursuant to Generally Accepted Accounting Principles, with which Plaintiff is required to comply pursuant to Federal Reserve Act of 1913, Regulation D. This charge down does not affect the outstanding principal due under the subject Promissory Note, and reflects an accounting adjustment only, for purposes of complying with federal banking regulators.

27. Based on the foregoing, As of December 3, 2010, I find that Plaintiff is entitled to judgment on the loan documents, in the amount of \$735,852.39, exclusive of interest after December 3, 2010, and attorneys' fees, as set forth below:

Principal Balance on the Note as of December 3 2010	\$642,564.00
Accrued Interest at 8.9% <i>per annum</i> from March 31, 2009 to October 30, 2009 (<i>per diem</i> of \$158.86)	\$23,987.43
Protective Advances (<i>ad valorem</i> real property taxes) paid October 30, 2009 and added to principal.	\$15,623.32
Accrued Interest at 8.9% <i>per annum</i> from October 30, 2009 to November 24, 2009 (<i>per diem</i> of \$162.72)	\$4,068.00

Environmental Phase I Report	\$2,250.00
Appraisal dated September 29, 2009	\$2,000.00
Updated Appraisal dated August 3, 2010	\$500.00
Accrued Interest at 8.9% per annum from November 24, 2009 until December 3, 2010 (<i>per diem</i> of \$118.67)	\$44,859.64
TOTAL DEBT AS OF DECEMBER 3, 2010	\$735,852.39

28. Defendants challenge Plaintiff's entitlement to attorneys' fees in the amount of fifteen percent (15%) of the indebtedness found above.

29. At the request of the Court, Plaintiff's counsel served an affidavit on Defendants' counsel detailing attorneys' fees and costs incurred in prosecuting this action on behalf of Plaintiff.

30. The Court ^{hear} ~~hear~~ argument from the parties regarding Plaintiff's entitlement to 15% attorneys' fees.

31. At the hearing on March 4, 2011, the Court invited counsel for Defendants to examine Mr. Bruce Wallace, Plaintiff's attorney, regarding his firm's fees and expenses charged in this litigation. Defendants declined the opportunity to so examine Mr. Wallace. Plaintiff has now filed the affidavit served on Defendants.

32. In the loan documents, the Borrowers agreed to pay all reasonable costs and expenses of collection including, but not limited to reasonable attorney fees. Specifically, Borrowers agreed to pay minimum attorneys fees of fifteen percent (15%) of the outstanding indebtedness, which would equal One Hundred and Twelve Thousand Three Hundred and Fifty-Seven and 66/100 Dollars (\$112,357.66).

33. The Plaintiff, Regions Bank, asked this Court to award an attorney fees in amount the of fifteen percent (15%) of the debt. The Plaintiff's request is denied for the following reasons discussed below.

Plaintiff argued that the mortgage contract drafted by the Plaintiff unambiguously grant them an attorney fees of fifteen percent (15%) of the debt in event of a borrower default of payment. The pertinent parts of the contract are the following:

"...Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorney's fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expense incurs that in Lender's opinions are necessary at any time..."

And

"Expense covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lenders reasonable attorney's fees in an amount not less than fifteen percent (15%) of the amount owing on the indebtedness and Lender's legal expenses whether or not there is a lawsuit."

Relying on the Dedes v. Strickland, 307 S.C. 155, 414 S.E.2d 134 (S.C. 1992), the plaintiff argued that the language is identical to the Dedes case which should allows the Plaintiff to obtain an attorney fees of fifteen percent (15%) of the debt.

Under the "American Rule," the parties to a lawsuit generally bear the responsibility of paying their own attorney's fees. Thus, unless provided for by (i) ^{(i) (ii)} contract, (ii) statute, and (iii) equity-i.e. common fund, each side pays their own attorney fees. If the parties strictly agreed upon an attorney fees rate of 15% in event of borrower default, South Carolina Courts generally will enforce such term providing that the attorney fees are not ambiguous and unconscionable.

A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear. Jordan v. Sec. Group, Inc., 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993). The court shall construe ambiguous contract against the drafter. Greenville County v. Ins. Reserve Fund, 313 S.C. 546, 547-548, 443 S.E.2d 552, 553 (1994).

The court finds that the contract is ambiguous and not the same language as the Dedes case. Since more than one interpretation as to how reasonableness and fifteen percent (15%) should be construed, the court finds that the agreement is ambiguous. The court construes the contract against the Plaintiff as the drafter. The Court denies Plaintiff's request of an attorney fees in the amount of fifteen percent (15%) of the debt. Since the contract is ambiguous, the court is bound to determine the amount of attorney fees by reasonableness factors.

Even if the mortgage contract is not ambiguous, attorney fees of fifteen percent (15%) of the debt (resulting in the Plaintiff receiving over two times (2X) the amount of hours worked) would shock the conscious of the court, which is analogous to the standard used by the court to determine when a bid at foreclosure sale is too low so as to require a new sale. The courts always maintain equitable discretion in awarding attorney fees. Enoree v. Yarborough, 120 S.C. 385, 113 S.E. 313 (1922). S.C. Nat'Bank v. S&L Investment, 308 S.C. 511 (Ct. App. 1992).

While certainly not completely analogous, nor apples to apples, the Layman ^{case} ⁽³¹⁾ is instructive for two points. First, the Layman ^{case} ⁽³¹⁾ distinguished the two exceptions to the "American Rule": (1) fee-shifting arrangement and (2) common fund doctrine. Layman v. State, 376 S.C. 434, 658 S.E.2d 320 (S.C. 2008).

Common Fund doctrine allowed plaintiff to recover attorney fees by the percentage of the recovery. In contrast, fee-shifting statute allowed plaintiff to recover attorney fees based on the amount of time that was reasonably expended on the litigation. The Layman Court stated that

a common fund doctrine is appropriate only when the attorney's fee are not assessed against the losing party by fee-shifting, but rather, are taken directly from the common fund or recovery and borne by the prevailing party through fee-spreading. See Burke v. Ariz. State Ret. Syst., 206 Ariz 269, 77 P.3d 444, 448 (Ct. App. 2003) (Cited by ^{the} ~~The~~ ^{case} Layman Case with approval.) However, where, the attorney's fees are being shifted to a losing party, The Layman Court found it both illogical and erroneous to calculate fees using the common fund doctrine by percentage of the debt.

Secondly, ^{the} The Layman Case ^{is} is instructive in using the lodestar analysis to determine an award of "reasonable" attorney's fees. A lodestar figure is designed to reflect the reasonable time and effort involved in litigating a case, and is calculated by multiplying a reasonable hourly rate by the reasonable time expended. Using this as a starting point for reasonableness, a court may consider other factors justifying an enhancement of the lodestar figure with a "multiplier" before arriving at a final amount.

In determining the reasonable time expended and a reasonable hourly rate for purpose of calculating attorney's fees, South Carolina courts have historically relied on six common law factors of reasonableness: (1) the nature, extent, and difficulty of the case, (2) the time necessarily devoted to the case, (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. In a hourly rate agreement, the court is bound by the six factors reasonableness test. While no one factor is controlling, time spent is perhaps "first among equals."

Six factors of reasonableness test is not strictly a time sheet analysis; if it was, courts would simply require calculator and review of time sheets. Instead, there are other factors required to be considered that reflect the "value billing" aspect illustrated in the old story about

owner whose plant was about to blow up. He calls a plumber who spends about 30 minutes ^{walking} ~~waking~~, listening and tapping, and then fixes the problem and leaves. Plumber sends bill for \$10,000 and owner is shocked and demands new, itemized bill. Plumber complies and new bill states (1) \$50.00 Plumber hourly rate (2) \$9,950.00 Plumber knowing where to look and tap. I believe the other 5 factors represent the court recognizes that experience, speed, etc., are also to be valued in determining attorney fees. Otherwise, the more experienced attorney who does job quicker, better and more efficiently, is in effect, penalized as against the less experienced attorney who takes longer to do the same task.

The question becomes: How does one determine value of the non-time factors?

Here, none of the Defendants disputed the time and even (to their credit) relayed to court that they believed Plaintiff's attorney did admirable job during this non-routine commercial foreclosure matter.

In both instances ^{the} ~~The~~ Layman Case and this case) the fee paying mechanism is a fee shifting event. The Layman court looked at hours as the lodestar and then applied a multiplier (1.25) in an attempt to quantify the other factors. (Some what like the court in the above low bid case established a mathematical formula that determined when a low bid shocked the conscience.)

The Court takes judicial notice of a range of 2%-10% being a reasonable fee range in a contested case subject to reasonable factors test. If the lodestar test plus multiplier of 1.25 is applied to hourly attorney fees total (i.e. \$50,000) would be within the 2-10% range. Therefore, the court awards (i) costs and (ii) a reasonable attorney fees of billed hourly hours plus a multiplier of 1.25.

34. The amount due and owing to Plaintiff on the aforesaid loan, with interest and other costs and expenses of collection, including attorney's fees, is computed as follows:

Total Debt as of December 5, 2010	\$735,852.39
Attorney's Fees (\$53,923.75 x 1.25)	\$67,404.69
Expenses	\$2,991.70
Total Debt Secured By Mortgage	\$806,248.78

35. Interest for the period from December 3, 2010, through the date of this judgment at the rate of 8.9% per annum shall be added to the above stated Total Debt Secured by Mortgage to comprise the amount of the judgment debt entered herein, and interest after the date of judgment at the same rate shall be added to such judgment debt to comprise the amount of the debt through the date to which such interest is computed.

36. Plaintiff has not waived a deficiency judgment, such that the bidding shall remain open for thirty days after the date of the sale.

CONCLUSIONS OF LAW

- A. Plaintiff should have judgment of foreclosure of its Mortgage.
- B. A mortgage is a contract between the parties signing it. The mortgage will be construed as any other contractual agreement. Therefore, the primary concern in construing the instrument is the intent of the parties. In discerning that intent, meaning should be given to all words and provisions used, if possible. United States Leasing Corp. v. Janicare, Inc., 294 S.C. 312, 364 S.E.2d 202 (Ct. App. 1988). As in the case with any other written agreement, the court will not make a new contract for the parties, nor will it not add to or eliminate any of the terms or provisions of the mortgage itself. C.A.N. Enterprises, Inc. v. South Carolina Health & Human Services Finance Comm'n, 296 S.C. 373, 373 S.E.2d 584 (1988). "It is not the function of the

court to rewrite contracts for parties.” Lewis v. Premium Inv. Corp., 351 S.C. 167, 171, 568 S.E.2d 361, 363 (2002)(citing C.A.N. Enterprises, Inc., *supra*).

The construction of a clear and unambiguous contract presents a question of law for the court. ... [The Courts] are without authority to alter an unambiguous contract by construction or to make new contracts for the parties. ... ‘A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties’ failure to guard their rights carefully.’”

U.S. Bank Trust Nat. Ass'n v. Bell, 385 S.C. 364, 379, 684 S.E.2d 199, 207 (Ct.App. 2009).

C. Plaintiff is entitled to recover its expenses incurred for appraisals and environmental inspections, and reasonable attorneys’ fees as set forth hereinabove.

D. The subject property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That, as of December 3, 2010, there is due to Plaintiff, on the loan secured by the Mortgage set forth in the Complaint, the sum of Eight Hundred and Six Thousand Two Hundred Forty-Eight and 78/100 Dollars (\$806,248.78) representing the “Total Debt Secured by Mortgage” due Plaintiff as set out hereinabove, together with interest at the rate of 8.9% per annum on the balance of principal from the aforesaid date to the date hereof.

2. The said amount due Plaintiff shall bear interest hereafter at the rate of 8.9% per annum.

3. That the party or parties liable for the aforesaid mortgage debt, shall, on or before the date of sale of the property hereinafter described, pay to Plaintiff or its attorneys the amount of the debt owed as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the subject property described herein be sold by the undersigned Master-in-Equity, or his designee at public auction,

at the Lexington County Judicial Center, in the City of Charleston, County and State aforesaid, on some convenient sales day hereafter as set by the Court, on the following terms, that is to say:

- (a) FOR CASH: The undersigned Master-in-Equity will require a deposit of five percent (5%) on the amount of the bid, in cash or its equivalent, same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within twenty (20) days same to be forfeited and applied to the costs and plaintiff's debt.
- (b) Interest on the balance of the bid shall be paid through the day of compliance at the rate of 8.9% per annum.
- (c) The sale shall be subject to taxes, assessments, existing easements, and easements and restrictions of record.
- (d) Purchaser to pay for deed stamps and cost of recording the deed.
- (e) That if Plaintiff is the successful bidder at said sale for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the undersigned Master-in-Equity only the amount of the costs and expenses, crediting the balance of the bid on its indebtedness. ✓

5. As a deficiency judgment has not been waived, the bidding shall remain open for thirty days after the date of the sale.

6. That the undersigned Master-in-Equity will, by advertisement according to law, give notice of the time and place of such sale, and the terms thereof; and will execute to the purchaser or purchasers a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale, and 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 undersigned Master-in-Equity may advertise the said property for sale on the next or some other subsequent sales day, as set by the Court, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured.

7. That should Plaintiff or an agent of Plaintiff fail to appear to bid at the time of sale, the property will be withdrawn from sale and sold at the next available sales date.

8. Plaintiff may waive any of its rights, including its right to a personal deficiency judgment, at any time prior to the foreclosure sale.

9. That the undersigned Master-in-Equity shall apply the proceeds of the sales of the properties as follows:

FIRST: To payment of the amount of costs and expenses of this action:

NEXT: To the payment to Plaintiff or its attorney of the amount of debt owed to plaintiff and interest, so much thereof as the purchase money will pay on the same; and

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

10. That Defendants named herein and all persons whosoever claiming under the Defendants be forever barred and foreclosed of all right, title, interest and equity of redemption in the subject property, or any part thereof.

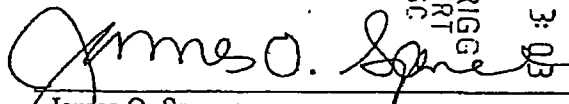
11. That the deed(s) of conveyance made pursuant to said sale shall contain the names of only Plaintiff, the defendants who were the title holders of the property at the time of the filing of the Lis Pendens, and the grantee; and the Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deeds.

12. That the undersigned Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure and to hear any post-judgment matters, including but not limited to the issuance of a Writ of Assistance.

13. A description of the subject property encumbered by the Mortgage herein ordered to be sold is attached hereto as Exhibit "A".

AND IT IS SO ORDERED.

April 11, 2011


James O. Spence
Master-in-Equity, Lexington County

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2011 APR 14 3:03
KATHA A. CARRIGG
CLERK OF COURT
LEXINGTON SC

EXHIBIT "A"

Property Description

All that certain piece, parcel or tract of land, together with the improvements thereon, containing ninety-nine and thirty-seven hundredths (99.37) acres, more or less; situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as "Tract G" on a Plat prepared by C.L. Hartley, RLS, dated 29 March 1912 and recorded in the office of the Lexington County Register of Deeds in Plat Book 49-G at page 109, and having the following metes and bounds: One the North by property now or formerly of Felix Burgess and measuring thereon a distance of fifty-seven (57) chains, more or less; One the East by property now or formerly of Johnson and Johnson and measuring thereon a distance of thirteen and forty-four hundredths (13.44) chains, more or less; One the South by property now or formerly of E. Hall and measuring thereon a distance of sixty and forty-six hundredths (60.46) chains, more or less; and One the West by the run of Chinquapin Creek. Further reference is made to that certain boundary survey prepared by James F. Drafts, RLS, dated 21 July 2003 and filed with the Lexington County Register of Deeds on 13 August 2003 in Record Book 8522 at page 73.

BEING the identical property conveyed to William S. Owens, Roland G. Paddy and David S. Hosteiler by deed of D&E of Myrtle Beach, LLC dated June 24, 2005 and recorded July 1, 2005 in the Lexington County Register of Deeds office in Deed Book 10261 at page 104.

Tax Map Number: 009300-04-005



A. William Roberts, Jr. & Associates

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NOTICE OF SALE
Case No. 2009-CP-32-5373

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BY VIRTUE of a Decree of the Court of Common Pleas for Lexington County, South Carolina, heretofore granted in the case of *Regions Bank v. William S. Owens, David S. Hostetter, Roland G. Paddy, and Greer State Bank*, I, the undersigned Master-in-Equity for Lexington County, South Carolina or my agent, will sell on Monday June 6th, 2011 at 11:00 A.m., at the Lexington County Judicial Center, Lexington, South Carolina, to the highest bidder, the following described property, to wit:

All that certain piece, parcel or tract of land, together with the improvements thereon, containing ninety-nine and thirty-seven hundredths (99.37) acres, more or less; situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as "Tract G" on a Plat prepared by C.L. Hartley, RLS, dated 29 March 1912 and recorded in the office of the Lexington County Register of Deeds in Plat Book 49-G at page 109, and having the following metes and bounds: One the North by property now or formerly of Felix Burgess and measuring thereon a distance of fifty-seven (57) chains, more or less; One the East by property now or formerly of Johnson and Johnson and measuring thereon a distance of thirteen and forty-four hundredths (13.44) chains, more or less; One the South by property now or formerly of E. Hall and measuring thereon a distance of sixty and forty-six hundredths (60.46) chains, more or less; and One the West by the run of Chinquapin Creek. Further reference is made to that certain boundary survey prepared by James F. Drafts, RLS, dated 21 July 2003 and filed with the Lexington County Register of Deeds on 13 August 2003 in Record Book 8522 at page 73.

BEING the identical property conveyed to William S. Owens, Roland G. Paddy and David S. Hostetter by deed of D&E of Myrtle Beach, LLC dated June 24, 2005 and recorded July 1, 2005 in the Lexington County Register of Deeds office in Deed Book 10261 at page 104.

Tax Map Number: 009300-04-005

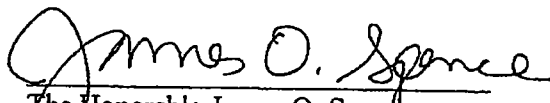
TERMS OF SALE: The successful bidder(s), other than the Plaintiff, will deposit with the Master-in-Equity or his agent, at the conclusion of the bidding, five (5%) percent of the bid,

in cash or equivalent, as evidence of good faith, same to be applied to purchase price in case of compliance, but to be forfeited and applied first to costs and then to Plaintiff's debt in the case of noncompliance. Should the last and highest bidder(s) fail or refuse to make the required deposits at the time of the bid or comply with the other terms of the bid within twenty (20) days, then the Master-in-Equity or his agent may resell the properties on the same terms and conditions on some subsequent sales day at the risk of the said highest bidder(s).

The sales shall be subject to Lexington County taxes and assessments and to existing easements and restrictions of record.

Purchaser(s) to pay for the preparation of the Deed(s), documentary stamps on the Deed(s), recording of the Deed(s), and interest on the amount of the bid(s) from date of sale to date of compliance with the bid(s) at the contract rates of interest.

As a deficiency judgment is being demanded, the bidding will remain open for thirty (30) days after the date of sale as provided by law. **REGIONS BANK RESERVES THE RIGHT TO WAIVE THE DEFICIENCY UP TO AND INCLUDING THE DATE OF SALE.**


The Honorable James O. Spence
Master-in-Equity for Lexington County

Lexington, South Carolina

April
December 13, 2010

NEXSEN PRUET, LLC
Post Office Box 486
Charleston, South Carolina 29402
(843) 577-9440

Attorneys for Plaintiff

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BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC
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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

REGIONS BANK,

Plaintiff,

vs.

WILLIAM S. OWENS, DAVID S.
HOSTETLER, ROLAND G. PADDY, and
GREER STATE BANK,

Defendants.

IN THE CIRCUIT COURT

Case No. 2009-CP-32-5373

**ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER**

This matter comes before the Court by the motion of Defendant William S. Owens to reconsider the Court's Order dated November 30, 2010, wherein the Court denied Defendant's Motion to Set Aside Entry of Default. The Court presided over a hearing on the Motion to Reconsider on March 4, 2011. Present at the hearing were counsel for Plaintiff, Bruce Wallace; counsel for Defendant Owens, John M. Hilliard, III and Cheevin T. Gardner; and counsel for Defendant Roland G. Paddy, W. Wesley Johnson, Jr. For the reasons stated herein, Defendant's Motion to Reconsider is DENIED.

Defendant Owens argues this Court should not impute the negligence or failure of Roland Paddy to him in refusing to set aside entry of default in this case. In support of his argument, Owens cites the case of Roberts v. Peterson, 292 S.C. 149, 355 S.E.2d 280 (Ct.App. 1987). In Roberts, the court set aside an entry of default against a teacher who gave the suit papers to her employer, but the employer did not hire an attorney to file an answer. The Court finds Roberts distinguishable on two grounds. First, the defendant in Roberts had a right to rely on her employers to transmit the suit papers to the school district's attorneys. Owens had no right to rely on Paddy to file an Answer on Owens' behalf, and Owens has not advanced a factual or legal basis for finding Owens had such a right to rely.

Second, the Court in Roberts said the school district's "business is education not litigation," such that their failure to get the suit papers to an attorney is more excusable than an insurance company's failure. Id. at 151, 355 S.E.2d at 281. Furthermore, the Court noted that the Roberts case was filed right after State immunity was repealed by statute, such that "State and County employees now have, or should have, detailed instructions and procedures to follow when served with suit papers; this was not the situation in the case before us which was instituted in early 1985." Therefore, the twofold lack of focus on litigation and lack of procedures for handling lawsuits compelled the court's decision to set aside the default judgment. Owens has not demonstrated the same policy considerations warrant setting aside entry of default here.¹

Defendant Owens again argued that the (1) relationship between Owens and Paddy and (2) the circumstances of their conversation about the lawsuit require that this court in its exercise of discretion vacate the default.

This argument is unpersuasive.

First, Owens admits that (1) Owens and Paddy had no formal relationship, i.e. they were not in a partnership nor were they in an employer-employee relationship; (2) Owens does not claim, nor prove, that Paddy either committed fraud by deliberately misleading Owens into believing Paddy would file an answer on Owens's behalf, nor that Paddy agreed to file such an answer and negligently failed to do so.

The facts indicate Owens made a unilateral mistaken assumption that Paddy would file an Answer on Owens's behalf. Owens never took proper steps to (1) confirm with Paddy that Paddy would file an answer (2) request a copy of the answer in a timely fashion (3) ask for name

¹ The Roberts trial court also found the defendant had a meritorious defense, a showing not made by Owens as explained herein.

of Paddy attorney so he could set time to agree to hire Paddy's attorney and confer with him about the case.

This claim of "I thought he would answer for me" under these circumstances, do not constitute excusable neglect.

Defendant advances one additional ground not previously considered by the Court in support of his Motion to Reconsider. Defendant argues the Court has not made specific findings of facts as to the factors enumerated in Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 381 S.E.2d 499 (Ct.App.1989). "The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause." Sundown Operating Co., Inc. v. Intedger Industries, Inc., 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009); Dixon v. Besco Engineering, Inc., 320 S.C. 174, 463 S.E.2d 636 (Ct.App. 1995). While it is clear to the Court there is sufficient evidentiary support on the record for the finding of the lack of good cause, the Court makes the following finding of facts and conclusions of law.

FINDINGS OF FACT

1. *The timing of Defendant's motion for relief.* Plaintiff filed the Affidavit of Default on March 19, 2010, whereupon the Clerk entered default against Owens. Owens filed his Motion to Set Aside on July 16, 2010, one hundred and nineteen (119) days and almost four (4) months after the entry of default. This delay strongly weighs against setting aside entry of default. See, e.g., Richardson v. P.V., Inc., 383 S.C. 610, 682 S.E.2d 263 (2009)(finding a delay of 2 months after entry of default to move to set aside entry of default too long).

2. *Whether Defendant has a meritorious defense.* "A meritorious defense need not be perfect nor one which can be guaranteed to prevail at a trial. It need be only one which is

worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence.” McClurg v. Deaton, 380 S.C. 563, 575, 671 S.E.2d 87, 94 (Ct.App. 2008). In this case, there is no dispute that the Note and Mortgage have matured. Likewise, there is no dispute the Note has not been repaid by Defendants. The only issue, as stated by Counsel for Defendants on the record at the March 4 hearing, is Plaintiff’s entitlement to a deficiency judgment against Defendants, particularly Owens.²

In his proposed answer, then, Defendant Owens alleges he did not sign the Note or Mortgage. Owens reiterated this in his deposition, but also testified that he was not supposed to be an owner of the mortgaged property. However, the testimony of two *disinterested* witnesses, Roland Paddy and Michele Refosco, shows Owens did sign the Note and Mortgage, and the terms of the same were explained to him at closing. Additionally, Owens has engaged in several other transactions with Paddy, and admitted that he may have signed some of the promissory note renewals in this loan transaction without reading them. Based on the record, then, Owens has not made a *prima facie* showing of a meritorious defense.

3. *The degree of prejudice to Plaintiff if relief is granted.* Plaintiff would be substantially prejudiced by setting aside entry of default in this case. Defendant Owens has, in addition to generally denying signing the loan documents, alleged as a counterclaim that Plaintiff committed unfair or deceptive trade practices in violation of the South Carolina Unfair Trade Practices Act. These allegations give rise to a legal cause of action, which would then entitle Owens to a jury trial. Therefore, granting Owens the relief he seeks would create substantial prejudice to Plaintiff in the form of delay in the trial of the merits of this action. See, Rule 40(f),

² Counsel for Owens stated on the record that should Plaintiff waive its request for deficiency judgment, the parties would stop defending the action.

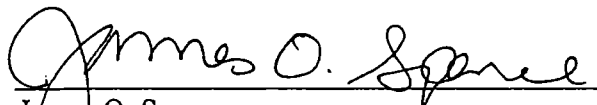
South Carolina Rules of Civil Procedure (actions will be transferred to the trial jury roster 12 months after filing). Additionally, Owens' counterclaim would substantially broaden the scope of this case, further prejudicing Plaintiff.

Finally, if allowed to proceed on his Answer and Counterclaim, Owens' would assert a factually inconsistent position. On the one hand, Owens maintains he did not sign the Note and Mortgage, and he is not an owner of the mortgaged property. On the other hand, Owens denies Plaintiff has the right to foreclose its Mortgage, even though Owens asserts he had not interest the mortgaged property. This inconsistent position, if allowed, would also substantially prejudice Plaintiff.³

CONCLUSIONS OF LAW

Defendant has failed to demonstrate he is entitled to set aside the Entry of Default under the Wham factors. For that reason, Defendant's Motion to Reconsider is DENIED.

AND IT IS SO ORDERED THIS 9th DAY OF MARCH, 2011.



James O. Spence
Master in Equity
Lexington County

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CLERK OF COURT

~~It appears to the Court Plaintiff should be judicially estopped from asserting that the~~
~~Federal Circuit in Daney, 527 S.C. 242, 469 S.E.2d 412 (1997).~~ (Jai)

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

REGIONS BANK,

Plaintiff,

vs.

WILLIAM S. OWENS, DAVID S.
HOSTETLER, ROLAND G. PADDY, and
GREER STATE BANK,

Defendants.

FILED

IN THE CIRCUIT COURT

2010 JAN - 1 A 10: 02

Case No. 2009-CP-32-5373

BETH A. CARRIGS
CLERK OF COURT
LEXINGTON

ORDER DENYING DEFENDANT'S
MOTION TO SET ASIDE ENTRY OF
DEFAULT, LEAVE TO FILE ANSWER,
AND CONTINUANCE

This matter comes before the Court on Defendant William S. Owens' Motion to Set Aside Entry of Default, Leave to Answer and Continuance. The undersigned conducted a hearing on the Motion on November 19, 2010. Present at the hearing were Wes Johnson, attorney for Defendant Roland G. Paddy; John M. Hilliard, III, attorney for Defendant William S. Owens; and Bruce Wallace, attorney for Plaintiff. After listening to argument from counsel, reading the memoranda filed by the parties, and considering the relevant case law, the Motion is DENIED.

FACTUAL BACKGROUND

Plaintiff filed this action on December 1, 2009. Defendant William S. Owens was personally served by Timothy R. Hecker on January 26, 2010. See, Affidavit of Service filed February 3, 2010. Counsel for Plaintiff filed an Affidavit of Default as to Owens on March 19, 2010. See, Affidavit of Default. The circuit court referred this action to the Master in Equity on March 2, 2010. The Master in Equity set this matter for final hearing on July 19, 2010. Counsel for Plaintiff notified William S. Owens of the final hearing by letter dated June 22, 2010. See, Exhibit "A" attached hereto. Thereafter, counsel for Owens filed the subject Motion on July 16, 2010, almost six (6) months after service of process and four (4) months after entry of default/

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Counsel for Owens also filed an Affidavit signed by Owens and a proposed Answer and Counterclaim in support of the Motion.

In his affidavit, Owens presents the following salient facts. First, he “never knowingly and willingly entered into the loan with Plaintiff.” Affidavit of Owens, ¶ 2. Second, Owens states, “I have never been contacted by the Plaintiff concerning the loan that is the subject of Plaintiff’s Complaint.” Id., ¶ 5. Third, Owens states, “Roland G. Paddy indicated to me that he would have his attorney answer Plaintiff’s Complaint on both our behalf [sic].” Id., ¶ 6.

In his proposed Answer, Owens “denies being a borrower of said loan” Answer, ¶¶ 8 and 9. Also, Owens denies signing the “loan contract,” or alternatively, “denies knowingly [entering] into a loan contract with the Plaintiff.” Id., ¶ 14. Finally, Owens claims Plaintiff breached some standard of care by failing to “investigate or contact Defendant Owens to determine if Defendant Owens had any intention to participate in the loan.” Id., ¶ 19. In his deposition, Owens testified that (1) he is not the owner of the subject real property; (2) any deed to the subject real property with his name on it is incorrect; (3) he never agreed to borrow money to purchase the subject real property; and (4) he never went to an attorney’s office to sign papers on the subject loan. Deposition of William S. Owens, p. 26, line 13 to p. 28, line 3.

Owens claims he first found out about the foreclosure action when “papers were sent to the shop from Regions.” Owens depo. at p. 32, line 23 to p. 33, line 1. Defendant Paddy came to speak with Owens, and Paddy said he got an attorney in Columbia that would defend the lawsuit. Owens depo. at p. 33, ll. 1-5. Owens asked why his name was on the loan, but never received an answer from Paddy. Owens depo. at p. 33, ll. 6-9.

Defendant Roland Paddy’s deposition testimony contradicts Owens’ testimony in certain material aspects. Mr. Owens and Paddy had been conducting business together since 1974.

Deposition of Roland Paddy, p. 9, line 20 to p. 10, line 10. In this subject loan transaction, Paddy testified that Owens' signature is on the loan documents because they signed the documents together. Paddy depo., p. 22, ll. 8-21; p. 37, ll. 5-14. Also, Paddy testified that he, Defendant Hostetler, and Defendant Owens all appeared at the closing attorney's office together to sign the loan documents. Paddy depo., p. 60, line 18 to p. 61, line 6. Nowhere in his deposition did Paddy testify that he retained an attorney to answer on behalf of Owens.

Michele Paddy Refosco was the attorney who closed the loan transaction for the defendants. She testified that Hostetler, Owens, and Paddy came to her office to sign the subject loan documents on June 24, 2005. Deposition of Michele P. Refosco, p. 13, line 24 to p. 14, line 8. Specifically, all three defendants signed the Note, Mortgage, and HUD-1 Settlement Statement in the presence of Refosco. Refosco depo. at p. 17, ll. 1-24. Pursuant to the Patriot Act, Refosco copied Owens' driver's license when he came to the closing. Refosco depo. at p. 20, ll. 15-19. Furthermore, Refosco would not have allowed Owens to sign the loan documents if he appeared to misunderstand the transaction. Refosco depo. at p. 30, ll. 4-10. Finally, Refosco is confident Owens personally signed the loan documents in her presence, because she knew him prior to her law practice, having had over 12 transactions with Owens through Paddy's business. Refosco depo. at p. 33, ll. 10-25.

DISCUSSION

The Motion is controlled by the "good cause" standard of Rule 55(c) of the South Carolina Rules of Civil Procedure. Rule 55(c) provides that "for good cause shown the court may set aside an entry of default ..." "[A] plain reading of Rule 55(a) allows entry of default when a pleading or defense is asserted in a manner noncompliant with the Rules of Civil Procedure." Stark Truss Co., Inc. v. Superior Construction Corp., 360 S.C. 503, 509, 602 S.E.2d 99, 102 (Ct. App. 2004). A holding to the contrary would render the requirements of Rule 12(a)

of the South Carolina Rules of Civil Procedure ("SCRCP") irrelevant. Id. The Defendant bears the burden to prove the Court should set aside the entry of default in this case.

Owens asserts several grounds in support of his Motion to set aside entry of default: (1) he has a good reason for not filing a timely answer, to wit: he relied on the representations of Defendant Roland Paddy who allegedly promised to hire an attorney to file an answer on both their behalves; (2) he timely filed his Motion to Set Aside; (3) he has asserted a meritorious defense; and (4) the Plaintiff will suffer no prejudice if the entry of default is set aside. None of these reasons are persuasive.

At the outset, the Court notes that under the prevailing authorities, primarily Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 681 S.E.2d 885 (2009) and Richardson v. P.V., Inc., 383 S.C. 610, 682 S.E.2d 263 (2009), if Owens cannot provide a "satisfactory explanation for the default," the Court's inquiry ends and the Motion will be denied. Also, this Court is not required to make specific factual findings regarding the factors enunciated in Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 381 S.E.2d 499 (Ct.App. 1989). See, Dixon v. Besco Engineering, Inc., 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App. 1995) ("We decline to read Wham as requiring the trial judge to make specific findings of these factors").

1. Defendant presents no "Good Cause" for failing to answer the Complaint, and therefore fails to meet the standard under Rule 55 (c).

Owens testified in his affidavit filed with the Court and in his deposition that Defendant Paddy represented that Paddy would hire an attorney to answer for both Owens and Paddy. While Owens' testimony is consistent on this point, Paddy did not corroborate Owens' testimony. In fact, nowhere in the record before the Court does Paddy agree or suggest he would

hire an attorney to answer for Owens. In the case at hand, Defendant's mistaken belief that a fellow defendant would answer on his behalf does not meet the "good cause" standard:

The courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant. ... In this case, Allstate's failure to answer the complaint is imputed to Miller. Accordingly, because no explanation was offered for Allstate's failure to respond to the complaint, we find no abuse of discretion here and affirm the trial court's refusal to set aside the default. Pilgrim v. Miller, 350 S.C. 637, 642, 567 S.E.2d 527, 529 (Ct.App. 2002).

Misplaced reliance in a fellow defendant is worse than relying on one's own attorney, and the latter explanation was soundly rejected in Pilgrim v. Miller, *supra*. If reliance on one's own attorney is insufficient to show "good cause," the reliance on another defendant and *his* attorney is equally insufficient.

The case of Stark Truss Co., Inc. v. Superior Const. Corp., 360 S.C. 503, 602 S.E.2d 99 (Ct.App. 2004), is instructive. In Stark Truss, the plaintiff sued two defendants under a contract. Upon being served, the first defendant gave its defense in the matter to the second defendant, "apparently intending for [the second defendant] to answer on its behalf." *Id.* at 506, 602 S.E.2d at 101. When neither defendant answered the Complaint, the clerk entered default against them both. The only explanation offered by defendants' attorneys was that the president of second defendant was "struggling with some depression and a lot of things slipped through his fingers." Stark Truss, 360 S.C. at 507, 602 S.E.2d at 101. The Court of Appeals upheld the entry of default, due to the lack of a good explanation for the defendants' noncompliance with Rule 12(a). Similarly here, Owens has not offered a good explanation for his failure to timely answer, nor has he offered a good explanation for Paddy's failure to answer on Owens' behalf. For his own part, Paddy's attorney told the Court that he was not retained nor instructed to file an answer on behalf of Owens.

The Court asked the parties whether Owens could reasonably rely on Paddy's representations. Owens' counsel responded that he could. Counsel for Plaintiff responded that he could not. Counsel for Paddy took no position.

In support of his position that it was reasonable to rely on Paddy, Owens would have this Court believe Defendant agreed to invest with Paddy, but then learned through this foreclosure action that he was actually a borrower. When Owens asked Paddy for explanation as to why Owens was a borrower, he received no response. Yet inexplicably, and despite Paddy's apparent failure to protect Owens in the past, Owens decided to rely on Paddy to protect him in this lawsuit. It is clear Owens took no steps to protect himself and continued to rely completely on the advice of his fellow defendant. Defendant now asks this Court to believe that he was either willfully blind or totally ignorant as to the loan transaction and the handling of this litigation. Owens should not be rewarded for his own negligence and intentional ignorance.

The Court next asked the parties whether there were facts supporting fraud by Paddy against Owens. Counsel for Owens conceded at the hearing that the facts did not rise to the level of fraud. However, in his supplemental brief, counsel for Owens argued Paddy "misled" Owens regarding hiring an attorney. The Court is convinced that counsel for Owens did not mean to suggest that Owens was defrauded by Owens after he conceded the facts did not support such an argument.

In summary, Owens has not provided a satisfactory explanation for his failure to timely file an answer in this action. As such, the Motion is denied under Sundown Operating, supra, and Richardson, supra.

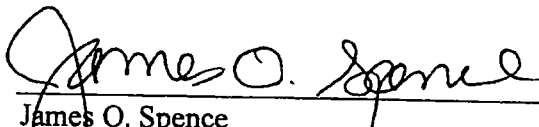
2. *Defendant Owens is not entitled to relief under the Wham factors.*

In addition to failing to provide a satisfactory explanation, Owens has not satisfied the Wham factors. Regarding timeliness of the Motion, the Richardson court noted the Defendant filed his motion 60 days after the default. Here, Owens waited until over 120 days after entry of default to file the subject Motion. Clearly, Owens motion is not timely. Moreover, Owens has not demonstrated he has a meritorious defense nor has he shown Plaintiff would not be prejudiced by setting aside entry of default. See, e.g., Richardson at ___, 682 S.E.2d at 267 (Court summarily addressed Wham factors in upholding entry of default against defendant).

CONCLUSION

For the reasons stated above, the Motion to Set Aside Entry of Default, Leave to Answer and Continuance is DENIED.

AND IT IS SO ORDERED THIS 3rd DAY OF November, 2010.


James O. Spence
Master in Equity
Lexington County

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

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STATE OF SOUTH CAROLINA

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COUNTY OF LEXINGTON

2010 MAR -2 P 3:34

IN THE CIRCUIT COURT
ELEVENTH JUDICIAL CIRCUIT

Regions Bank,

Plaintiff,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Case No. 2009-CP-32-05373

vs.

ORDER OF REFERENCE

William S. Owens, David S. Hostetler, Roland
G. Paddy and Greer State Bank,

Defendants.

IT APPEARING that, pursuant to Rule 53(b), SCRCP, an action for foreclosure of a mortgage may be referred to a Master-In-Equity by order of a circuit court judge or the clerk of court,

WAC
1/1
IT FURTHER APPEARING that the above-entitled action is an action for foreclosure of a mortgage on real property located in Lexington County, South Carolina; and, it is a proper matter to refer to the Honorable James O. Spence, Master-In-Equity for Lexington County, South Carolina,

AND IT FURTHER APPEARING that Defendant Roland G. Paddy and Defendant Greer State Bank have filed responsive pleadings to the Summons and Complaint,

AND IT FURTHER APPEARING that Defendant Williams S. Owens and Defendant David S. Hostetler have failed to file responsive pleadings to the Summons and Complaint herein and are in default, pursuant to the Affidavits of Default and Non-Military Service filed herein or that shall be filed soon,

AND IT FURTHER APPEARING that this action is now ripe for referral to the Master-In-Equity,

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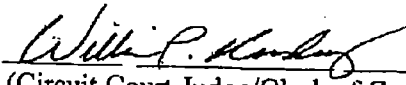
NOW, THEREFORE, pursuant to Rule 53, SCRCF, and upon motion of the attorney for the Plaintiff,

IT IS HEREBY ORDERED that the above-entitled action be, and the same hereby is, referred to the Honorable James O. Spence, Master-In-Equity for Lexington County, South Carolina to: take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRCF, and all matters arising from or reasonably related to such action. The Master-In-Equity shall retain jurisdiction to perform all necessary acts incident to this foreclosure including, but not limited to, issuance of a writ of assistance; issuance of a rule to show cause; and the hearing of issues involving appraisal proceedings under S.C. Code Ann. § 29-3-360 (1976), *et seq.* Further, the Master-In-Equity shall retain jurisdiction to hear any action contesting the validity of the foreclosure action or sale or any motions pursuant to South Carolina Rules of Civil Procedure including, but not limited to, Rule 60(b).

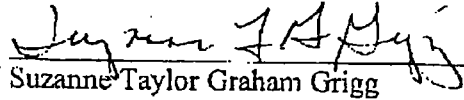
Any appeal from the final judgment entered by the Master-In-Equity shall be directly to the South Carolina Court of Appeals, pursuant to Rule 203(d)(1), SCACR, effective June 1, 1999.

AND IT IS SO ORDERED.

March 2, 2010
Lexington, South Carolina


(Circuit Court Judge/Clerk of Court)

I SO MOVE:



Suzanne Taylor Graham Grigg

NEXSEN PRUET, LLC

1230 Main Street, Suite 700 (29201)

Post Office Drawer 2426

Columbia, South Carolina 29202

(802) 771-8900

Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

REGIONS BANK,
Plaintiff,

vs.

WILLIAM S. OWENS, DAVID S.
HOSTETLER, ROLAND G. PADDY, AND
GREER STATE BANK,
Defendants.

FILED
IN THE CIRCUIT COURT

2009 DEC -1 P 12:51

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Case No. 09-CP-__-__

SUMMONS
(NON-JURY)
(DEFICIENCY DEMANDED)

2009CP3205375

TO DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint filed in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their offices, 205 King Street, Suite 400, Post Office Box 486, Charleston, South Carolina 29402, within thirty (30) days as required by law after the service hereof. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE THAT Plaintiff will move for an Order of Reference or that the Court may issue a general order of reference on this action to the master in equity for Beaufort County or a special referee pursuant to Rule 53 of the South Carolina Rules of Civil Procedure.

FILED

Bruce Wallace 2009 DEC - 1 P 12: 51

R. Bruce Wallace

NEXSEN PRUET, LLC

205 King Street, Suite 400 (29401)

P.O. Box 486

Charleston, SC 29402

843.577.9440

BETH A. CARRIGG
CLERK OF COURT
LEWIS & CLARK SC

Attorneys for Plaintiff
REGIONS BANK

November 24, 2009
Charleston, South Carolina

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Owens / received 1/25/10

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

REGIONS BANK,

Plaintiff,

vs.

WILLIAM S. OWENS, DAVID S.
HOSTETLER, ROLAND G. PADDY, AND
GREER STATE BANK,

Defendants.

FILED

IN THE CIRCUIT COURT

2009 DEC -1 P 12: 51

Case No. 09-CP-___

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

**FORECLOSURE COMPLAINT
(NON-JURY)
(DEFICIENCY DEMANDED)**

2009CP3205373

Plaintiff Regions Bank, complaining of the Defendants above named, would allege and show unto this Court as follows:

1. Plaintiff is a state banking corporation organized and existing under the laws of the State of South Carolina.
2. Defendant Roland G. Paddy is, upon information and belief, a resident of the County of Horry.
3. Defendant David S. Hostetler is, upon information and belief, a resident of the County of Horry.
4. Defendant William H. Owens is, upon information and belief, a resident of the County of Horry.
5. The Defendant Greer State Bank is a corporation organized and existing in the State of South Carolina with its principle place of business in Greer, South Carolina.
6. This action involves certain real property located in the County of Lexington, as more particularly described in Exhibit "A" attached hereto, being the same real property described in the *lis pendens* filed herewith.

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7. This Court has jurisdiction over the parties hereto, the subject matter hereof, and venue is proper in the County of Lexington.

8. For value received, on or about June 24, 2005, Plaintiff loaned Seven Hundred Thousand Dollars (\$700,000.00) to Roland G. Paddy, David S. Hostetler, and William H. Owens to purchase the subject real property.

9. In consideration for this loan from Plaintiff, on June 24, 2005, Defendants Paddy, Hostetler, and Owens executed certain written Promissory Note in favor of Plaintiff in the amount of Seven Hundred Thousand Dollars (\$700,000) (hereafter, the "Promissory Note"). The terms and conditions of the Promissory Note are incorporated herein by reference.

10. To secure the payment of the indebtedness evidenced above to the Plaintiff, on or about June 24, 2005 Defendants Paddy, Hostetler, and Owens, executed and delivered to Plaintiff that certain written Mortgage, whereby the Defendants Paddy, Hostetler, and Owens mortgaged the subject property (hereafter, the "Mortgage"). The Mortgage was recorded on July 1, 2005 with the Register of Deeds for Lexington County in book 10261 at page 186. The terms and conditions of the Mortgage are incorporated herein by reference.

11. By agreement, Plaintiff agreed to extend the maturity date of the Promissory Note until July 1, 2009.

12. Following the maturity of the Promissory Note, and pursuant to an agreement with Plaintiff, and in consideration for the extensions referenced above, on March 31, 2009, Defendants Paddy, Hostetler, and Owens executed that certain written Promissory Note in favor of Plaintiff in the amount of Six Hundred Forty Two Thousand Five Hundred Sixty-Four (\$642,564.00) Dollars (hereafter, the "Second Promissory Note"). The terms and conditions of the Second Promissory Note are incorporated herein by reference.

13. Further, to further secure the indebtedness evidenced above to Plaintiff, on or about March 31, 2009, Defendants Paddy, Hostetler, and Owens, executed and delivered to Plaintiff that certain written Assignment of Rents for the subject real property. The terms and conditions of the Assignment of Rents are incorporated herein by reference.

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CLERK OF COURT
SPARTANBURG SC

14. Plaintiff herein is the sole owner and holder of the Promissory Notes, Mortgage, Assignment of Rents, and all other related loan documents pertaining to the subject loan.

15. The obligations under the terms and conditions of the Promissory Note and Mortgage are in default for, among other reasons, the Promissory Notes have matured.

16. Defendants Paddy, Hostetler, and Owens have been duly notified, in writing, of the outstanding default and given the right to cure said default.

17. Defendants Paddy, Hostetler, and Owens have failed to cure said default.

18. It is provided in the subject loan documents that when Defendants Paddy, Hostetler, and Owens, as the borrowers, default thereunder, the whole amount of the debt would become immediately due and payable. By reason of the said Defendants' default of the terms and conditions of the said loan documents, Plaintiff has declared the indebtedness immediately due and payable, and, as a further result of the said default, Plaintiff is entitled to foreclosure of its Mortgage and security interest.

19. It is further provided in the Promissory Note, Mortgage and Security Agreement that the maker, Defendants Paddy, Hostetler, and Owens, would pay all costs and expenses of collection, including, but not limited to, reasonable attorney's fees.

20. There is now due and owing to Plaintiff under the Promissory Notes, as of November 5, 2009, the amount of Six Hundred Eighty-Three Thousand One Hundred Fifty-Four and 75/100 Dollars (\$683,154.75), exclusive of costs and attorneys fees.

21. Plaintiff demands a deficiency judgment against Defendants Paddy, Hostetler, and Owens.

**FOR A FIRST CAUSE OF ACTION
(Foreclosure)**

2009 DEC -1 P 12:51

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, KY

22. As a direct and proximate result of Defendants' default under the Notes and Mortgage, Plaintiff is entitled to judgment of foreclosure in the amount of Six Hundred Eighty-Three Thousand One Hundred Fifty-Four and 75/100 Dollars (\$683,154.75), plus additional interest and other amounts properly chargeable to the aforesaid loan, including without limitation, attorneys fees and the costs of this action, such judgment to be entered immediately, with the amount of such judgment to be reduced by the amounts, if any, realized from the sale of the mortgaged subject real property.

23. Upon information and belief, the following Defendant claims or may claim an interest in all or a portion of the subject property:

(a) Greer State Bank by virtue of a written Mortgage dated November 21, 2006, recorded December 6, 2006 in the Register of Deeds for Lexington County at Book 11591, page 184.

24. The interests of said Defendant, if any, are junior and subordinate to the lien of Plaintiff's Mortgage, and Plaintiff is entitled to judgment barring the Defendant and all persons claiming by or through the Defendant from any and all right, title and interest in or to the subject property, and each and every part thereof.

WHEREFORE, Plaintiff prays:

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JULIEN SC
- (a) That the amounts due upon the aforescribed Promissory Notes be ascertained and determined under the direction of the Court, together with attorneys fees and the costs of this action;
 - (b) For a judgment of foreclosure for the amount so found to be due and owing to Plaintiff under the aforescribed Promissory Notes, together with reasonable attorneys fees and the costs of this action;
 - (c) That the mortgaged real property be sold pursuant to Order of this Court, the equity of redemption be barred, and the proceeds of sale be first applied to the costs and expenses of this action, with the remaining proceeds being applied upon Plaintiff's judgment and attorneys fees, any amount in excess to be held by the Court until further ordered;
 - (d) That Defendants and all persons whomsoever claiming by or through the Defendants be forever barred of all right, title and interest in and to the mortgaged property, and each and every part thereof;
 - (e) For a judgment against Defendants Roland G. Paddy, David S. Hostetler, and William H. Owens, for the full amount due Plaintiff under the said Promissory Notes and Mortgage, such judgment to be entered immediately, with the amount of such judgment to be reduced by the amounts, if any, realized from the sale of the mortgaged Property; and
 - (f) For such other and further relief as the Court may deem just and proper.



R. Bruce Wallace
NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, SC 29402
843.577.9440

Attorneys for Plaintiff
REGIONS BANK

November 24, 2009
Charleston, South Carolina

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Exhibit A

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2004 DEC 1 2 25
RETURN TO
CLERK OF COURT
LEXINGTON SC

All that certain piece, parcel or tract of land, together with the improvements thereon, containing ninety-nine and thirty-seven hundredths (99.37) acres, more or less; situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as "Tract G" on a Plat prepared by C.L. Hartley, RLS, dated 29 March 1912 and recorded in the office of the Lexington County Register of Deeds in Plat Book 49-G at page 109, and having the following metes and bounds: One the North by property now or formerly of Felix Burgess and measuring thereon a distance of fifty-seven (57) chains, more or less; One the East by property now or formerly of Johnson and Johnson and measuring thereon a distance of thirteen and forty-four hundredths (13.44) chains, more or less; One the South by property now or formerly of E. Hall and measuring thereon a distance of sixty and forty-six hundredths (60.46) chains, more or less; and One the West by the run of Chinquapin Creek. Further reference is made to that certain boundary survey prepared by James F. Drafts, RLS, dated 21 July 2003 and filed with the Lexington County Register of Deeds on 13 August 2003 in Record Book 8522 at page 73.

SCANNED
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STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

REGIONS BANK,)

Plaintiff,)

vs.)

William S. Owens, David S. Hostetler,
Roland G. Paddy and Greer State Bank,)

Defendants.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
C.A. NO. 09-CP-32-5373

ANSWER

BETH A. CARRIGE
CLERK OF COURT
LEXINGTON SC

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The Defendant, Roland G. Paddy hereby Answers the Complaint of the Plaintiff as follows:

Every allegation contained in the Plaintiff's Amended Complaint not specifically admitted in this Answer is hereby denied.

For a First Defense

1. Upon information and belief, the Defendant admits paragraph 1.
2. The Defendant admits paragraph 2.
3. The Defendant admits, upon information and belief, paragraph 3.
4. The Defendant admits, upon information and belief, paragraph 4.
5. The Defendant admits, upon information and belief, paragraph 5.
6. The Defendant admits, upon information and belief, paragraph 6.
7. The Defendant admits paragraph 7.
8. The Defendant admits paragraph 8.
9. The Defendant admits paragraph 9.
10. The Defendant admits paragraph 10.
11. The Defendant admits paragraph 11 to the extent it alleges the Plaintiff agreed to extend the maturity date until at least July 1, 2009.
12. The Defendant admits paragraph 12.
13. The Defendant admits paragraph 13.

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14. Defendant does not have information sufficient to determine the truth of paragraph 14 and therefore, denies same.
15. The Defendant admits paragraph 15.
16. The Defendant admits paragraph 16 to the extent it alleges he has been notified of the default, but denies the remainder of the paragraph.
17. The Defendant admits paragraph 17.
18. The Defendant admits paragraph 18.
19. The Defendant admits paragraph 19.
20. The Defendant denies the amount in paragraph 20.
21. The Defendant denies paragraph 21.
22. The Defendant denies paragraph 22.
23. Paragraphs 23 and 24 do not contain an allegation against the Defendant, but to the extent they do, such allegation is denied. To the extent paragraph 13 requires a responsive pleading, it is denied.
24. Defendant denies the "Wherefore" clause of the Complaint.

THEREFORE, having answered the allegations submitted by the Plaintiff, the Defendant asks that the action brought by the Plaintiff be dismissed with prejudice.

BARFIELD & JOHNSON, L.L.C.

By 
W. Wesley Johnson, Jr.
Attorney for the Defendant
111 East Main Street, Suite D
Lexington, SC 29072
803/957-4000
803/359-5555 Fax
main@barfieldjohnson.com

Lexington, South Carolina

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ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-32-0537

REGIONS BANK,)
Plaintiff(s),)

Vs.)

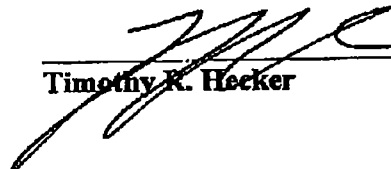
WILLIAM S. OWENS, David S.)
Hostetler, Roland G. Paddy, and)
Greer State Bank,)
Defendant(s).)

AFFIDAVIT OF SERVICE

Timothy R. Hecker, being duly sworn, says that he served:
SUMMONS, COMPLAINT, AND CIVIL COVER SHEET, NOTICE OF PENDENCY OF
LITIGATION, PROOF OF ADR OR EXEMPTION, NOTICE OF MOTION AND MOTION
FOR ORDER OF REFERENCE AND COVER SHEET

in the above referenced action on:
WILLIAM S. OWENS

by delivering copies of same to him personally at 10:00 AM on the 26th day of January, 2010,
at 808 Seaboard Street, Myrtle Beach in Horry County, SC 29577; and deponent is not a
party to the action. **THIS DEFENDANT IS NOT IN THE MILITARY SERVICE OF
THE UNITED STATES OF AMERICA.**


Timothy R. Hecker

SWORN to before me this 26th
day of January, 2010
Jessie J. Sallach (T.S.)
Notary Public for South Carolina
My Commission Expires: 9/14/2011

BETH A. CATTING
CLERK OF COURT
LEXINGTON, SC

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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

REGIONS BANK,

Plaintiff,

vs.

WILLIAM S. OWENS, DAVID S.
HOSTETLER, ROLAND G. PADDY, AND
GREER STATE BANK,

Defendants.

IN THE CIRCUIT COURT

Case No. 09-CP-32-5373

AFFIDAVIT OF DEFAULT
AS TO DEFENDANT
WILLIAM S. OWENS

ORIGINAL

PERSONALLY APPEARED before me, Bruce Wallace, who upon being duly sworn, deposes and says:

1. He is an attorney with the law firm of Nexsen Pruet, LLC, counsel for Plaintiff in the above action.
2. Defendant William S. Owens was served with Summons, Complaint, Civil Cover Sheet, Notice of Pendency of Litigation, Proof of ADR or Exemption, and Notice of Motion and Motion for Order of Reference and Motion Cover Sheet in person on January 26, 2010, as reflected in the Affidavit of Service filed with the Court on February 2, 2010, and attached hereto as Exhibit "A."
3. More than thirty (30) days have elapsed since service of Defendant William S. Owens and the Defendant Owens has failed to answer or otherwise plead.
4. Defendant William S. Owens is now in default pursuant to Rule 55 of the South Carolina Rules of Civil Procedure.

Further Affiant sayeth not.

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CLERK OF COURT
LEXINGTON, SC

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R. Bruce Wallace
R. Bruce Wallace

SWORN to before me this 18
day of March, 2010.

Kimberly Jenkins
Notary Public for the State of South Carolina
My Commission Expires: 3-17-15

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BETTY A. JONES
CLERK OF COURT
LEXINGTON, SC

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

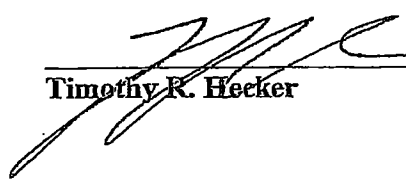
IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-32-0537

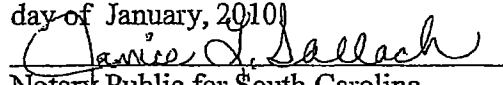
REGIONS BANK,)
Plaintiff(s),)
Vs.)
WILLIAM S. OWENS, David S.)
Hostetler, Roland G. Paddy, and)
Greer State Bank,)
Defendant(s).)

AFFIDAVIT OF SERVICE
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BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Timothy R. Hecker, being duly sworn, says that he served:
SUMMONS, COMPLAINT, AND CIVIL COVER SHEET, NOTICE OF PENDENCY OF
LITIGATION, PROOF OF ADR OR EXEMPTION, NOTICE OF MOTION AND MOTION
FOR ORDER OF REFERENCE AND COVER SHEET

in the above referenced action on:
WILLIAM S. OWENS
by delivering copies of same to him personally at 10:00 AM on the 26th day of January, 2010,
at 808 Seaboard Street, Myrtle Beach in Horry County, SC 29577; and deponent is not a
party to the action. **THIS DEFENDANT IS NOT IN THE MILITARY SERVICE OF
THE UNITED STATES OF AMERICA.**


Timothy R. Hecker

SWORN to before me this 26th
day of January, 2010
 (L.S.)
Notary Public for South Carolina
My Commission Expires: 9/14/2011

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BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Regions Bank,

Plaintiff,

vs.

Williams S. Owens, David S. Hostetler,
Roland G. Paddy, and Greer State Bank

Defendants.

IN THE CIRCUIT COURT
Case No. 09-CP-3205373

2010 JUL 21 P 2:30

) Motion to Set Aside Entry of Default,
) Leave to File Answer, and Continuance

FILED
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JUL 21 2010

The Defendant, Williams S. Owens, (hereinafter Defendant Owens) pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure, moves the court for an order to set aside the entry of default entered against him, and to permit Defendant Owens to enter a defense herein on the ground that a legal contract is lacking between Plaintiff and Defendant Owens, as more particularly shown by the affidavit of Williams S. Owens attached hereto as Exhibit A. Defendant Owens is advised and believes that he has a good and sufficient defense to the claim of the Plaintiff, as more particularly appears from his affidavit.

Defendant Owens has "good cause" for his failure to timely answer in that fraud perpetrated by Defendant Roland G. Paddy induced Defendant Owens to not answer. Defendant Paddy misrepresented to Defendant Owens that Defendant Paddy would answer on behalf of both of them. Defendant Paddy only submitted an answer for himself. Defendant Owens relied upon Paddy's misrepresentation to his detriment.

The trial court has discretion to set aside "entry of default" for good cause which should be construed liberally so as to promote justice and dispose of cases on their merits.

Wham v. Shearson Lehman Bros., Inc 298 SC 462, 381 S.E.2d 499 (1989, App).

To adequately prepare for a defense, Defendant Owens requests leave to file an answer and a continuance to perform discovery.



Cheevin Ty (Lex) Gardner, Esq.

PO Box 2740

Myrtle Beach, SC 29578

843-448-9471

Fax: 843-626-0003

Dated: 7/16/2010

Myrtle Beach, South Carolina

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE CIRCUIT COURT
Case No. 09-CP-3205373

FILED

2010 JUL 21 P 2:31

Regions Bank,

Plaintiff,

AFFIDAVIT OF
WILLIAM S. OWENS

CLERK OF COURT
LEXINGTON, SC

vs.

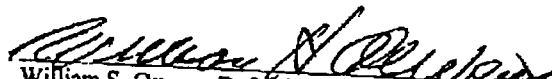
William S. Owens, David S. Hostetler,
Roland G. Paddy, and Greer State Bank

Defendants.

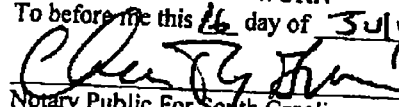
I, WILLIAM S. OWENS, being first duly sworn, depose and state:

1. I am a Defendant in the above-captioned matter.
2. I never knowingly and willing entered into the loan with the Plaintiff.
3. The extent of my investment with Defendant Roland G. Paddy, was as a limited partner.
4. The total extent of my investment in the Limited partnership was the sum of \$100,000.00.
5. I have never been contacted by the Plaintiff concerning the loan that is the subject of Plaintiff's Complaint.
6. Defendant Roland G. Paddy indicated to me that he would have his attorney answer Plaintiff's Complaint on both our behalf.
7. To the best of my belief, Roland G. Paddy used my name in order to obtain a loan with the Plaintiff without my consent.

FURTHER AFFIANT SAYETH NOT.


William S. Owens, Defendant

SUBSCRIBED AND SWORN
To before me this 16 day of July, 2010.


Notary Public For South Carolina
My Commission Expires:

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE CIRCUIT COURT
Case No. 09-CP-3205373

Regions Bank,

Plaintiff,

vs.

Williams S. Owens, David S. Hostetler,
Roland G. Paddy, and Greer State Bank

Defendants.

Answer and Counter Claim
(Jury Trial Requested)

The Defendant, William S. Owens, (hereafter the "Defendant Owens") answering the Complaint would respectfully show the Court as follows:

1. Each and every allegation not hereinafter admitted, modified or qualified is denied and strict demanded thereof.
2. Defendant Owens does not have sufficient information to determine the truth of paragraphs 1, 2, and 3, and therefore, denies same.
3. Defendant Owens admits the allegations in paragraph 4.
4. Defendant Owens does not have sufficient information to determine the truth of paragraph 5 and therefore, denies same.
5. Defendant Owens admits, upon information and belief, paragraphs 6 and 7.
6. Defendant Owens denies paragraphs 8, 9, 10, 11, 12, and 13, as to participating as a borrower and is without sufficient knowledge as to the other Defendants.
7. Defendant Owens does not have sufficient information to determine the truth of paragraph 14 and therefore, denies same.
8. Defendant Owens denies being a borrower of the said loan therefore, the

Defendant Owens denies paragraph 15, 16, 17, 18, 19, 20, and 21.

9. Defendant Owens denies the allegations of paragraph 22, and specifically denies being a borrower. Therefore, Defendant Owens denies being in default of any loan thereunder.

10. Defendant Owens does not have sufficient information to determine the truth of paragraphs 3 and 24 and therefore, denies same.

11. Defendant Owens denies the "Wherefore" clause of the Complaint.

First Affirmative Defense
(Lack of Contract)

12. The previous paragraph listed above are incorporated herein by reference.

13. A legal contract does not exist between Defendant Owens and the Plaintiff.

14. Defendant Owens denies that the signature on the loan contract is his; or, in the alternative, that he knowingly entered into a loan contract with the Plaintiff.

15. The loan document with Defendant Owens' name was submitted to the bank without the consent of Defendant Owens.

16. Defendant Owens never had a meeting of the mind with the bank to form a contract to borrow money.

Second Affirmative Defense
(Negligence)

17. The previous paragraph listed above are incorporated herein by reference.

18. The Plaintiff acted in an unreasonable manner when the Plaintiff relied upon Defendant Paddy's misrepresentation was a willing participant of the loan, without investigation the truth of the representation. The Plaintiff violated their duty as a loan

office in loaning money to Defendants Paddy and Hostelter, while including Defendant Owens without Defendant Owens consent.

19. The bank failed to investigate or contact Defendant Owens to determine if Defendant Owens had any intention to participate in the loan.

20. The bank's action was the direct cause of Defendant Owens suffering damages.

First Counterclaim
(Unfair Trade Practice)

21. The previous paragraphs listed above are incorporated herein by reference.

22. The Plaintiff has committed an unfair or deceptive act when without due diligence of ascertaining identification of the borrower, the Plaintiff gave a loan to Defendant Paddy and Hostetler using the name and credit of Defendant Owens.

23. Plaintiff failed to make any contact with Defendant Owens to determine if Defendant Owens was truly the person who wanted to enter into a loan.

24. Plaintiff knew or should have known that Defendant Owen had no intent to borrow money from Plaintiff.

25. Plaintiff's action is so unfair and reckless that is could be repeated to the detriment of the public.

26. As a result of the unfair or deceptive action of the Plaintiff, Defendant Owens has suffered damages.

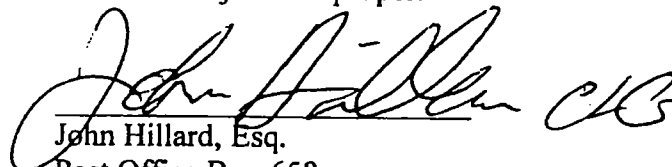
WHEREFORE, Defendant Owens prays:

- a That the loan liability pertaining to Defendant Owens be rescinded;
- b That Defendant Owens be granted treble damages under Unfair Trade

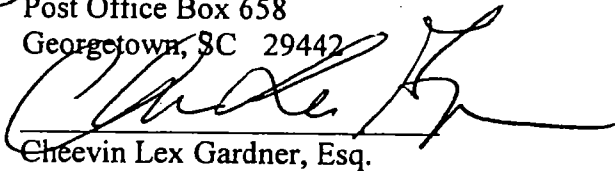
Practices committed by the Plaintiff;

c That Defendant Owens be awarded attorneys' fees and his costs incurred in this action; and

d For such other and further relief that this Court deems just and proper.


John Hillard, Esq.

Post Office Box 658
Georgetown, SC 29442


Cheevin Lex Gardner, Esq.

Post Office Box 2740
Myrtle Beach, SC 29578

Dated: 07/16/2010

Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-32-5373

Regions Bank,

Plaintiff,

vs.

William S. Owens, David S.
Hostetler, Roland G. Paddy, and
Greer State Bank,

Defendants.

) **DEFENDANT OWENS' MEMORANDUM**
) **IN SUPPORT OF HIS MOTION TO SET**
) **ASIDE DEFAULT AND LEAVE TO**
) **FILE ANSWER**

FACTS

The Defendant, William Owens, (hereafter "Mr. Owens") owns and operates a steel company in Myrtle Beach, South Carolina. The Defendant, Roland G. Paddy, (hereafter "Defendant Paddy"), befriended Mr. Owens and was able to get in a position of trust with him. Sometime in February of 2005, the Defendant Paddy was able to convince Mr. Owens to invest \$100,000 with him with the prospect of getting a quick return on his investment. Without Mr. Owens' knowledge, the Defendant Paddy and David S. Hostetler (hereafter "Defendant Hostetler"), were able to acquire a \$700,000 loan from the Plaintiff, Regions Bank (hereafter "Plaintiff") with Mr. Owens as a purported co-signer. Mr. Owens was never contacted by the Plaintiff and never had any knowledge of the loan. When Mr. Owens asked the Defendant Paddy about the return on his \$100,000 investment, the Defendant Paddy never informed Mr. Owens that his name had been connected with the loan given by the Plaintiff.



In December of 2009 the Plaintiff filed this foreclosure action naming Mr. Owens as a co-Defendant. When Mr. Owens was served with the Summons Complaint, he immediately contacted the Defendant Paddy. The Defendant Paddy represented to Mr. Owens that he had hired an attorney in Columbia and that that attorney would represent both of them in the action.

Mr. Owens later contacted an attorney, Lex "Cheevin" Gardner, about the possibility of recovering his initial \$100,000 investment from the Defendant Paddy. Mr. Gardner quickly discovered that no Answer had been filed on Mr. Owens' behalf. Mr. Owens then hired both Mr. Gardner and John M. Hilliard, III to represent him.

QUESTION PRESENTED

Whether the fraudulent misrepresentation by the Defendant Paddy to Mr. Owens that he would protect his legal interests constitutes good cause such that the default should be set aside.

ARGUMENT

GOOD CAUSE EXISTS TO SET ASIDE THE DEFAULT BECAUSE OF THE FRAUDULENT MISREPRESENTATION BY THE DEFENDANT PADDY

Rule 55(c) of the South Carolina Rules of Civil Procedure states that the court may set aside an entry of default, "for good cause shown." In deciding whether good cause exists, the trial court should consider the following factors: (1) the timing of the defendant's motion for relief; (2) whether the defendant has

a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” *Stark Truss Co., Inc. vs. Superior Construction Corporation*, 602 S.E.2d 99, 102 (S.C. App. 2004) citing *Pilgrim v. Miller*, 350 S.C. 637, 640 567 S.E.2d 527, 528 (Ct. App. 2002). “The decision to set aside a default is within the discretion of the trial judge and will not be reversed on appeal absent an abuse of discretion.” *New Hampshire Insurance Company v. The Bey Corporation*, 312 S.C. 47, 50, (Ct. App. 1993).

Mr. Owens Acted Reasonably When He Relied On The Fraudulent Misrepresentations Of The Defendant Paddy And Acted Promptly In Hiring Counsel Once He Discovered He Had No Attorney

In the instant case Mr. Owens was served with the Summons and Complaint in this action at his steel business in Myrtle Beach, South Carolina. Mr. Owens immediately contacted the Defendant Paddy. Paddy told him that he had hired a lawyer in Columbia and that he would take care of it. The Defendant Paddy stated in his deposition that, “I was looking out for him and myself.” (See Ex. A, Dep. Of Defendant Paddy, pp. 85, l. 3). The Defendant Paddy also admitted that he told Mr. Owens that he had a lawyer in Columbia. (See Ex. A, Dep. Of Defendant Paddy, pp. 83, l. 24-25). Mr. Owens asserts that the Defendant Paddy told him that he “didn’t have to worry” and that he and his lawyer would “take care of it.” (See. Ex. B, Dep. Of William Owens, pp. 38, l. 25 and pp. 39, l. 1). More specifically, Mr. Owens has stated that the Defendant Paddy indicated to him that he would have his attorney answer the

Plaintiff's Complaint on both their behalves. (See Ex. C, Affidavit of William Owens).

Mr. Owens subsequently contacted the attorney Cheevin "Lex" Gardner about the possibility of recovering his \$100,000 investment from the Defendant Paddy. Mr. Gardner quickly learned that Mr. Owens had been sued in a foreclosure action and that no one had filed an Answer on Mr. Owens' behalf. Mr. Owens promptly hired Mr. Gardner and John M. Hilliard, III to jointly represent him in this case. In other words, Mr. Owens sought his own legal counsel as soon as he realized that he was not represented by the Defendant Paddy's attorney, as had been represented to him.

In *Clark v. Swain*, the United States District Court for the Western District of New York granted the Defendant's Motion to vacate an entry of default and allow him to answer the Complaint. *Clark v. Swain*, 084-CV-0637(Sr) (W.D.N.Y. 2010). In *Clark*, the Defendant was an employee of a private firm working at a county correctional facility. The Plaintiff was an inmate of the facility and sued the Defendant claiming that he denied him appropriate medical care following an injury. The Defendant was served in July of 2009. Employees of the county advised him that the county would respond to the complaint on his behalf. In October of 2009, the county advised the Defendant that they were taking the position that the private firm he worked for was responsible for his defense. An employee at his firm assured him that the company's insurance would pay for his legal defense. The owner

of the firm told him that the company would "take care of it." In December of 2009 the Defendant learned that there had been an entry of default against him. The Defendant immediately sought his own attorney.

In granting the Defendant's motion the court stated that, "...it is clear that the entry of default should be vacated. Defendant's affidavit demonstrates that his failure to answer the complaint was not willful, but the result of misrepresentations by both the County of Erie and defendant's employer." *Id.* The Court also noted that the Defendant moved promptly to hire his own counsel once he became aware that the County and his employer were not providing for his defense.

In the instant case Mr. Owens was similarly misled by the representations of the Defendant Paddy. Mr. Owens was told that they would, "take care of it." (See. Ex. B, Dep. Of William Owens, pp. 39, l. 1). Mr. Owens relied on that representation. And once he discovered that it had not been taken care of, he hired an attorney.

In *Allstate v. Hopfer*, the United States District Court for the Eastern District of the Pennsylvania also granted the Defendants' motions to set aside an entry of default. *Allstate Ins. Co. v. Hopfer*, Civil Action No. 08-4549 (E.D. Pa. 2009). In that case the Defendants were initially sued in Pennsylvania state court for a wrongful death action. The Defendants were represented by legal counsel in the state court action. Allstate Insurance Company filed in federal court seeking a declaratory judgment that they had no duty to defend

based on the inapplicability of their homeowner's insurance policy to the wrongful death action. The Defendants' attorney in their state court action told them that he would "take care of the matter" and "not to worry". *Id.*

The court in *Allstate* noted that the Defendants' reliance on their attorney's statements, "explains their failure to respond in a timely manner, and it weighs against a finding they willfully disregarded the rules. I am also persuaded by the fact that the defendants acted promptly once they learned (their attorney) had not responded to the complaint." *Id.*

In the instant case, Mr. Owens relied on the representations of his self proclaimed "close friend" (See Ex. A, Dep. Of Defendant Paddy, pp. 84, l. 23-24). The Defendant Paddy's misrepresentations explain why no answer was filed on Mr. Owens' behalf. Similarly, Mr. Owens acted promptly in hiring his attorneys when he discovered that he was not represented by the Defendant Paddy's attorney.

Mr. Owens Has A Meritorious Defense

Mr. Owens is seeking to assert the Affirmative Defense of the lack of a contract between himself and the Plaintiff. He is also seeking two counterclaims against the Plaintiff. One for negligence and one for a violation of the Unfair Trade Practices act.

Mr. Owens asserts that he never knowingly and willingly entered into a loan with the Plaintiff. (See Ex. C, Affidavit of William Owens). He also asserts

that he has never been contacted by the Plaintiff bank concerning the loan alleged in the Complaint. (See Ex. C). To the best of his knowledge, the Defendant Paddy used Mr. Owens' name in order to obtain a loan with the Plaintiff bank without his consent (See Ex. C).

Mr. Owens alleges in his counterclaims that the Plaintiff bank was negligent and violated the Unfair Trade Practices Act when it loaned the money without ever investigating or contacting him.

All of the above are issues of fact which must be decided upon by the trier of fact at a trial on the merits.

The Plaintiff Would Not Be Prejudiced

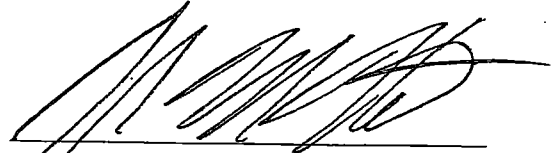
The plaintiff would not be prejudiced by having this case heard on the merits. The plaintiff's attorney has acknowledged that the reason that his client would not agree to continue the motion from November 19, 2010 until prior to the trial on December 3, 2010 is that he would require two weeks to adequately prepare a defense to Mr. Owens' counterclaims.

If this Court were to set aside the entry of default and allow this case to be tried on the merits, the plaintiff would still have that time to prepare for trial and would suffer no delay as a result.

For the foregoing reasons, I respectfully request that the relief in the Defendant's Motion be granted.

(SIGNATURE PAGE TO FOLLOW)

Respectfully submitted,



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Georgetown, South Carolina
November____, 2010

1 A. Apparently I don't know what it's all about,
2 either.

3 Q. Yes, sir.

4 About the Summons and Complaint that the
5 bank served on you and then they served on
6 Mr. Owens. Mr. Owens got his Summons and Complaint
7 from the bank; he called you about it; is that
8 right?

9 A. No. I got mine first.

10 Q. Right.

11 A. And then I went to Mr. Owens, and he had not
12 received one.

13 Q. Right.

14 A. And then eventually he received one, also.

15 Q. Right. And when he got his, he called
16 you --

17 A. Yeah.

18 Q. -- and said, "I got one"?

19 A. Yes. Well, I was probably there that
20 weekend probably talking to him, anyway.

21 Q. And when you talked to him, you told him
22 that you had a lawyer in Columbia to handle it, or
23 a lawyer up there to handle it.

24 A. I have a lawyer to keep check on the -- what
25 was going on, yes.

1 Q. And you took away his Complaint with you
2 when you left. His Summons and Complaint, you
3 carried it with you?

4 A. I don't remember that.

5 Q. Well, if he said that was correct, you
6 wouldn't disagree with him?

7 A. I don't know what I would have done with it.

8 Q. All right. And if Mr. Owens -- let me ask
9 the question a different way, I'm sorry.

10 And I don't remember exactly what you said
11 about this, so just help me with this. But do you
12 recollect taking documents to Mr. Owens' place of
13 business for him to sign on some occasions? Do you
14 remember that?

15 A. No. I mean, I might have. I don't know.
16 I'm not sure.

17 Q. So you may have carried some documents to
18 his place of business for him to sign and then
19 carried them away?

20 A. Possibly.

21 Q. Is it fair to say that you and Mr. Owens
22 were close friends before all this happened?

23 A. We're close friends. As far as I know,
24 we're still close friends.

25 Q. Still close friends.

1 And that he believed that you would have
2 looked out for him?

3 A. Well, I was looking out for him and myself.

4 Q. All right. So it's reasonable for him to
5 believe that you would have gotten a lawyer for him
6 as well as you, if that's what he believed.

02:51PM

7 MR. SLOUGH: Object to the form.

8 THE DEPONENT: Well, my assumption was
9 that whatever happened to me was going to
10 happen to him and to Hostetler, and I would
11 know about it, if that answers your
12 question.

02:51PM

13 MR. HILLIARD: All right, sir. Excuse
14 me one second, Gentlemen, and I'll be done.

15 (Off-the-record conference.)

02:51PM

16 MR. HILLIARD: Thank you, sir.

17 MR. GARDNER: I'm done. Thank you so
18 much.

19 THE DEPONENT: You're welcome.

20 MR. JOHNSON: Thank you so much.

02:51PM

21 THE DEPONENT: Can I go off the record
22 with something?

23 MR. JOHNSON: No, no.

24 THE DEPONENT: I'm just going to make a
25 comment.

02:52PM

1 Q. And let me show you, is this not the
2 Complaint that you received?

3 A. Yes.

4 Q. And it was not a Letter For Demand or Notice
5 or anything like that?

6 A. No, sir.

7 MR. GARDNER: That's all I have, unless
8 you can think of...

9 MR. HILLIARD: Just give me one second.

10 MR. GARDNER: Okay.

11 *(Off-the-record conference.)*

12 MR. GARDNER: Just one more question.

13 Mr. Hilliard just reminded me.

14 BY MR. GARDNER:

15 Q. When you come to me, sir, you were seeking
16 the \$100,000 back from Mr. Paddy?

17 A. Yes.

18 Q. And it was only after I -- you know, that I
19 found out that you had been sued. And did you not
20 tell me that Mr. Paddy assured you that he would
21 answer for both of you?

22 A. Yes, sir. Mr. Paddy said he hired a lawyer
23 in Columbia right close to Regions --

24 Q. And did he not --

25 A. -- and that I didn't have to worry, that

12:01PM

12:01PM

12:01PM

12:02PM

12:02PM

1 they would take care of it.

2 Q. And did that come as a complete surprise to
3 you that you would not be answered --

4 A. Yes.

5 Q. -- and your interests were not being
6 protected?

7 A. Right.

8 MR. GARDNER: Thank you. I believe
9 that's all I have.

10 EXAMINATION

11 BY MR. JOHNSON:

12 Q. Mr. Owens, my name is Wes Johnson. I
13 represent Mr. Paddy in this matter.

14 Do you think that you owe any money to
15 Regions Bank?

16 A. No, sir.

17 Q. Now, you were served with a lawsuit that
18 says that they're seeking to get money from you,
19 Mr. Paddy and Mr. Hostetler, correct?

20 A. I got that. That there's the first I got,
21 right there (indicating).

22 Q. Were you served with a lawsuit from Regions
23 Bank?

24 A. Whatever that is, if that's the lawsuit.

25 Q. I'm sorry, Mr. Owens, I can't see what

12:02PM

12:02PM

12:03PM

12:03PM

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE CIRCUIT COURT
Case No. 09-CP-3205373

Regions Bank,

Plaintiff,

AFFIDAVIT OF
WILLIAM S. OWENS

vs.

William S. Owens, David S. Hostetler,
Roland G. Paddy, and Greer State Bank

Defendants.

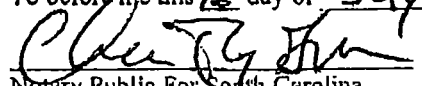
I, WILLIAM S. OWENS, being first duly sworn, depose and state:

1. I am a Defendant in the above-captioned matter.
2. I never knowingly and willing entered into the loan with the Plaintiff.
3. The extent of my investment with Defendant Roland G. Paddy, was as a limited partner.
4. The total extent of my investment in the Limited partnership was the sum of \$100,000.00.
5. I have never been contacted by the Plaintiff concerning the loan that is the subject of Plaintiff's Complaint.
6. Defendant Roland G. Paddy indicated to me that he would have his attorney answer Plaintiff's Complaint on both our behalf.
7. To the best of my belief, Roland G. Paddy used my name in order to obtain a loan with the Plaintiff without my consent.

FURTHER AFFIANT SAYETH NOT.


William S. Owens, Defendant

SUBSCRIBED AND SWORN
To before me this 16 day of July, 2010.


Notary Public For South Carolina
My Commission Expires:

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-32-5373

Regions Bank,

Plaintiff,

vs.

William S. Owens, David S.
Hostetler, Roland G. Paddy, and
Greer State Bank,

Defendants.

) **DEFENDANT OWENS' SUPPLEMENTAL**
) **MEMORANDUM IN SUPPORT OF HIS**
) **MOTION TO SET ASIDE DEFAULT**

FACTS

The defendant William Owens (hereafter "Mr. Owens") is seventy-eight years old. Mr. Owens went to school through the twelfth grade and has personally worked in his steel fabrication shop in Myrtle Beach since 1965.

Mr. Owens became friends with Roland G. Paddy (hereafter "Mr. Paddy"). They would have lunch together nearly every day. Mr. Owens trusted him. Mr. Owens loaned him \$100,000 to invest. When Mr. Owens was served with the Summons and Complaint for the foreclosure action, he immediately contacted Mr. Paddy. (See Ex. A, Dep. Of Defendant Paddy, pp. 83, l. 14-20). Mr. Paddy told him that he had hired a lawyer in Columbia and he would take care of it. (See. Ex. B, Dep. Of William Owens, pp. 38, l. 25 and pp. 39, l. 1). Mr. Owens trusted him. He was his close friend. In fact, Mr. Paddy stated that he still believes that they are "close friends." (See Ex. A, Dep. Of Defendant Paddy, pp. 84, l. 23-24).

QUESTION PRESENTED

Whether a defendant who believed he was being defended because he was misled by a co-defendant who he considered a trusted friend is distinguishable from a defendant who defaults because of the negligence of his attorney or insurance company.

ARGUMENT

A defendant who was misled by a co-defendant who he considered a close friend is distinguishable from situations when an attorney or an insurance company fail to defend and is “good cause” under Rule 55(c) of the S.C. Rules of Civil Procedure to set aside an entry of default.

The issue before the Court is whether a defendant who believed he was being defended because he was misled by a co-defendant who he considered a close friend is distinguishable from a defendant who defaults because of the negligence of his attorney or insurance company.

The standard for granting relief from an entry of default is good cause under Rule 55(c) S.C.R.C.P.

An abuse of discretion in setting aside a default judgment arises when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support. *Ricks v. Weinrauch*, 293 S.C. 372, 375, 360 S.E.2d 535, 536-537 (Ct. App. 1987).

Public policy favors the disposition of cases on their merits rather than on technicalities. Micronics, Inc. v. S.C. Dept. of Rev., 548 S.E.2d 223, 225 (S.C. Ct. App. 2001).

Rule 55(c) should be liberally construed to promote justice and dispose of case on their merits. Dixon v. Besco Engineering, Inc., 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995).

The courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant. Roberts v. Peterson, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct. App. 1987). However, our Court of Appeals in Roberts, also indicated that, "...the negligence in the failure to act was more excusable, we think, than the cases involving attorneys or insurance companies." Id.

In Roberts, the Court of Appeals set aside the default judgment entered against the defendant, a schoolteacher for the Charleston County school system. After a student was injured during a chemistry experiment, the defendant teacher was served with a summons and complaint. The defendant immediately gave the pleadings to the school principal. The school failed to timely notify either its attorney or insurance company, and the plaintiff obtained a default judgment against the defendant teacher.

The Roberts court specifically noted that the defendant teacher would have no recourse against the state if a large verdict were rendered against her.

The court also noted that the school's business is education and not litigation. *Id. at 151.*

Similarly, in the instant case, Mr. Owens would have no recourse if judgment were entered against him. The Plaintiff's brief correctly contends that a defendant is liable when his attorney or insurance company fails to timely file an answer on his behalf. What the Plaintiff's brief omits is the *reason* why attorneys and insurance companies are treated differently by our courts. Their business is litigation. *Id. at 151.* If an attorney fails to answer a complaint, the defendant has recourse through the attorney's malpractice insurance policy. Similarly, if an insurance company fails to answer a complaint, the defendant has recourse because the insurance companies own policy with the defendant will obligate it to pay the judgment within the policy limits. Additionally, insurance companies can be sued by defaulting defendants for breach of contract, negligence, and other torts connected to their failure to properly defend. Attorneys and insurance companies are treated differently because they both have a heightened duty and the defaulting defendant has recourse if they fail to live up to their obligations.

In the instant case those considerations do not apply. Mr. Owens was misled by the representations made to him by a co-defendant, Mr. Paddy. Because Mr. Paddy is neither an attorney nor an insurance company, it would be a misapplication of the law to impute his actions to Mr. Owens.

Despite the general rule regarding the imputation of an insurance company's or attorney's negligence to a defaulting defendant, our Court of Appeals has still upheld a trial judge who relieved a defaulting defendant in the interests of justice, even when it was based upon the negligence of an insurance company. In Ricks v. Weinrauch the Defendant was served with a Summons and Complaint on December 2, 1985. See Ricks v. Weinrauch, 293 S.C. 372, 360 S.E.2d 535 (Ct. App. 1987). The defendant called her attorney who told her to contact her insurance company. She hand delivered a copy of the pleadings to her insurance agent with a letter dated December 12, 1985 requesting that the complaint be forwarded to her carrier. After returning from a vacation on December 29, 1985, she learned that her insurance agent had closed and declared bankruptcy. The complaint was never forwarded to her carrier. She called her attorney again who instructed her to gather all the information she could. She had left her copy of the complaint in the trunk of her automobile. Because her car was being serviced she could not get access to the pleadings and was unable to file a timely answer. The trial judge applied the Rule 55(c) "good cause" standard and set aside the entry of default.

The Court of Appeals affirmed and stated that, "This court cannot substitute its judgment for that of the trial judge and will not disturb the trial court's decision absent a clear showing of abuse of discretion." Id. at 374. This element of discretion given to the trial judge makes it clear the party requesting a judgment by default is not entitled to one as of right, even when the defendant is technically in default." Id. at 375.

The Court of Appeals also quoted a Georgia appellate court case, Sears Roebuck & Company v. Ramey: "The law should not blindly impose standards which require individuals, in the conduct of their daily business, to distrust the parties with whom they deal. Likewise, a litigant should not unnecessarily be forced into default as a consequence of having reasonably relied upon the word of his fellow, particularly when no innocent party will suffer if the default is opened." *Id.* at 375, quoting Sears, Roebuck & Company v. Ramey, 170 Ga. App. 873, 318 S.E. 2d 740 (1984).

The Plaintiff cites five case in his brief, all of which are easily distinguishable from the case at hand.

The Plaintiff bank cited Pilgrim v. Miller in his brief. Pilgrim v. Miller, 350 S.C. 637, 567 S.E.2d 527 (S.C. Ct. App. 2002). This opinion was vacated by our Supreme Court on April 25, 2003. See Bage v. Southeastern Roofing Co., 383 S.C. 489, 681 S.E.2d 867 (2009). However, even if the opinion had not been vacated, it would still be inapplicable to the facts of the instant case. In Pilgrim v. Miller, the defendant in a car accident was served with a summons and complaint. The defendant immediately contacted an attorney, who promptly told him to notify his insurance company. The insurance company failed to file an answer on the defendant's behalf and judgment was entered against the defendant. The Court of Appeals upheld the default judgment.

Pilgrim is distinguishable from the instant case on several grounds. First, as stated above, insurance companies and attorneys are treated

differently than other classes, such as employers. Roberts at 151. Litigation is their business. Id. at 151. They have a heightened duty to defend. Pilgrim at 529.

Secondly, in Pilgrim, the defendant did not offer a reason to the court why the complaint was not answered. In Pilgrim, the defendant's attorney stated on the record "I've got no excuse and I'm not trying to make an excuse for what happened...I have no idea and no way of telling because no one knows." Id. at 529.

In contrast, Mr. Owens is representing to this Court that the specific reason he did not answer the complaint was because he was misled by the defendant Mr. Paddy.

Thirdly, in Pilgrim, the plaintiff's attorney had been in contact with the insurance company for nearly three years before the complaint was filed and served. Id. The defendant's insurance company was well aware of the possibility of litigation.

The plaintiff bank never contacted him regarding the loan. And when he was served with the complaint his "close friend" told him that he would get his attorney to represent him. (See Ex. A, Dep. Of Defendant Paddy, pp. 84, 1. 23-24).

The second case which the Plaintiff bank cites is Stark Truss Co., Inc. v. Superior Const. Corp., 602 S.E.2d 99 (S.C. Ct. App. 2004). In Stark Truss the co-defendants were served with a summons and complaint on July 24 and July

26, 2002, respectively. Superior, the principal defendant, did not notify its attorneys that they had been served until September 5, 2002.

Stark Truss is easily distinguishable from the instant case because in Stark Truss the defaulting defendant's attorney, "informed the circuit court that there was no good explanation for not filing an answer within thirty days, other than the fact that (defendant's) president was 'struggling with some depression and a lot of things slipped through his fingers.'" *Id.* at 101.

In the instant case Mr. Owens is very clearly representing to the Court that the actions of Mr. Paddy caused him not defend himself. The specific representation was made to him that an attorney would represent him. Stark Truss stands for the proposition that a vague assertion of "depression" on the part of a chief executive is not "good cause" to set aside a default. The facts in the two cases are simply too different for Stark Truss to be controlling.

The third case which Plaintiff bank cites is Dixon v. Besco Engineering, Inc., 320 S.C. 174, 463 S.E.2d 636 (Ct. App. 1995). In Dixon the employee of the defendant mistakenly believed that a fifteen day extension to file an answer was an unlimited extension. The Florida attorney for the defendant company also instructed the employee to retain South Carolina counsel as soon as possible. This case is easily distinguishable because no explanation was offered for why the employee misunderstood the instructions. In fact, the argument on appeal was that the court neglected to make specific findings of fact on the factors enumerated in Wham v. Shearson Lehman Bros., Inc., 298

S.C. 462, 381 S.E.2d 499 (Ct. App. 1989). Again, this is distinguishable from the instant case because Mr. Owens was misled by Mr. Paddy. *Dixon* stands for the proposition that it is not “good cause” when an insurance company employee claims that he simply misunderstands his out-of-state counsel’s instructions to get instate representation and file an answer before an extension runs out. Again, the facts are simply too different for *Dixon* to be controlling.

The fourth case relied upon by the Plaintiff bank is *Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 681 S.E.2d 885 (2009). *Sundown* has a very complicated procedural history with initial pleadings sent to two different locations. The essential facts are that the defendant company was served with copies of the complaint both on August 28, 2001 and September 4, 2001. The defendant company’s president did not notify the insurance company until September 14, 2001 and did not forward a copy of the pleadings until October 1, 2001. An entry of default was entered on October 2, 2001 based upon the August 28, 2001 service date. The insurance company failed to file an answer within thirty days of the September 4, 2001 service date.

This case is easily distinguishable from Mr. Owens’ situation. First, the defaulting defendants put forth no explanation with regard to why the pleadings received on August 28 were not answered. *Id.* at 609. As stated above, Mr. Owens is representing to this Court that the reason an answer was not filed was because he was misled by Mr. Paddy. Secondly, in regards to the

second service date of September 4, the defaulting defendants argued that their insurance agent was negligent. For the above-state reasons, insurance agents and attorneys are treated differently by our courts. Their negligence is generally imputable to a defaulting defendant. Roberts at 151. The court also noted that the defaulting defendant's contributed to their insurance agent's negligence by not timely forwarding them the pleadings. Sundown at 609. In the instant case, Mr. Owens was misled and has no recourse against a negligent insurance company, as in Sundown.

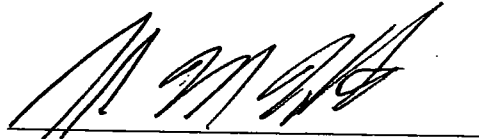
The fifth case relied upon by the Plaintiff bank is Richardson v. P.V., Inc., 383 S.C. 610, 618 S.E.2d 263 (2009). Richardson involved a wrongful death action from a drowning which occurred in a motel pool. The defendant motel promptly notified their insurance agent. Later, the defendant motel was served with the complaint. After the complaint was filed, the insurance agent started receiving correspondence from the plaintiff's attorney. The correspondence was also addressed to another attorney for the plaintiff. The insurance agent assumed that the complaint had already been forwarded to the insurance company and that the other attorney receiving copies of the correspondence was defendant's counsel. Our Supreme Court held that even if the insurance company was at fault for not answering, it would still not constitute good cause. Again, the negligence of an insurance company is imputed to a defaulting litigant and cannot constitute good cause. Id. at 619. This is easily distinguishable from the instant case.

As stated above, the failure of attorneys and insurance companies to answer is imputable to defaulting defendants. Again, in the instant case Mr. Owens was misled by the representations of Mr. Paddy.

CONCLUSION

For the foregoing reasons, the defendant William H. Owens respectfully requests that this Court enter an order setting aside the entry of default and allowing him to file an answer and counterclaim in this case.

Respectfully submitted,



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Georgetown, South Carolina
November 23, 2010

1 trying to -- first of all, they were trying to get
2 a bottling plant there.

3 Q. Okay. When you say "they," who is they?

4 A. Meaning Hostetler and his people that he was
5 trying to get a bottling plant with.

02:45P

6 Q. Okay. Hostetler and his folks were trying
7 to get a bottling plant?

8 A. Yeah. Mr. Owens and I were only interested
9 in investing \$200,000 and getting 400,000 back or
10 600,000 back for our 200,000.

02:46P

11 Q. Okay. But if the NBSC money was used by you
12 to make payments prior to Mr. Owens' involvement,
13 that's what I am interested in. Tell me about
14 that.

15 A. I can't tell you. I don't know. I mean, I
16 have to pull out my records and find out.

02:46P

17 Q. Well, one of two things is true: Either
18 Mr. Owens and you became involved with Hostetler at
19 the same time; or --

20 A. Well, we did do that.

02:46P

21 Q. -- or you were involved with Hostetler
22 before you and Mr. Owens became involved with
23 Hostetler together.

24 A. I knew Hostetler maybe a week or two weeks
25 prior to Mr. Owens and I.

02:46P

1 Q. So you didn't pay off -- you didn't have any
2 loans with Hostetler prior to Mr. Owens being
3 involved with you?

4 A. No, never had any dealings with him.

5 Q. So the NBSC loan would have been what?

02:47PM

6 A. I'd have to pull the NBSC loan out and see
7 what it is. I don't know what it is. I don't even
8 know whether it's my loan or whether it was
9 Patricia Love's loan. I don't know.

10 Q. So you owe 700,000 -- you and the other
11 people owed --

02:47PM

12 (Proceedings were interrupted.)

13 THE DEPONENT: Excuse me. I'm sorry.

14 (Off-the-record conference.)

15 BY MR. HILLIARD:

02:48PM

16 Q. The loan that's \$700,000 that was disbursed,
17 there's 200,000 of it to NBSC, and you don't
18 remember what that would have been about?

19 A. No.

20 Q. All right, sir. But it's fair to say that
21 Mr. Owens wouldn't know what that's about; he
22 didn't know about it at all.

02:48PM

23 A. He didn't know about it at all.

24 Q. So on his behalf, you borrowed \$700,000 and
25 spent 200,000 that he doesn't know anything about.

02:48PM

1 A. Apparently I don't know what it's all about,
2 either.

3 Q. Yes, sir.

4 About the Summons and Complaint that the
5 bank served on you and then they served on
6 Mr. Owens. Mr. Owens got his Summons and Complaint
7 from the bank; he called you about it; is that
8 right?

9 A. No. I got mine first.

10 Q. Right.

11 A. And then I went to Mr. Owens, and he had not
12 received one.

13 Q. Right.

14 A. And then eventually he received one, also.

15 Q. Right. And when he got his, he called
16 you --

17 A. Yeah.

18 Q. -- and said, "I got one"?

19 A. Yes. Well, I was probably there that
20 weekend probably talking to him, anyway.

21 Q. And when you talked to him, you told him
22 that you had a lawyer in Columbia to handle it, or
23 a lawyer up there to handle it.

24 A. I have a lawyer to keep check on the -- what
25 was going on, yes.

1 Q. And you took away his Complaint with you
2 when you left. His Summons and Complaint, you
3 carried it with you?

4 A. I don't remember that.

5 Q. Well, if he said that was correct, you
6 wouldn't disagree with him?

7 A. I don't know what I would have done with it.

8 Q. All right. And if Mr. Owens -- let me ask
9 the question a different way, I'm sorry.

10 And I don't remember exactly what you said
11 about this, so just help me with this. But do you
12 recollect taking documents to Mr. Owens' place of
13 business for him to sign on some occasions? Do you
14 remember that?

15 A. No. I mean, I might have. I don't know.
16 I'm not sure.

17 Q. So you may have carried some documents to
18 his place of business for him to sign and then
19 carried them away?

20 A. Possibly.

21 Q. Is it fair to say that you and Mr. Owens
22 were close friends before all this happened?

23 A. We're close friends. As far as I know,
24 we're still close friends.

25 Q. Still close friends.

1 Q. And let me show you, is this not the
2 Complaint that you received?

3 A. Yes.

4 Q. And it was not a Letter For Demand or Notice
5 or anything like that?

6 A. No, sir.

7 MR. GARDNER: That's all I have, unless
8 you can think of...

9 MR. HILLIARD: Just give me one second.

10 MR. GARDNER: Okay.

11 *(Off-the-record conference.)*

12 MR. GARDNER: Just one more question.

13 Mr. Hilliard just reminded me.

14 BY MR. GARDNER:

15 Q. When you come to me, sir, you were seeking
16 the \$100,000 back from Mr. Paddy?

17 A. Yes.

18 Q. And it was only after I -- you know, that I
19 found out that you had been sued. And did you not
20 tell me that Mr. Paddy assured you that he would
21 answer for both of you?

22 A. Yes, sir. Mr. Paddy said he hired a lawyer
23 in Columbia right close to Regions --

24 Q. And did he not --

25 A. -- and that I didn't have to worry, that

12:01P

12:01PM

12:01PM

12:02PM

12:02PM

1 they would take care of it.

2 Q. And did that come as a complete surprise to
3 you that you would not be answered --

4 A. Yes.

5 Q. -- and your interests were not being
6 protected?

7 A. Right.

8 MR. GARDNER: Thank you. I believe
9 that's all I have.

10 EXAMINATION

11 BY MR. JOHNSON:

12 Q. Mr. Owens, my name is Wes Johnson. I
13 represent Mr. Paddy in this matter.

14 Do you think that you owe any money to
15 Regions Bank?

16 A. No, sir.

17 Q. Now, you were served with a lawsuit that
18 says that they're seeking to get money from you,
19 Mr. Paddy and Mr. Hostetler, correct?

20 A. I got that. That there's the first I got,
21 right there (indicating).

22 Q. Were you served with a lawsuit from Regions
23 Bank?

24 A. Whatever that is, if that's the lawsuit.

25 Q. I'm sorry, Mr. Owens, I can't see what

12:02PM

12:02PM

12:03PM

12:03PM

COPY

STATE OF SOUTH CAROLINA

FILED

IN THE CIRCUIT COURT

COUNTY OF LEXINGTON

2010 NOV 19 A 9:20

REGIONS BANK,

Plaintiff,

vs.

WILLIAM S. OWENS, DAVID S.
HOSTETLER, ROLAND G. PADDY, and
GREER STATE BANK,

Defendants.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Case No. 2009-CP-32-5373

DESIGNATION OF DEPOSITION
EXCERPTS IN OPPOSITION TO
MOTION TO SET ASIDE ENTRY OF
DEFAULT, LEAVE TO FILE ANSWER,
AND CONTINUANCE

Plaintiff, Regions Bank, designates the following deposition excerpts in opposition to
Defendant Owens' Motion to Set Aside Entry of Default, Leave to Answer and Continuance:

William S. Owens

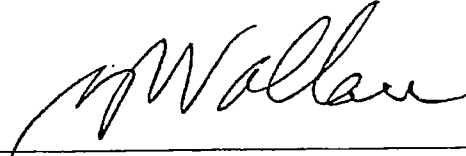
p. 26, line 13 to p. 28, line 3;
p. 32, line 23 to p. 33, line 1;
p. 33, ll. 1-5;
p. 33, ll. 6-9; and
p. 37, ll. 21-25.

Roland G. Paddy

p. 9, line 20 to p. 10, line 10;
p. 22, ll. 8-21; p. 37, ll. 5-14; and
p. 60, line 18 to p. 61, line 6.

Michele P. Refosco

p. 13, line 24 to p. 14, line 8;
p. 17, ll. 1-24;
p. 20, ll. 15-19;
p. 30, ll. 4-10; and
p. 33, ll. 10-25.



R. Bruce Wallace
NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, SC 29402
843.577.9440

Attorneys for Plaintiff
REGIONS BANK

November 18, 2010

000086

NPCHAR1:614440.1

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF LEXINGTON

3 REGIONS BANK,

4 Plaintiff(s),

5 vs.

CIVIL ACTION NO.
09-CP-32-5373

6 WILLIAM S. OWENS, DAVID S.
7 HOSTETLER, ROLAND G. PADDY,
8 AND GREER STATE BANK,

9 Defendant(s).

COPY

10 DEPOSITION OF: WILLIAM H. OWENS

11 DATE: Tuesday, August 3, 2010 .

12 TIME: 11:08 a.m. through 12:04 p.m.

13 LOCATION: Nexsen, Pruet
14 1101 Johnson Avenue, Suite 300
Myrtle Beach, South Carolina

15 TAKEN BY: Attorneys for the Plaintiff(s)

16 COURT REPORTER: MADONNA M. PERKINS
17 Registered Professional Reporter
18 Certified Livenote Reporter



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Madonna Perkins, RPR *** (843) 685-0075
392 Oak Moss Court, Murrells Inlet, SC 29576

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1 STIPULATION: It is stipulated by and
2 among Counsel that this deposition is being
3 taken in accordance with the South Carolina
4 Rules of Civil Procedure; and that the
5 deponent waives reading and signing of this
6 deposition.

7 * * * * *

8 WILLIAM H. OWENS, being first duly
9 sworn, testified as follows:

10 (PLF. EXH. 1, Title to Real Estate, was
11 marked for identification.)

12 (PLF. EXH. 2, Promissory Note from
13 Regions Bank, was marked for
14 identification.)

15 (PLF. EXH. 3, Mortgage dated June 24,
16 2005, was marked for identification.)

17 (PLF. EXH. 4, Mortgage with Greer State
18 Bank, was marked for identification.)

19 (PLF. EXH. 5, Limited Power of
20 Attorney, was marked for identification.)

21 (PLF. EXH. 6, Power of Attorney
22 Revocation, was marked for identification.)

23 (PLF. EXH. 7, Promissory Note from
24 Regions Bank, was marked for
25 identification.)

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1 Rents?

2 A. No, sir.

3 Q. And you'll see on Exhibit B, which is the
4 last page, you'll see another signature block.

5 A. Right.

11:38AM

6 Q. And it's William H. Owens by Roland G.
7 Paddy, his attorney-in-fact. And just to ask you
8 again, do you recall giving Mr. Paddy authority to
9 sign this document on your behalf?

10 A. No, sir.

11:38AM

11 Q. Or any documents on your behalf?

12 A. No.

13 Q. And once again, you don't recall having any
14 -- there were any loans to Regions Bank --

15 A. No.

11:38AM

16 Q. -- in which you were listed as borrower?

17 A. No, sir.

18 Q. Now, have you invested any other money with
19 Mr. Paddy or Mr. Hostetler?

20 A. No, sir.

11:38AM

21 Q. Have you ever purchased any property with
22 Mr. Hostetler or Mr. Paddy?

23 A. No, sir.

24 Q. Now, is your position, as we sit here today,
25 that you are not an owner of the property in

11:39AM

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1 Lexington County?

2 A. Yes, sir.

3 Q. That is your -- you're not an owner?

4 A. No, sir.

5 Q. So if there's a deed out there that has your
6 name on it, that's incorrect?

11:39AM

7 A. Yes, sir.

8 Q. And that you never agreed with anyone,
9 Mr. Paddy or Mr. Hostetler or anyone else to buy
10 the property in Lexington County?

11:39AM

11 A. No, sir.

12 Q. And you never agreed to participate in any
13 financing --

14 A. No, sir.

15 Q. -- or any loans --

11:39AM

16 A. No, sir.

17 Q. -- for the purchase of that property?

18 A. No, sir.

19 Q. And do you recall ever going to an
20 attorney's office or a lawyer's office to sign any
21 documents associated with the property or your
22 investment?

11:39AM

23 A. No, sir.

24 Q. Are you familiar with a company called
25 Miracle Wells, LLC?

11:40AM

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1 A. No, sir.

2 Q. Have you had any conversations with anyone
3 from Regions Bank?

4 A. No, sir.

5 Q. Now, when you invested the 100,000 with
6 Mr. Paddy, what did he tell you about the terms of
7 the expected return? How quickly would you get,
8 you know, money back on this project?

9 A. When I invested with him, he was -- we were
10 talking probably within a year. But the economy
11 started going downhill. And like I say, Paddy was
12 a good friend of mine, and I just kept letting it
13 lag on, lag on and hoped that he'd come through or
14 either I'd lose it. I mean, you know, either make
15 money or lose it, just like you do. And that's
16 just the way it was.

17 Q. Did he ever give you any updates on how
18 things were going?

19 A. Every week, every month, he'd come by the
20 shop and the tell me they expect to get money
21 anytime and that he'd be getting with me and give
22 me mine. Then he started coming by the shop and
23 telling me -- at first, it started out about
24 300,000, then it dropped to, like, 200, then he'd
25 could go on and get the money, and I agreed to

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1 identification.)

2 BY MR. SLOUGH:

3 Q. Mr. Owens, let me show you this document
4 right here that we have marked right here as
5 Plaintiff's Exhibit 10.

11:46AM

6 Have you ever seen that document?

7 A. No, sir.

8 Q. You see down there that there is a notation
9 of, it looks like, a note dated January 3, 2005 for
10 100,000?

11:47AM

11 A. Uh-huh.

12 Q. Above that, it has your name, Herman Owens.
13 Is that you, Mr. Owens?

14 A. Yes.

15 Q. And then down below, it has interest on the
16 note, 100,000, for a total of 200,000?

11:47AM

17 A. Right.

18 Q. Do you know anything about this document or
19 these notations --

20 A. No, sir.

11:47AM

21 Q. -- or any payment to you of 200,000?

22 A. No, sir.

23 Q. Okay. How did you come to find out about
24 this foreclosure lawsuit?

25 A. I got -- papers were sent to the shop from

11:48AM

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1 Regions Bank. And the day that I got them, I
2 called Mr. Paddy. Mr. Paddy come to the shop and
3 told me that they went to Columbia -- he went to
4 Columbia -- and he'd -- you know, got a lawyer and
5 they were taking care of it. But I wanted to know
6 how they had me on a loan, but I never could get an
7 answer.

11:48AM

8 Q. He wouldn't give you an answer?

9 A. No, sir.

10 Q. Now, in reviewing your Counterclaim, it
11 looks like you alleged that Mr. Paddy used your
12 name to secure the loan; is that correct?

11:48AM

13 A. Yes.

14 Q. And it's your testimony today that you have
15 never signed any documents for Regions Bank for a
16 loan?

11:49AM

17 A. Not to my knowledge, no, sir.

18 Q. And are you claiming any interest in the
19 property whatsoever?

20 A. No, sir.

11:49AM

21 Q. Or any ownership in the property whatsoever?

22 A. No, sir.

23 Q. Now, when did you have the conversation with
24 Mr. Paddy that his attorney would file an Answer on
25 your behalf. Do you recall when that was?

11:49AM

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1 Revocation --

2 A. Yes, sir.

3 Q. -- that you were afraid now that you haven't
4 got your money back from Mr. Paddy and that we
5 found out that you have a Power of Attorney?

12:00PM

6 A. Yes.

7 Q. And I advised to you that it's important for
8 us to revoke this Power of Attorney?

9 A. Yes, sir.

10 Q. And let me show it to you. This is my name,
11 preparing the document of revocation. And this is
12 my paralegal who witnessed it. And it is my belief
13 that you signed that in front of me.

12:00PM

14 Can you recall now that it is your
15 signature, sir?

12:00PM

16 A. Yes, sir.

17 Q. Okay. And I just have one more question.
18 I'm sorry, Mr. Slew?

19 MR. SLOUGH: Slough.

20 BY MR. GARDNER:

12:00PM

21 Q. Mr. Slough said that you received a letter
22 from the bank. But it is not true that you did not
23 actually receive a letter from the bank that you
24 actually received a Complaint?

25 A. Yes, sir.

12:01PM

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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF LEXINGTON

3 Regions Bank,

4 Plaintiff(s),

5 vs.

CIVIL ACTION NO.
09-CP-32-5373

6 WILLIAM S. OWENS, DAVID S.
7 HOSTETLER, ROLAND G. PADDY,
8 AND GREER STATE BANK,

9 Defendant(s).

COPY

10 **DEPOSITION OF: ROLAND G. PADDY**

11 **DATE:** Tuesday, August 3, 2010

12 **TIME:** 1:01 p.m. through 2:52 p.m.

13 **LOCATION:** Nexsen, Pruet
14 1101 Johnson Avenue, Suite 300
Myrtle Beach, South Carolina

15 **TAKEN BY:** Attorneys for the Plaintiff(s)

16 **COURT REPORTER:** MADONNA M. PERKINS
17 Registered Professional Reporter
18 Certified Livenote Reporter



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Madonna Perkins, RPR *** (843) 685-0075
392 Oak Moss Court, Murrells Inlet, SC 29576

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1 STIPULATION: It is stipulated by and
 2 among Counsel that this deposition is being
 3 taken in accordance with the South Carolina
 4 Rules of Civil Procedure; and that the
 5 deponent does not waive reading and signing
 6 of this deposition.

7 * * * * *

8 ROLAND G. PADDY, being first duly
 9 sworn, testified as follows:

10 EXAMINATION

11 BY MR. SLOUGH:

12 Q. Mr. Paddy, my name is David Slough, and I'm
 13 here representing Regions Bank in this foreclosure
 14 action. You sat through the earlier deposition of
 15 Mr. Owens, so you've heard what I'm getting ready
 16 to say as far as how the ground rules go, but I
 17 just need to make sure it's on the record.

18 As I said earlier, this nice lady right here
 19 is a court reporter, so she's going to be taking
 20 down everything that we say. So I would ask that
 21 if you give an answer to a question that you
 22 verbalize that answer instead of giving an "uh-huh"
 23 or "unh-unh" shaking your head.

24 A. I understand.

25 Q. I would also ask that when I ask a question,

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1 A. They had invested \$250,000. And he came to
2 me about recouping that by getting some investors
3 to go ahead through with the sale of the property.

4 Q. But Mr. Hostetler personally was out
5 200,000?

01:07PM

6 A. His father-in-law -- no, his father was out
7 175,000, and he and three other investors were out
8 approximately another 75,000.

9 Q. And who were those other investors, do you
10 know?

01:07PM

11 A. I don't know.

12 Q. If you could, describe what this property
13 is. I've seen the appraisals, but I just want a
14 better description of what it is.

15 A. First of all, the property is 107 acres, to
16 correct your acreage. And it has an abundance of
17 water, underground water, which he came to us about
18 putting a bottling plant there. That's why he
19 wanted to purchase it.

01:07PM

20 Q. Okay. So when Mr. Hostetler comes to you
21 regarding this investment, what do you tell him?

01:08PM

22 A. I told him I would search, which then I
23 asked Mr. Owens if he were -- wanted to go ahead
24 and invest in this.

25 Q. And when would that conversation have taken

01:08PM

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000097

1 place?

2 A. The tail end of 2004.

3 Q. And how did you know Mr. Owens?

4 A. I had been dealing with him since 1974.

5 Q. Through your business?

01:08PM

6 A. Yes. He has a steel business, and I had the
7 construction business.

8 Q. And what did Mr. Owens say regarding your
9 idea?

10 A. He said he'd think about it, and eventually
11 we got together and put up \$200,000, he 100,000 and
12 me 100,000, with Mr. Hostetler.

01:09PM

13 Q. And how much did Mr. Hostetler have in it?

14 A. He didn't have anything in it at that time.

15 MR. GARDNER: I'm sorry, could you
16 repeat that?

01:09PM

17 THE DEPONENT: As far as I know, he had
18 nothing in it.

19 MR. GARDNER: But how much did
20 Hostetler invest in it and how much did you
21 invest in it?

01:09PM

22 THE DEPONENT: He had invested in it at
23 the beginning before we got involved and
24 lost it, you know, with the attorney.

25 MR. GARDNER: The amount of his

01:09PM

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000098

1 office.

2 Q. And when you say "Michele," just so we're
3 clear --

4 A. Michele Refosco.

5 Q. And she's an attorney here in Myrtle Beach;
6 is that correct?

7 A. Yes.

8 Q. And do you recall if Mr. Owens was present?

9 A. Yes.

10 Q. And to the best of your knowledge, did you
11 see him sign this document?

12 A. I don't -- no, I can't say for sure.

13 Q. But you're certain that that's your
14 signature?

15 A. Yes, I'm certain that's his signature.

16 Q. Okay. You are certain that's his signature?

17 A. Yes.

18 Q. And how are you certain that that's his
19 signature?

20 A. Because I've seen five other files that have
21 got that same signature.

22 Q. And do you recall having discussions with
23 him about this Promissory Note or that transaction?

24 A. What happened was we were offered 3.5 -- no,
25 I'm wrong -- \$3,375,000 for the property with a

01:25PM

01:25PM

01:25PM

01:25PM

01:26PM

1 A. Yes.

2 Q. Where does the situation stand now with the
3 potential purchaser?

4 A. I don't know.

5 Q. Now, you heard Mr. Owens' testimony earlier
6 that he felt that his name was not on -- or that
7 was not his signature on several of those loan
8 documents?

9 A. Well, I know it is.

10 Q. What's that, again?

11 A. I think it is, yes.

12 Q. And why do you think it is?

13 A. Because he signed several documents with me,
14 and they're all the same.

15 Q. Now, Mr. Owens also said in his deposition
16 that you would have your attorney file an Answer on
17 his behalf. Do you recall any conversation like
18 that?

19 A. Let me clarify that. I called Mr. Johnson
20 to intercede on the foreclosure papers and give us
21 as much as time as we could because I had a
22 contract in hand that, you know, for sale. I
23 didn't know how long it was going to take to get it
24 completed. And it's still not completed. It might
25 be completed today, but I'm not sure. I made a

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000100

01:47PM

01:47PM

01:47PM

01:48PM

01:48PM

1 your knowledge, is owned by David Hostetler?

2 A. No. It's owned by Paddy, Owens and
3 Hostetler.

4 Q. Okay. But you were never issued a share for
5 the LLC?

02:17PM

6 A. No, not that I know of, yes.

7 Q. Okay. What is your future plans for this
8 business? I mean, it sounds like a great idea,
9 water, good mineral. Was it sunk?

10 A. We were never interested in the bottling
11 plant. We were only interested in putting the
12 money up and getting our money back.

02:17PM

13 Q. I see.

14 A. And we were elated that the first part was
15 going to be 300,000, if it sold for 3 million and
16 over. And we were elated if it sold for 2.2, so we
17 would get 200,000 back. And that's where we are.

02:17PM

18 Q. Okay. And is it your testimony then that
19 Mr. Owens was there at Ms. Refosco law office, and
20 he was there signing the HUD statement?

02:18PM

21 A. I think for the original Regions' mortgage,
22 yes.

23 Q. Okay. Can you tell me who else was there?

24 A. Well, my assumption, Mr. Hostetler was
25 there.

02:18PM

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000101

1 Q. Okay.

2 A. And Michele was there.

3 Q. Okay.

4 A. Myself and her assistant.

5 Q. Would that be Ms. Jill Sowers?

02:18PM

6 A. Yes.

7 Q. Now, when you applied for the loan with

8 Regions Bank, can you recall what type of an

9 application you filled out for them or any

10 information that you provide for them?

02:19PM

11 A. No, I can't remember.

12 Q. Okay.

13 A. I know it wasn't -- it didn't look like that

14 one.

15 Q. It wasn't these contracts?

02:19PM

16 A. I don't know.

17 Q. Okay.

18 A. I can't recall.

19 Q. Okay. But you said that was your signature?

20 A. Yes.

02:19PM

21 Q. But the -- Mr. Hostetler or Mr. Owens was

22 with you at the application?

23 A. They might have been, might have been; I

24 don't know.

25 Q. They may have been, okay.

02:19PM

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000102

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF LEXINGTON

3 Regions Bank,

4 Plaintiff(s),

CIVIL ACTION NO.
09-CP-32-5373

5 vs.

6 WILLIAM S. OWENS, DAVID S.
7 HOSTETLER, ROLAND G. PADDY,
8 AND GREER STATE BANK,

9 Defendant(s).

COPY

10 DEPOSITION OF: MICHELE PADDY REFOSCO

11 DATE: Tuesday, August 3, 2010

12 TIME: 3:24 p.m. through 4:17 p.m.

13 LOCATION: Nexsen, Pruet
14 1101 Johnson Avenue, Suite 300
15 Myrtle Beach, South Carolina

16 TAKEN BY: Attorneys for the Plaintiff(s)

17 COURT REPORTER: MADONNA M. PERKINS
18 Registered Professional Reporter
19 Certified Livenote Reporter
20
21
22
23
24
25



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1 STIPULATION: It is stipulated by and
2 among Counsel that this deposition is being
3 taken in accordance with the South Carolina
4 Rules of Civil Procedure; and that the
5 deponent does not waive reading and signing
6 of this deposition.

7 * * * * *

8 MICHELE PADDY REFOSCO, being first duly
9 sworn, testified as follows:

10 EXAMINATION

11 BY MR. SLOUGH:

12 Q. Michele, my name is David Slough. And I'm
13 an attorney with Nexsen, Pruet, and I represent
14 Regions Bank in this foreclosure action filed
15 against Roland Paddy, David Hostetler and William
16 Owens. I'm going to be asking you some questions
17 today regarding your involvement in the closings.
18 I imagine if you have not had your deposition taken
19 before, you've at least been involved in
20 depositions, so --

21 A. (Moves head side to side.)

22 Q. Never? Okay. I was going to try not to go
23 through the ground rules, but I'll go through the
24 ground rules.

25 Of course, she is taking down everything

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000104

03:24PM

03:24PM

03:24PM

1 that David Hostetler or D&E of Myrtle Beach
2 was who borrowed the money to purchase the
3 property.

4 MR. GARDNER: Okay.

5 THE DEPONENT: I don't have a copy of
6 the payoff.

03:34PM

7 BY MR. SLOUGH:

8 Q. And then on down, we have balance held in
9 trust by you of 17,563.25?

10 A. Correct, used to disburse the first few
11 payments to Regions Bank, pay the insurance on the
12 property, pay costs of expenses to the seller,
13 David Hostetler -- or the partner, expenses that he
14 had had, payments to Regions -- that's David --
15 another payment to Regions, the first few payments
16 of the Regions Bank loan.

03:34PM

17 MR. SLOUGH: Let's go ahead and mark
18 this as Plaintiff's Exhibit 1.

19 (PLF. EXH. 1, Handwritten Note entitled
20 "700,00 loan by Regions Bank" with attached
21 Regions Bank Info and Michele Paddy info,
22 was marked for identification.)

03:35PM

23 BY MR. SLOUGH:

24 Q. And looks like from the Settlement Statement
25 that the principal amount of the loan was 700,000;

03:35PM

1 is that correct?

2 A. Yes, it is.

3 Q. Now, on the first page, there are three
4 signatures: Mr. Paddy, Mr. Hostetler and
5 Mr. Owens. Did all three of these individuals come
6 to your office to sign?

03:35PM

7 A. Yes, they did.

8 Q. And do you recall specifically that
9 Mr. Owens was present for this closing?

10 A. It was five years ago. I don't recall
11 specifically, but I know that they all three signed
12 all the documents all the way through. And I do
13 this for a living, so...

03:36PM

14 Q. And it is your practice that someone comes
15 to your office and signs documents in your
16 presence?

03:36PM

17 A. And I review them myself.

18 Q. So you have no reason to dispute that that's
19 Mr. Owens' signature?

20 A. I do not.

03:36PM

21 Q. And I'll show you on Page 3 of the
22 Settlement Statement, the signatures are there
23 again.

24 A. Correct.

25 Q. Once again, no reason for you to believe

03:38PM

STENOTYPE REPORTING SERVICE, LLC

Madonna Perkins, RPR *** (843) 685-0075
392 Oak Moss Court, Murrells Inlet, SC 29576

000106

1 Q. And here is a copy of the Promissory Note.
2 And what's the date of that note?

3 A. Date of that note is 6/24/2005.

4 Q. And that's with Regions Bank?

5 A. Correct.

03:39PM

6 Q. And it is signed by Mr. Paddy, Mr. Owens,
7 Mr. Hostetler?

8 A. Yes, it is.

9 Q. Any reason to believe that's not their
10 signature?

03:39PM

11 A. No, there's not.

12 Q. We had previously marked as Exhibit 3 to
13 Mr. Owens' deposition a copy of the mortgage. The
14 reason I give you that one is that one has,
15 obviously, been recorded.

03:39PM

16 And my question is, I guess in the second to
17 last page, is that all --

18 A. Mr. Paddy, Mr. Owens, Mr. Hostetler signed
19 it. It is witnessed by myself and my assistant and
20 notarized by me.

03:40PM

21 Q. And you certainly would not have witnessed
22 and notarized unless Mr. Owens was in your presence
23 to sign the document; is that correct?

24 A. Yes, that is correct.

25 (PLF: EXH. 6, Business Loan Agreement,

03:40PM

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392 Oak Moss Court, Murrells Inlet, SC 29576

000107

1 office suite, as witness, and myself as witness;
2 myself as notary.

3 Q. And, of course, you would not have witnessed
4 or notarized had they not been in your presence to
5 sign these documents?

03:43PM

6 A. Correct. The rest of the documents would
7 only have my father's signature on them.

8 Q. Let me -- see if I can show you this. Let's
9 get this marked.

10 (PLF. EXH. 8, NBSC Account Signer
11 Identification Form and copy of Mr. Owens'
12 driver's license, was marked for
13 identification.)

14 BY MR. SLOUGH:

15 Q. I'll show you what we've marked as Exhibit
16 8, if you can tell me what that is.

03:44PM

17 A.. That would be a copy of Mr. Owens' driver's
18 license and the filled-out Account Signer
19 Identification Form.

20 MR. GARDNER: Can I see that, please?

03:44PM

21 (Tendered document.)

22 BY MR. SLOUGH:

23 Q. And that says NBSC at the top. I thought
24 the loan was with Greer State Bank.

25 A. The loan was with Greer State Bank.

03:45PM

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000108

1 A. He didn't ask me.

2 Q. Okay. I know how that is. My mother never
3 asks me for any.

4 You said you saw Mr. Owens sign the loan
5 document. Did he seem to understand what he was
6 signing?

03:59PM

7 A. Well, if I had thought that he hadn't
8 understood them, I wouldn't have allowed him to
9 sign, but I don't recall the exact day and sitting
10 there at the table.

03:59PM

11 Q. Okay. You don't have a photographic memory?

12 A. Not five years ago.

13 Q. Okay. Just to be clear, so it is your
14 testimony today that Mr. Owens, Mr. Hostetler,
15 Ms. Jill Sowers -- is she your assistant?

04:00PM

16 A. She is.

17 Q. She was there at the closing?

18 A. She is -- was.

19 Q. And at the HUD that occurred on June 24,
20 2005?

04:00PM

21 A. Correct.

22 Q. Who is Saul Craig and Hugh Hostetler? Are
23 they the extra investors in the group?

24 A. I have never heard of Saul Craig or Hugh
25 Hostetler.

04:00PM

1 A. No. I had no contact with Regions. I would
2 not have chosen Regions.

3 Q. So they brought that -- or your dad -- was
4 your dad -- your point of contact with this group
5 of people was your dad; is that fair to say?

04:03PM

6 A. Yes. And the title order would have come
7 directly from Regions, telling me what the loan
8 amount was and perform a title search and write a
9 title commitment and proceed to closing.

10 Q. How many times would you say you had met
11 Mr. Owens prior to any legal dealings with him?

04:04PM

12 A. As a contractor -- I worked for my father
13 for five years. He used Owens Steel almost
14 exclusively during that time -- ten, 12, 14 times.

15 Q. And in what context? Would you have gone to
16 his business or would he --

04:04PM

17 A. I would have gone to his business to order
18 or pick up or pay for whatever products we were
19 using in his business -- in our business from him.

20 Q. And you would have seen him in that context?

04:04PM

21 A. Yes.

22 Q. How many times would you say he's been to
23 your office?

24 A. Well, at least two. He's never been to my
25 office for anything other than these deals. I'm

04:04PM

STENOTYPE REPORTING SERVICE, LLC

Madonna Perkins, RPR *** (843) 685-0075
392 Oak Moss Court, Murrells Inlet, SC 29576

000110

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-32-5373

2010 DEC 14 A 8:55

Regions Bank,

Plaintiff,

vs.

William S. Owens, David S.
Hostetler, Roland G. Paddy, and
Greer State Bank,

Defendants.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

**NOTICE OF MOTION
AND MOTION TO RECONSIDER**

TO: BRUCE WALLACE, ESQ., ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant, William S. Owens, moves the Court to reconsider the Order signed on November 30, 2010 and sent to the Defendant by electronic mail on December 1, 2010. We believe that there was an error in the time stamp as it indicates that the Order was filed on January 1, 2010. It is our understanding that the Order was filed on December 1, 2010. The basis of this motion is as follows:

1. The Court erred in not making specific findings of fact on the record for each of the factors enumerated in Wham v. Shearson Lehman Bros., Inc. in that there was insufficient evidentiary support for the finding of the lack of good cause under Rule 55(c) of the South Carolina Rules of Civil Procedure. Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 381 S.E.2d 499 (S.C. App. 1989);



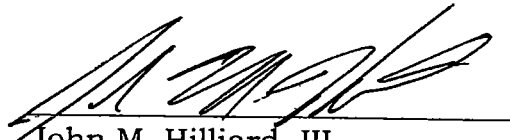
2. The Court erred in applying the legal standard of imputing the negligence of an attorney or insurance company to a defaulting defendant to the disparate facts of the instant case; and

3. And such other and further presentations as may be made by counsel.

WHEREFORE, Defendant requests the Court to reconsider its Order attached hereto and for such other and further relief as the Court may deem just, necessary and proper.

Respectfully submitted,

HILLIARD LAW FIRM, LLC



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(843) 527-1400 (facsimile)

hilliardlawfirm@sccc.tv

Attorney for Defendant Owen

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

REGIONS BANK,

Plaintiff,

vs.

WILLIAM S. OWENS, DAVID S.
HOSTETLER, ROLAND G. PADDY, and
GREER STATE BANK,

Defendants.

FILED

IN THE CIRCUIT COURT

2010 JAN - 1 A 10: 02

Case No. 2009-CP-32-5373

DETHA A. CARRIGG
CLERK OF COURT
LEXINGTON

ORDER DENYING DEFENDANT'S
MOTION TO SET ASIDE ENTRY OF
DEFAULT, LEAVE TO FILE ANSWER,
AND CONTINUANCE

This matter comes before the Court on Defendant William S. Owens' Motion to Set Aside Entry of Default, Leave to Answer and Continuance. The undersigned conducted a hearing on the Motion on November 19, 2010. Present at the hearing were Wes Johnson, attorney for Defendant Roland G. Paddy; John M. Hilliard, III, attorney for Defendant William S. Owens; and Bruce Wallace, attorney for Plaintiff. After listening to argument from counsel, reading the memoranda filed by the parties, and considering the relevant case law, the Motion is DENIED.

FACTUAL BACKGROUND

Plaintiff filed this action on December 1, 2009. Defendant William S. Owens was personally served by Timothy R. Hecker on January 26, 2010. See, Affidavit of Service filed February 3, 2010. Counsel for Plaintiff filed an Affidavit of Default as to Owens on March 19, 2010. See, Affidavit of Default. The circuit court referred this action to the Master in Equity on March 2, 2010. The Master in Equity set this matter for final hearing on July 19, 2010. Counsel for Plaintiff notified William S. Owens of the final hearing by letter dated June 22, 2010. See, Exhibit "A" attached hereto. Thereafter, counsel for Owens filed the subject Motion on July 16, 2010, almost six (6) months after service of process and four (4) months after entry of default/

000113

1150

Counsel for Owens also filed an Affidavit signed by Owens and a proposed Answer and Counterclaim in support of the Motion.

In his affidavit, Owens presents the following salient facts. First, he “never knowingly and willingly entered into the loan with Plaintiff.” Affidavit of Owens, ¶ 2. Second, Owens states, “I have never been contacted by the Plaintiff concerning the loan that is the subject of Plaintiff’s Complaint.” Id., ¶ 5. Third, Owens states, “Roland G. Paddy indicated to me that he would have his attorney answer Plaintiff’s Complaint on both our behalf [sic].” Id., ¶ 6.

In his proposed Answer, Owens “denies being a borrower of said loan” Answer, ¶¶ 8 and 9. Also, Owens denies signing the “loan contract,” or alternatively, “denies knowingly [entering] into a loan contract with the Plaintiff.” Id., ¶ 14. Finally, Owens claims Plaintiff breached some standard of care by failing to “investigate or contact Defendant Owens to determine if Defendant Owens had any intention to participate in the loan.” Id., ¶ 19. In his deposition, Owens testified that (1) he is not the owner of the subject real property; (2) any deed to the subject real property with his name on it is incorrect; (3) he never agreed to borrow money to purchase the subject real property; and (4) he never went to an attorney’s office to sign papers on the subject loan. Deposition of William S. Owens, p. 26, line 13 to p. 28, line 3.

Owens claims he first found out about the foreclosure action when “papers were sent to the shop from Regions.” Owens depo. at p. 32, line 23 to p. 33, line 1. Defendant Paddy came to speak with Owens, and Paddy said he got an attorney in Columbia that would defend the lawsuit. Owens depo. at p. 33, ll. 1-5. Owens asked why his name was on the loan, but never received an answer from Paddy. Owens depo. at p. 33, ll. 6-9.

Defendant Roland Paddy’s deposition testimony contradicts Owens’ testimony in certain material aspects. Mr. Owens and Paddy had been conducting business together since 1974.

Deposition of Roland Paddy, p. 9, line 20 to p. 10, line 10. In this subject loan transaction, Paddy testified that Owens' signature is on the loan documents because they signed the documents together. Paddy depo., p. 22, ll. 8-21; p. 37, ll. 5-14. Also, Paddy testified that he, Defendant Hostetler, and Defendant Owens all appeared at the closing attorney's office together to sign the loan documents. Paddy depo., p. 60, line 18 to p. 61, line 6. Nowhere in his deposition did Paddy testify that he retained an attorney to answer on behalf of Owens.

Michele Paddy Refosco was the attorney who closed the loan transaction for the defendants. She testified that Hostetler, Owens, and Paddy came to her office to sign the subject loan documents on June 24, 2005. Deposition of Michele P. Refosco, p. 13, line 24 to p. 14, line 8. Specifically, all three defendants signed the Note, Mortgage, and HUD-1 Settlement Statement in the presence of Refosco. Refosco depo. at p. 17, ll. 1-24. Pursuant to the Patriot Act, Refosco copied Owens' driver's license when he came to the closing. Refosco depo. at p. 20, ll. 15-19. Furthermore, Refosco would not have allowed Owens to sign the loan documents if he appeared to misunderstand the transaction. Refosco depo. at p. 30, ll. 4-10. Finally, Refosco is confident Owens personally signed the loan documents in her presence, because she knew him prior to her law practice, having had over 12 transactions with Owens through Paddy's business. Refosco depo. at p. 33, ll. 10-25.

DISCUSSION

The Motion is controlled by the "good cause" standard of Rule 55(c) of the South Carolina Rules of Civil Procedure. Rule 55(c) provides that "for good cause shown the court may set aside an entry of default ..." "[A] plain reading of Rule 55(a) allows entry of default when a pleading or defense is asserted in a manner noncompliant with the Rules of Civil Procedure." Stark Truss Co., Inc. v. Superior Construction Corp., 360 S.C. 503, 509, 602 S.E.2d 99, 102 (Ct. App. 2004). A holding to the contrary would render the requirements of Rule 12(a)

of the South Carolina Rules of Civil Procedure ("SCRCP") irrelevant. Id. The Defendant bears the burden to prove the Court should set aside the entry of default in this case.

Owens asserts several grounds in support of his Motion to set aside entry of default: (1) he has a good reason for not filing a timely answer, to wit: he relied on the representations of Defendant Roland Paddy who allegedly promised to hire an attorney to file an answer on both their behalves; (2) he timely filed his Motion to Set Aside; (3) he has asserted a meritorious defense; and (4) the Plaintiff will suffer no prejudice if the entry of default is set aside. None of these reasons are persuasive.

At the outset, the Court notes that under the prevailing authorities, primarily Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 681 S.E.2d 885 (2009) and Richardson v. P.V., Inc., 383 S.C. 610, 682 S.E.2d 263 (2009), if Owens cannot provide a "satisfactory explanation for the default," the Court's inquiry ends and the Motion will be denied. Also, this Court is not required to make specific factual findings regarding the factors enunciated in Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 381 S.E.2d 499 (Ct.App. 1989). See, Dixon v. Besco Engineering, Inc., 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App. 1995) ("We decline to read Wham as requiring the trial judge to make specific findings of these factors").

1. Defendant presents no "Good Cause" for failing to answer the Complaint, and therefore fails to meet the standard under Rule 55 (c).

Owens testified in his affidavit filed with the Court and in his deposition that Defendant Paddy represented that Paddy would hire an attorney to answer for both Owens and Paddy. While Owens' testimony is consistent on this point, Paddy did not corroborate Owens' testimony. In fact, nowhere in the record before the Court does Paddy agree or suggest he would

hire an attorney to answer for Owens. In the case at hand, Defendant's mistaken belief that a fellow defendant would answer on his behalf does not meet the "good cause" standard:

The courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant. ... In this case, Allstate's failure to answer the complaint is imputed to Miller. Accordingly, because no explanation was offered for Allstate's failure to respond to the complaint, we find no abuse of discretion here and affirm the trial court's refusal to set aside the default. Pilgrim v. Miller, 350 S.C. 637, 642, 567 S.E.2d 527, 529 (Ct.App. 2002).

Misplaced reliance in a fellow defendant is worse than relying on one's own attorney, and the latter explanation was soundly rejected in Pilgrim v. Miller, *supra*. If reliance on one's own attorney is insufficient to show "good cause," the reliance on another defendant and *his* attorney is equally insufficient.

The case of Stark Truss Co., Inc. v. Superior Const. Corp., 360 S.C. 503, 602 S.E.2d 99 (Ct.App. 2004), is instructive. In Stark Truss, the plaintiff sued two defendants under a contract. Upon being served, the first defendant gave its defense in the matter to the second defendant, "apparently intending for [the second defendant] to answer on its behalf." *Id.* at 506, 602 S.E.2d at 101. When neither defendant answered the Complaint, the clerk entered default against them both. The only explanation offered by defendants' attorneys was that the president of second defendant was "struggling with some depression and a lot of things slipped through his fingers." Stark Truss, 360 S.C. at 507, 602 S.E.2d at 101. The Court of Appeals upheld the entry of default, due to the lack of a good explanation for the defendants' noncompliance with Rule 12(a). Similarly here, Owens has not offered a good explanation for his failure to timely answer, nor has he offered a good explanation for Paddy's failure to answer on Owens' behalf. For his own part, Paddy's attorney told the Court that he was not retained nor instructed to file an answer on behalf of Owens.

The Court asked the parties whether Owens could reasonably rely on Paddy's representations. Owens' counsel responded that he could. Counsel for Plaintiff responded that he could not. Counsel for Paddy took no position.

In support of his position that it was reasonable to rely on Paddy, Owens would have this Court believe Defendant agreed to invest with Paddy, but then learned through this foreclosure action that he was actually a borrower. When Owens asked Paddy for explanation as to why Owens was a borrower, he received no response. Yet inexplicably, and despite Paddy's apparent failure to protect Owens in the past, Owens decided to rely on Paddy to protect him in this lawsuit. It is clear Owens took no steps to protect himself and continued to rely completely on the advice of his fellow defendant. Defendant now asks this Court to believe that he was either willfully blind or totally ignorant as to the loan transaction and the handling of this litigation. Owens should not be rewarded for his own negligence and intentional ignorance.

The Court next asked the parties whether there were facts supporting fraud by Paddy against Owens. Counsel for Owens conceded at the hearing that the facts did not rise to the level of fraud. However, in his supplemental brief, counsel for Owens argued Paddy "misled" Owens regarding hiring an attorney. The Court is convinced that counsel for Owens did not mean to suggest that Owens was defrauded by Owens after he conceded the facts did not support such an argument.

In summary, Owens has not provided a satisfactory explanation for his failure to timely file an answer in this action. As such, the Motion is denied under Sundown Operating, supra, and Richardson, supra.

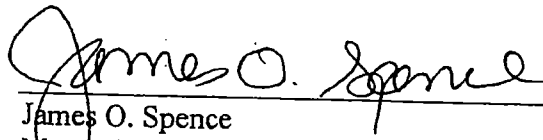
2. *Defendant Owens is not entitled to relief under the Wham factors.*

In addition to failing to provide a satisfactory explanation, Owens has not satisfied the Wham factors. Regarding timeliness of the Motion, the Richardson court noted the Defendant filed his motion 60 days after the default. Here, Owens waited until over 120 days after entry of default to file the subject Motion. Clearly, Owens motion is not timely. Moreover, Owens has not demonstrated he has a meritorious defense nor has he shown Plaintiff would not be prejudiced by setting aside entry of default. See, e.g., Richardson at ___, 682 S.E.2d at 267 (Court summarily addressed Wham factors in upholding entry of default against defendant).

CONCLUSION

For the reasons stated above, the Motion to Set Aside Entry of Default, Leave to Answer and Continuance is DENIED.

AND IT IS SO ORDERED THIS 30th DAY OF November, 2010.


James O. Spence
Master in Equity
Lexington County

FILED
2010 JAN - 1 A 10:02
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF LEXINGTON

3 REGIONS BANK,

4 Plaintiff,

5 vs.

CASE NO. 2009-CP-32-5373

6 WILLIAM S. OWENS, DAVID S.
7 HOSTETLER, ROLAND G. PADDY, AND
8 GREER STATE BANK

9 Defendants.

COPY

10 MASTER-IN-EQUITY HEARING BEFORE

11 THE HONORABLE JAMES O. SPENCE

12 DATE: November 19, 2010

13 TIME: 9:36 A.M.

14 LOCATION: Lexington County Courthouse
15 205 East Main Street, Room 2A
16 Lexington, SC

17 REPORTED BY: LORI S. MORTGE,
18 Certified Court
19 Reporter, CCR

20
21 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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25 (803) 731-5224 (864) 234-7030 (704) 573-3919

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25 Lexington, SC 29072
(803) 957-4000
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(INDEX AT REAR OF TRANSCRIPT)

1 THE COURT: We are here on the Regions
2 Bank versus William Owens, et al. It is
3 2009-CP-32-5373. We are here on the Defendant
4 William Owens' motion pursuant to Rule 55(c) to set
5 aside an order of entry of default. If you will
6 just announce who you are, who you represent, and
7 then I'd like to hear arguments.

8 MR. HILLIARD: Thank you, Your Honor.
9 This is John Hilliard from Georgetown. I appear on
10 behalf of Mr. William S. Owens and I represent
11 Mr. Owens also in conjunction with Lex Gardner.
12 Mr. Gardner will not be appearing here today. Thank
13 you, Your Honor.

14 THE COURT: Thank you.

15 MR. WALLACE: Good morning, Your Honor.
16 My name is Bruce Wallace, I represent the Plaintiff,
17 Regions Bank.

18 MR. JOHNSON: Wes Johnson representing
19 Roland Paddy.

20 THE COURT: Yes, sir. Mr. Hilliard,
21 your motion.

22 MR. HILLIARD: Thank you very much, Your
23 Honor. Judge, we have exchanged briefs and
24 memoranda with the --

25 THE COURT: Thank you.

1 MR. HILLIARD: -- Plaintiff's counsel
2 and I -- in reviewing his documents and our
3 documents, it seems that we agree on a number of
4 factors regarding the facts in the case.
5 Essentially what happened in this case is there was
6 a loan that was made by Regions Bank to some
7 individuals and Regions Bank foreclosed on that --
8 on that mortgage. And one of the individuals that
9 they foreclosed on was my client, Mr. Owens.

10 He was, in fact, served with the
11 documents. He had been operating through Mr. Paddy,
12 and in connection with that Mr. Paddy came and
13 collected Mr. Owens' documents and told Mr. Owens
14 that he would be hiring an attorney to represent --
15 to represent them in connection with the case.

16 And that's the -- sort of the crux of
17 our position, is that he -- Mr. Owens relied on
18 Mr. Paddy's representation. And he did not find out
19 that he didn't have an attorney and was not
20 proceeding in the case with a defense until he was
21 served with notice of the hearing in this case. And
22 he, at that point, engaged counsel and we've engaged
23 in this -- in this motion.

24 And so we have -- we're here today on
25 and that you'll see, Judge, I've taken some

1 depositions. We have an affidavit that's in the
2 file. We have also taken some depositions and you
3 will see -- the Plaintiff and I disagree about
4 whether or not Mr. Paddy has confirmed that, in
5 fact, he made that misrepresentation to Mr. Owens.
6 And I can point out, I believe, to the -- (reading.)

7 In the deposition of the Defendant Paddy
8 at Page 39 -- I'm sorry, the deposition of Mr. Owens
9 at Page 39, these pages were attached. And the
10 deposition of Mr. Paddy, at Page 83 and 84, will
11 point out that Mr. Paddy said that he got his
12 summons and complaint first and Mr. Owens called and
13 said that he had gotten the summons and complaint
14 and that -- and when Mr. Paddy came and talked to
15 Mr. Owens he said that he told him that he had a
16 lawyer in Columbia to handle it, but that there was
17 a lawyer to handle it.

18 And that's the -- our excusable neglect,
19 Your Honor. Also, we have a meritorious defense in
20 connection. I recognize that there is a difference
21 in the facts or difference in the testimony
22 connected to our version of what happened and their
23 version of what happened about the -- the event and
24 the circumstances surrounding the mortgage itself.
25 Mr. Owens indicates that he did not understand he

1 was signing a mortgage, that he did not go to the
2 attorney's office and sign the mortgage, and that he
3 did not participate in the same fashion that they
4 allege. There's testimony in our deposition to the
5 effect that he didn't do that and he didn't
6 understand that, in fact, this was a mortgage, that
7 he signed the documents that Mr. Paddy brought him.
8 And that is, of course, a question of fact, but we
9 certainly have that to -- to present.

10 As to whether or not the Plaintiff is
11 prejudiced, our position would be that there is, in
12 fact, no prejudice to the -- to the Plaintiff if
13 Mr. Owens was given the opportunity to have his day
14 in court, which is all that he's asking. He's
15 asking that he have the opportunity to present his
16 defense. And what they say about their prejudice is
17 that it expands the scope of the litigation which,
18 of course, is -- that sort of presumes that he has,
19 in fact, a meritorious defense and has something to
20 say connected to it and that -- and that in some
21 form or fashion the fact that we're having this
22 motion has prejudiced them.

23 But I would submit to the Court that
24 that's not the kind of prejudice that the case is
25 talking about. The kind of prejudice that the case

1 is talking about is prejudice in the underlying
2 merits of the case itself.

3 So we've got some cases there, Judge,
4 that we rely on connected to those propositions but
5 that's sort of where the whole thing is, is that
6 it's really unfair to Mr. Owens, who is a fellow of
7 some advanced age as is indicated in there, and not
8 particularly sophisticated in these -- in these
9 areas. It's unfair not to give him the opportunity
10 to appear through counsel and participate in this
11 litigation, and we would ask Your Honor to allow us
12 to answer in this case. Thank you, Judge.

13 THE COURT: Thank you. Mr. Hilliard or
14 Mr. Johnson, whichever order y'all might go in.

15 MR. HILLIARD: I was Hilliard, Judge.

16 THE COURT: I'm sorry. Mr. Wallace,
17 Mr. Johnson?

18 MR. JOHNSON: I'm a defense counsel in
19 this and I'm not exactly sure -- I'd like to hear
20 from --

21 THE COURT: You're representing?

22 MR. JOHNSON: Mr. Paddy. Mr. Paddy is
23 not -- I'm more of a codefendant so -- we really
24 don't have a position on this. Mr. Owens is seeking
25 to -- I guess our only position on this, my client

1 testified in deposition that he did talk to
2 Mr. Owens, he did collect the lawsuit from him and
3 that he would have an attorney answer. There's no
4 testimony that he would particularly have an
5 attorney go answer one way or another. Mr. Owens is
6 alleging a defense completely different than
7 Mr. Paddy's defense, so I don't understand exactly
8 how one attorney would be able to represent both of
9 them anyway, but we really don't have a position in
10 this. This is Mr. Owens' motion.

11 THE COURT: Thank you. Yes, sir.

12 MR. WALLACE: Thank you, Your Honor.
13 Again, I'm Bruce Wallace representing the Plaintiff
14 Regions Bank in this case. If I may, I've got some
15 clocked copies of our memorandum and some cases, if
16 I may hand them up.

17 THE COURT: All right.

18 MR. WALLACE: Thank you. We've also
19 attached the designation of excerpts of some
20 depositions that were taken in the case, and then
21 some pertinent case law that we have cited to the
22 Court for ease of reference that are also in our
23 memorandum.

24 Now, I want to -- before I get started,
25 I want to clear up a couple of things. First of

1 all, Mr. Paddy did not collect any suit papers. In
2 fact, when he was asked that question, and I believe
3 that's in our excerpts, he said, I wouldn't have
4 done that. In other words, he wouldn't have taken
5 the complaint from Mr. Owens for his own purposes.
6 He had already been served, he had a copy of it.

7 He also does not say, Your Honor -- and
8 I've got both the sealed transcript and a good copy
9 of all of these depositions because we took them.
10 He does not say, I agreed to hire a lawyer to
11 represent Mr. Owens. He simply says, I had a lawyer
12 and I figured what would happen to me would happen
13 to Owens and I told him that. That's all Mr. Paddy
14 says.

15 Now Mr. Owens, of course, has an
16 entirely different story at both the loan stage and
17 what happened when he was served with papers. But I
18 get a little ahead of myself, Your Honor. If I may
19 review the law as pertinent to setting aside the
20 entry of default before I get into the facts, I
21 think that would get help set the stage here.

22 Your Honor, we've handed up five cases
23 from the South Carolina Court of Appeals and the
24 Supreme Court. And each one of them, Your Honor,
25 I've taken the pains of trying to calculate how long

10

1 it was before the Defendant answered or moved to set
2 aside. In each one of them, the earliest was 51
3 days and the longest was 106 days before the
4 Defendant jumped in and moved to set aside; okay?
5 So the longest that any court has considered that I
6 can find in the last 15 years was 106-day delay
7 between the service and moving to set aside entry of
8 default. Mr. Owens waited 171 days, almost six
9 whole months before he moved to set aside the entry
10 of default.

11 I say that, Judge, because the next
12 thing that I looked at in these five cases that we
13 cited are the reasons why the Defendant failed to
14 respond. And if I may, Your Honor, each one of
15 them -- each one of them -- the Defendant relied on
16 somebody else, whether it was their lawyer, their
17 insurance carrier as we know that's contractually
18 bound to enter an answer on behalf of an insured, or
19 a codefendant.

20 And, Your Honor, both -- Mr. Hilliard
21 said there are a couple of things that we agree on,
22 and one of the things we agree on is we both cite
23 Stark Truss Company versus Superior Construction
24 case, Court of Appeals case from 2004. In that case
25 both defendants were served, one sent suit papers

1 over to the other, gave them suit papers, relying on
2 the other defendant to insert an answer on behalf of
3 both defendants, and in that case that was a breach
4 of a performance bond on a truss system. And so
5 both defendants worked together and knew each other,
6 very similar to the facts here where Mr. Paddy and
7 Mr. Owens worked together and knew each other and
8 had several transactions together.

9 And what the Court said is reliance on a
10 lawyer, reliance on another defendant or reliance on
11 an insurance carrier for a long standing rule in
12 this court, in this state, the failure of that party
13 on whom the reliance is placed to answer is imputed
14 to the defaulting party. In other words, if your
15 lawyer messes up, if your insurance carrier messes
16 up or, in the case of the Stark Truss case, if your
17 codefendant messes up, you can still lose. That's
18 not an adequate excuse.

19 And, Your Honor, the other thing that
20 became apparent in reading all of these cases, the
21 last two of which were from the Supreme Court in
22 2009, is that the Courts have set aside as a
23 secondary consideration these wham factors. And the
24 Courts in each one of these five appellate opinions
25 have analyzed whether the -- each one of these five

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1 appellate opinions they analyzed whether the excuse
2 was good enough to go to the wham factors. In each
3 case, where reliance was provided or placed on a
4 third party, the Court said -- unanimously said
5 that's not good enough. In the three Court of
6 Appeals cases, they cite the wham factors but never
7 analyzed the cases.

8 In the Richardson case, which is a
9 Supreme Court case, and the Sundown Operating
10 Company case, both of which were Supreme Court cases
11 from last year, the Supreme Court said first we're
12 going to look and see if it's a good enough excuse.
13 And only if it's a good enough excuse will we
14 consider the wham factors. In that case -- in both
15 cases, where reliance was placed on a third party
16 the Court said, that's not a good enough excuse.
17 And only in the -- I believe it was the Richardson
18 case did the Supreme Court say and in addition to
19 that the wham factors don't help.

20 So what the analysis as I understand it,
21 Your Honor, and the law of Rule 55(c) that's been
22 handed down by the Court of Appeals and the Supreme
23 Court is, first, is the excuse good? And they've
24 said numerous times, citing numerous cases, reliance
25 on your attorney, such as your insurance agent or in

1 the case of the Stark Truss case, codefendant, that
2 is not a good enough excuse.

3 Now, I believe, Your Honor, the Court's
4 inquiry should stop there. I believe that Mr. Paddy
5 and Mr. Owens together do not provide a sufficient
6 excuse for why Mr. Owens did not answer in a timely
7 fashion. Reliance on the third party is no good
8 excuse. If he were mentally infirm, which is not
9 alleged here, they simply say he's an old man. But
10 if he were mentally infirm, that would be one thing.
11 Of course, there's rules of service of process and
12 other things that total statute of limitations,
13 there's all kinds of things, mentally infirm, but he
14 has not alleged that. He has not filed an affidavit
15 suggesting that, and nowhere in his affidavit --
16 nowhere in his deposition did he testify to that.
17 So he's mentally acute enough to focus on his own
18 defense, hire his own lawyers, and do all the things
19 that he should have done 171 days earlier.

20 So I believe, as I understand the five
21 cases we've handed up, including the two Supreme
22 Court cases, the Court's inquiry should stop there,
23 no good excuse. But I think we need to go to the
24 wham factors just to seal the deal if you don't
25 mind, Your Honor.

1 The first one is the timeliness of the
2 motion; okay? Again, Mr. Hilliard and I agree that
3 that is a significant factor and he cites it in his
4 brief in the New Hampshire case from 1994. The New
5 Hampshire case talks about Harry Lightsey and James
6 Flannigan's wonderful civil procedure treatise. The
7 promptness with which relief is sought, the reasons
8 for the failure to act promptly and the existence of
9 a meritorious defense and the prejudice to the other
10 party are relevant. Talks about what became known
11 as the wham factors. But the promptness of which
12 relief is sought is the first one. As I explained
13 to the Court, the longest delay is in the Dixon
14 versus Besco Engineering case.

15 THE COURT: Let me interrupt you and ask
16 a question, if I may.

17 MR. WALLACE: Yes, Your Honor.

18 THE COURT: Is it simply a matter of
19 counting days, or is the amount of time that the
20 response is delayed -- is that based on some notice
21 like discovery? For example, if you -- if you don't
22 know a fact, then you can't react to something if
23 you don't know about it.

24 MR. WALLACE: I understand that, Your
25 Honor.

1 THE COURT: Will you address that? What
2 I heard Counsel say is we didn't know about it, we
3 thought it was all being taken care of, and our
4 first notice that something was up was the hearing.

5 MR. WALLACE: Well, of course, Your
6 Honor --

7 THE COURT: Did any of those cases
8 address that issue, or is it just a straight day
9 counting matter?

10 MR. WALLACE: Well, the day counting was
11 done by me, of course, and they don't really analyze
12 the day counting as -- as a factor. They say the
13 length of time is a factor but nobody said, hey, 106
14 days is too long. They simply say the excuse was no
15 good.

16 But what they do say, of course, if you
17 read the cases is that inevitably they still have
18 that same thing. Here, take care of this. What?
19 We're in default and we just got notice? And that's
20 when they moved to set aside. The critical factor
21 is that in every case the Defendant has given the
22 papers away and forgotten about the lawsuit thinking
23 somebody else was handling it.

24 THE COURT: I understand what you're
25 arguing, that -- what you're arguing is reliance on

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1 a third party is first and foremost. And the case
2 uniformly says not good enough.

3 MR. WALLACE: Yes, sir.

4 THE COURT: And that your theory is that
5 you have to satisfy that element before you get to
6 the wham factors.

7 MR. WALLACE: Yes, sir.

8 THE COURT: All right. I understand
9 that. So I want to -- I want to hear the wham stuff
10 now.

11 MR. WALLACE: Okay. So the question
12 you're asking, then, is the timeliness and notice of
13 default --

14 THE COURT: You've got time, prejudice,
15 meritorious defense, those things.

16 MR. WALLACE: I have not analyzed the
17 cases from a point of timeliness from the notice of
18 default, if you will. I believe that you'll find
19 that the timeliness is fairly tight each time with
20 the exception of two cases, and that is the Dixon
21 versus Besco Engineering case. In that case it was
22 106 days from the date of service to the date of
23 filing a motion to set aside entry of default, and
24 at that time the defendant had lawyers involved.
25 And I don't believe there was ever any sort of time

1 which they got notice of default. They had a
2 Florida lawyer involved, he said to one of the
3 employees of the defendant, get a South Carolina
4 lawyer involved. He started talking to South
5 Carolina lawyers right before the deadline ran to
6 file the answer, one lawyer took a month to get
7 back, another lawyer took 15 days and so on and so
8 forth, so they were always aware of it.

9 And then when Paul Tinkler, my former
10 law partner, finally filed an answer on behalf of
11 Besco Engineering, it was too late at that point and
12 he immediately found out it was too late and filed a
13 motion to set aside the entry of default.

14 I believe the proper counting for the
15 Court's purposes would be for the date of service,
16 because that's your first notice. And in each
17 instance the party thought they handed off to
18 somebody else they could trust. But I can't -- I
19 can't -- I haven't done the analysis for that time.

20 THE COURT: That's fine. I was curious
21 about that.

22 MR. WALLACE: I appreciate that, Your
23 Honor, and I apologize for not anticipating the
24 question, but I believe that the Courts run the
25 clock from the date of service. I haven't seen any

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1 cases and it's only from the date you find out
2 you're in default because, of course, the whole
3 purpose of service of process is to provide notice
4 and to get jurisdiction over the parties.

5 The second one is meritorious defense.
6 And you've heard Mr. Hilliard characterize
7 Mr. Owens' affidavit and testimony two different
8 case. Either he didn't sign it or he didn't know
9 what he signed; okay? Well, the second one is not a
10 meritorious defense, as we know, because the parties
11 always imputed they know what they signed in reading
12 it; okay? So, really, the only question is, did
13 somebody else sign his name; okay? In other words,
14 did somebody else steal his identity, sign his name
15 on this loan?

16 We've gotten and we've pointed to the
17 Court in the designations the deposition of Roland
18 Paddy and Michelle Paddy Refosco. Ms. Refosco is
19 the lawyer that closed the transaction. She's the
20 lawyer that notarized the mortgage and she's the
21 lawyer that witnessed Mr. Owens sign the mortgage
22 and note in her office in Myrtle Beach, which
23 admitted her sworn testimony to the Court for that
24 purpose. What she says is these salient facts -- I
25 know Mr. Owens, I've known him for years before I

1 practiced law, I have been involved in Mr. Paddy's
2 and my father's steel business or construction
3 business, I've had 12 transactions with Mr. Owens
4 before I became a lawyer, and he came in both times
5 into my office to sign documents related to this
6 loan. She photocopied his driver's license as
7 required by the Patriot Act. So she knows and she's
8 testified that he was there and she witnessed it.
9 She's a disinterested witness, Your Honor.

10 Mr. Paddy, likewise, who's known
11 Mr. Owens since 1974, said he went to the lawyer's
12 office with Hostetler, the other in default
13 defendant, Mr. Owens and himself, and they all
14 signed the loan documents.

15 My partner, David Slough out of Myrtle
16 Beach, asked Mr. Paddy, how do you know Mr. Owens
17 signed? He said, I know he signed it, that's his
18 signature. He's been in business with him 25 or 30
19 years, 35 years if my math is right. He's known
20 this man, he has done deals with him.

21 So you have two disinterested witnesses.
22 Mr. Paddy, who actually would behoove him to have
23 Mr. Owens fight and sign it, he says no, he signed
24 the note. He said no, he signed the mortgage; okay?
25 So we have the testimony of two disinterested

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1 witnesses as opposed to Mr. Owens who's fat is
2 hanging out in the fire trying to get out of
3 default.

4 So I would submit, Your Honor, that that
5 is not a meritorious defense. There's no evidence
6 to support Mr. Owens' testimony. There's no
7 evidence to corroborate Mr. Owens' testimony. And,
8 in fact, the only testimony that is of disinterested
9 witnesses is direct contrary of what he testified.

10 Finally, Your Honor, with regard to
11 prejudice, one thing we haven't really talked about,
12 and this is really what prejudice goes to, is that
13 Mr. Owens has filed a proposed answer that says in
14 relevant part these things -- I didn't sign it, I
15 didn't know what I was signing or, alternatively,
16 Mr. Paddy stole my identity; okay?

17 Then he says, as an affirmative defense
18 to a contractual action, the Plaintiff was negligent
19 in not investigating whether I wanted this loan.
20 Then it says as a counterclaim the Plaintiff has
21 violated the Unfair Trade Practices Act.

22 Now, in the three depositions we've
23 taken, there's absolutely no evidence how my client
24 violated the Unfair Trade Practices Act, but it's
25 out there. So if you do set aside default and if

1 Mr. Owens is allowed to file his answer to the
2 counterclaim, it will tremendously expand the scope
3 of this litigation. Not -- not really in the
4 prosecution of my client's claim, but in the defense
5 and prosecution of the counterclaim. And if that's
6 not prejudice for my client, Your Honor, I don't
7 know what is.

8 But additionally, Your Honor, the cost
9 and expense associated with this whole process of
10 setting aside allowing an entry -- allowing an
11 answer and then proceeding forward on the claim and
12 counterclaim also prejudices my client -- aside from
13 the expansion of the issues, the cost to defend the
14 counterclaim. Is highly prejudicial.

15 THE COURT: Let me interrupt. Any time
16 a Court would grant a motion and allow somebody out
17 of default, where they can file an answer, the same
18 would be true in each case to some extent because an
19 answer would be filed and you would have to respond
20 to it. I mean, isn't that true?

21 MR. WALLACE: Well, Your Honor, the only
22 thing that's true in the context of counterclaim
23 would you have to respond to it. I think an answer,
24 like Mr. Johnson's client filed, where it's just a
25 general denial --

1 THE COURT: Well, I understand that, but
2 you can't pick and choose how the other side is
3 going to answer. They can do a general denial, they
4 can do an affirmative defense, they can allege a
5 dissatisfaction in a commercial dealing, they can do
6 a counterclaim. All of that can lead to further
7 discovery and cost. So --

8 MR. WALLACE: I agree, Your Honor,
9 except that all of that goes into the prejudice
10 analysis.

11 THE COURT: Well, that's my point here,
12 because I don't think now I have to defend is the
13 type of prejudice that the Court is talking about
14 because, by definition, if you allow somebody out of
15 default you've got to do something because they have
16 the ability to respond. And their ability to
17 respond is not just limited to a general denial.

18 MR. WALLACE: Sure.

19 THE COURT: All right.

20 MR. WALLACE: I would agree with that,
21 Your Honor, but I think the person that sits and
22 waits for 171 days and then blasts in and says not
23 only -- first of all, I want to remind the Court
24 that he was relying on Paddy to interpose an answer
25 which would have been enhancement of a general

1 denial.

2 THE COURT: I'm going to get back to
3 that link, but if meritorious -- if -- if the
4 prejudice -- I think what the prejudice means is I
5 changed my condition, my witnesses got gone,
6 somebody moved, I can't -- I can't -- I can't do
7 something right now on November 19th that I could
8 have done 90 days ago, I don't think it just simply
9 means now I have to respond.

10 But I want to get back because what I've
11 kind of heard in argument earlier from you is you've
12 got -- the way I interpret the law, you have four
13 factors you've got to look at. And what I hear you
14 argue is there's a threshold and you don't talk
15 about these three unless you get by Number 1.
16 That's your argument.

17 MR. WALLACE: That is my argument, Your
18 Honor.

19 THE COURT: Now, so what I want to ask
20 all counsel here -- can you slide over a little bit?

21 MR. WALLACE: I can sit down if you'd
22 like.

23 THE COURT: That's fine. You can do
24 both. If there is the threshold question of
25 reliance that we've argued about, what I want to

1 know is is based on the deposition testimony that
2 y'all have got and y'all's argument, is anybody
3 arguing that Paddy unambiguously told Owens, I'm
4 going to answer the lawsuit for you? I'd like to
5 hear a response from all three of you.

6 MR. HILLIARD: Yes, sir. That is --
7 that is what Mr. Owens says. Mr. Owens says that --
8 well, I suppose that I should be somewhat less
9 positive and I don't -- I don't know that I can say
10 that he said, I'm going to answer the lawsuit. But
11 I don't know that people talk -- that Mr. Paddy and
12 Mr. Owens talked in terms of answering lawsuits.

13 Mr. Owens says that -- in his deposition
14 Mr. Owens says that Mr. Paddy had been sued and
15 Mr. Owens, my client, got a lawsuit, was served with
16 a lawsuit and when he received the lawsuit the first
17 thing that he did was call Mr. Paddy. And he called
18 Mr. Paddy and said, I've been sued and Mr. Paddy
19 came -- and Mr. Owens says that Mr. Paddy came and
20 collected the papers and said, I will take care of
21 it. And that fits within the context of all the
22 things that have been said between Paddy and Owens
23 in this case because Mr. Paddy had indicated to
24 Mr. Owens that -- the way this thing started, Judge,
25 to give you a little background -- and I know you

1 asked a specific question. If I go too far, just
2 shut me off.

3 Mr. Owens loaned Mr. Paddy \$100,000 on
4 the idea that he would make a profit on that
5 \$100,000 loan. Mr. Paddy came back and said,
6 Mr. Owens, if you want to -- that loan stayed
7 outstanding for some considerable period of time and
8 Mr. Paddy came to Mr. Owens and said, Mr. Owens, if
9 you -- if you want me to be able to repay you your
10 100,000, then you're going to have to sign some
11 papers -- bless you.

12 And the -- and the defenses that we have
13 in this case are somewhat tangled in that in that
14 Mr. -- Mr. Owens says that he doesn't know whether
15 he signed those documents or not. Mr. Paddy would
16 bring documents and he would sign them on the notion
17 that he was signing documents --

18 THE COURT: All right. That's getting
19 into your theory of meritorious defense. What I
20 want to focus in on right now is this theory that's
21 been advanced that there's a threshold question that
22 you guys have got to answer. Do you have a right to
23 rely on somebody else? If a person gets sued in
24 South Carolina and somebody else says, I will answer
25 it for you and you go into default, is that a

1 meritorious defense?

2 To me, there's a two-step analysis. And
3 one is, is it said unambiguously? Did somebody say,
4 I'll answer it for you? And because I've heard -- I
5 mean, I've read what the deposition said and, to me,
6 it seems like it was more of an inference or I heard
7 the situation and that's what I -- that's what I
8 meant and that's what I thought he understood I
9 meant. And that's what I want to hear from you
10 guys, because if there's somewhere in the deposition
11 in the stuff that y'all handed up where Paddy says
12 I'll answer it or I'll take care of it or it's my
13 responsibility, then that's what I want to see.

14 Now, Mr. Johnson, does your guy in the
15 depositions tell him I'll answer the lawsuit?

16 MR. JOHNSON: Your Honor, I don't think
17 that he specifically said that he would answer it on
18 behalf of Mr. Owens. He obviously said that he
19 hired me to answer it on behalf of himself. There
20 was never any conversation about me representing
21 anybody other than Mr. Paddy in our personal
22 conversations and being retained.

23 But within the deposition I think
24 Mr. Paddy was clear that he did speak with Mr. Owens
25 and -- I don't recall exactly what the depositions

1 say about his conversations with him about -- it's
2 unclear -- the only -- in his answer he says, let me
3 clarify that. I called Mr. Johnson when I received
4 the foreclosure papers to give us as much time as he
5 could because I had a contract in hand, you know,
6 for sale. I didn't know how long it was going to
7 get completed -- I didn't know how long it was going
8 to take to get completed. So he does state that he
9 called me to intercede on the foreclosure papers,
10 but I don't think that he ever said that I told
11 Mr. Owens that I would have an attorney answer for
12 him.

13 THE COURT: All right. I've already --
14 I've heard your response on it.

15 MR. WALLACE: You have, Your Honor. He
16 does not say it anywhere.

17 THE COURT: All right. Now, let's
18 assume -- let's assume that he doesn't have to say
19 it directly, but you can infer it from the
20 circumstances; all right? Let's say that's the
21 standard, for the totality of circumstances you can
22 infer it; all right? A reasonable man would infer
23 he's doing this. Does it matter? Under the case
24 law that Plaintiffs have cited, does South Carolina
25 case law say you can't rely on your attorney, you

1 can't rely on your insurance agent, you can't rely
2 on a third person to sign it? I mean, is there any
3 case that says excusable neglect is reliant on a
4 third party?

5 MR. HILLIARD: I would submit, Judge,
6 that there are not cases that say that it is -- that
7 it is necessarily not excusable neglect. One of the
8 things -- I hear -- I hear where you are and I
9 understand what the Plaintiff has said his cases
10 say.

11 One of the things that's in the cases,
12 Judge, that's clear throughout every case and that
13 is that the code section is to be liberally
14 construed to promote justice and dispose of cases on
15 the merits. So liberal construction in order to get
16 to the case on the merit. And whether or not to
17 grant relief is within the discretion of the Court.

18 So I think that our question here today
19 is not -- I would urge the Court to take the
20 position that you have the right to decide this case
21 certainly to -- there's nothing in any of these
22 cases that says that you can't give us the
23 opportunity to answer. I don't -- I don't think the
24 Plaintiff is saying that it would be an abuse of
25 discretion for you to give us the opportunity to

1 answer. I don't think any of the cases say that

2 I think what you're asking is that if --
3 and the way I read the cases is that if Your Honor
4 were to decide in your discretion not to open the
5 case would we be able to overturn that decision on
6 appeal? I think that's kind of where the case is --
7 cases go to. I think clearly it's within your
8 discretion.

9 If, in fact, the individual who -- who
10 makes a representation to my client was acting
11 fraudulently in connection with that, that is
12 Mr. Paddy -- and if I could just point out, Judge,
13 what Mr. Owens says about your question at Page 38
14 of his deposition it says: Mr. Paddy assured you
15 that he would answer for the both of you? And the
16 answer is: Yes, sir. Mr. Paddy said he'd hire a
17 lawyer in Columbia and that I didn't have to worry.

18 So that -- as far as Mr. Owens, there's
19 a question -- I would submit that there's not really
20 a question of fact in connection to that, but
21 certainly that's a very specific answer to a
22 question that Mr. Owens -- Mr. Owens said.

23 Whether you rely on -- I don't think
24 that -- I don't think that there are any cases that
25 say that you have the absolute right to rely on a

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1 third party, but at the same time I would submit to
2 the Court that the cases don't say that you can't
3 rely on a third party either if the Court, in its
4 discretion, decided to give us the opportunity to
5 answer on its merits.

6 THE COURT: I hear what you're saying --
7 hear what all of y'all are saying, but what I'm
8 trying to figure out is if our appellate courts have
9 said it's not excusable neglect when you rely on a
10 lawyer that you ought to be able to rely on? It is
11 not excusable neglect to rely on an insurance agent.

12 I'm trying to figure out how, then, it
13 would be a proper exercise of discretion to say
14 given those two relationships you can't -- that you
15 can rely on somebody that you're in business with.

16 MR. HILLIARD: In the one sense there's
17 a professional relationship and those other
18 individuals are people who you have a contract with
19 and who are obliged to follow through on your behalf
20 and in some ways are considered to be an extension
21 of yourself, so that would be an agency type
22 situation whereas here --

23 THE COURT: And that's another point.
24 In an agency situation, the holding out is not what
25 the agent said, it's what the principal says or --

1 an analogy between authority and parent authority of
2 what can I do and what did -- what am I authorized
3 to do or what was said is what the principal says,
4 not what the agent understood. Isn't that what our
5 case law is?

6 MR. HILLIARD: Yes, sir.

7 THE COURT: All right. So, again, I
8 guess what I'm saying is your guy said I thought he
9 said this, but what Mr. Johnson is saying is that
10 ain't what my guy said. You're saying I thought
11 that's what he said, but he's saying that ain't what
12 I said.

13 MR. HILLIARD: What Mr. Paddy in his
14 deposition says -- which is his guy. And I don't
15 think that -- I hate to put words in his mouth but I
16 don't think what he meant to say was that's not what
17 he said in the sense that I will handle it may very
18 well mean exactly the same thing as I will hire a
19 lawyer or I will answer for both of us, I'll take
20 care of it.

21 And the difference, Judge, in that kind
22 of situation, here we have Mr. Paddy who was not
23 acting as a representative of my client but, in
24 fact, had some pretty good reason not to want my
25 client to be involved in all of this because it's --

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1 it's his daughter who is the attorney. And I would
2 submit, Judge, he's not a disinterested witness in
3 this case. It's his daughter, Mr. Paddy's daughter,
4 the attorney, who said that these things were
5 executed in a fashion, that my client absolutely
6 denies that they were executed in that fashion. So
7 if, in fact, what happened was Mr. Paddy was sort of
8 putting this thing together outside the knowledge of
9 my client, then he would have an interest in keeping
10 my client out of the litigation.

11 THE COURT: Well, there's -- I mean, now
12 you tend to be arguing something different. If the
13 argument is do I have a right of reasonable
14 reliance --

15 MR. HILLIARD: Yes, sir.

16 THE COURT: -- case law seems to say no,
17 because you've got a right of reasonable reliance on
18 your lawyer, on your insurance agent. Clearly a
19 codefendant can't do it, but now what you're tending
20 to do is -- it's kind of getting into earlier stuff
21 I read is that you're almost arguing there was a
22 fraud.

23 Now, if -- I mean, if you're saying they
24 committed deliberate fraud in that dad and daughter
25 somehow committed fraud, I mean, I don't -- I'm

1 trying to see where the evidence gets to that level
2 because clearly there's -- in my mind there would be
3 a different issue of somebody perpetuating a fraud
4 as opposed to reliance. Are you arguing fraud?

5 I mean, for example, if -- if there was
6 a -- if there was documentation where Mr. Johnson's
7 client got hold of his stationery and said, I'm
8 answering for you, I will file an answer and gave it
9 to Mr. Owens and it was clearly found out later that
10 that was fraud; okay? I mean, that's different from
11 just relying, I think.

12 So what I guess I'm asking you is, is
13 I'm not -- you're sort of drifting there, but I
14 don't see any facts approaching fraud. It seems to
15 me to be more just a case giving the benefit of the
16 doubt and taking everything that your man has
17 alleged to be true, it would seem to be a case of he
18 was relying on what Mr. Johnson's guy said and he
19 interpreted it to mean I will file an answer for
20 you.

21 That's different from fraud. That's
22 different from a conscious effort on his guy's part
23 to mislead your man into thinking that so he can put
24 him in default to benefit him, which you're starting
25 to kind of go into now.

1 MR. HILLIARD: I don't believe that I
2 can prove fraud. The reason that I'm talking about
3 those things is to -- is to put into perspective
4 perhaps the thought process of Mr. Paddy and saying
5 one group of things to Mr. Owens and to -- and doing
6 something different than what he said. Again, I
7 can't prove that he went there purposely to mislead
8 Mr. Owens. But clearly if you look at what
9 happened -- and, again, Mr. Owens is standing there
10 and what Mr. Owens says, Mr. Paddy came and he said
11 I will take care of this and he got the papers and
12 carried the papers away. That's what Mr. Owens
13 says.

14 THE COURT: All right. Would that
15 situation be any different from the attorney case
16 cited where, say, Mr. Owens had come to Attorney X
17 and met in Attorney X's office and gave him all the
18 papers and said, I've been sued, here's all the
19 paperwork, here's my whole file and Attorney X does
20 not file an answer? Because under the case cited
21 that seems to say it doesn't matter if your attorney
22 didn't file it, doesn't matter.

23 MR. HILLIARD: And that -- (reading) --
24 the case that you're referring to, Judge?

25 THE COURT: Mr. Wallace cited three

1 cases. He said there was an attorney -- you can't
2 rely on an attorney, you can't rely on an insurance
3 agent and you can't rely on a codefendant; is that
4 correct, Mr. Wallace?

5 MR. WALLACE: Your Honor, that is the
6 long-standing rule of this state. And I actually
7 cited five cases, but that's correct.

8 THE COURT: Which case was the attorney
9 case?

10 MR. WALLACE: I don't know that any of
11 them were an attorney case per se except --
12 actually, that's not true. Dixon versus Besco
13 Engineering.

14 THE COURT: This says --

15 MR. WALLACE: I think that would be an
16 attorney case. And then the Stark Truss case is the
17 codefendant case.

18 THE COURT: (Reading.) All right.

19 MR. HILLIARD: Judge, in the one that he
20 cited as the attorney, reading from the case itself,
21 it is the individual -- the attorney in Florida got
22 an extension until January 4th to file an answer --

23 THE COURT: Well, if I can direct you to
24 Page 4, bottom of 4 it says: The Courts of this
25 state have consistently held that the negligence of

36

1 an attorney or insurance company is imputable to a
2 defaulting litigant.

3 MR. HILLIARD: The bottom of Page -- oh,
4 I see. The Page 4 from the facts part of it, so...

5 THE COURT: It's in the memorandum, Page
6 4 of the memorandum.

7 MR. HILLIARD: I'm sorry, Page 4 of the
8 memorandum. Yes, sir. But if you look at the case
9 at Page 5, and I think you have a copy of the case
10 there, Judge, the one that he's talking about where
11 the lawyer made the mistake.

12 THE COURT: You're talking about Dixon.
13 I'm talking about Pilgrim versus Miller.

14 MR. HILLIARD: I was talking about Dixon
15 versus...

16 MR. WALLACE: Your Honor, if I may
17 clarify that. I apologize. In looking back at
18 Dixon I'm not sure that the lawyer messed up such
19 that his negligence was imputable. Lawyers were
20 involved, but I don't think a lawyer quote, unquote
21 failed to answer.

22 But the Court is correct that all the
23 other cases cite, just as you said, they cite
24 that -- I believe it's the Von Valkenberg case from
25 1985 that says attorney negligence and insurance

1 company negligence are imputable to the defaulting
2 party.

3 THE COURT: That's my understanding of
4 the law.

5 MR. WALLACE: I take back my
6 representation. I don't think one of these five
7 cases I've handed up is an attorney negligence case,
8 and I'm sorry for the confusion.

9 MR. HILLIARD: So we agree that the
10 Dixon case does not apply, because that was clearly.
11 the person who was held in default made the error in
12 Dixon.

13 THE COURT: The language in the case is
14 the language in the case. I guess what I'm asking
15 is it appears to me, from what I read and
16 understand, that if the attorney messes up that's
17 imputed to you. You can't say my attorney didn't do
18 it, that's not -- that's not good cause. Is that
19 your understanding of the law?

20 MR. HILLIARD: Yes, sir.

21 THE COURT: Okay. All right. Let me --
22 unless there's something else any of y'all want to
23 add, I want to take this back and I'll read it all
24 and I'll send out memorandum. But as I
25 understand -- if I can just summarize. If I

1 understand what Plaintiff is saying, Plaintiff is
2 saying that there is a -- there is a threshold
3 question that has to be answered. You have to have
4 good cause before you get to the wham factors. And
5 Plaintiff is arguing you don't have good cause
6 because there was -- you can't -- if you can't rely
7 on an attorney, if you can't rely on the insurance
8 agent, if you can't rely on the good -- on a
9 codefendant, you can't rely on a business partner.
10 And I've heard the evidence about what everybody
11 says they think Paddy said to Owens.

12 MR. WALLACE: Yes, sir.

13 THE COURT: What I've heard Mr. Johnson
14 say is that it's not his understanding that his
15 client directly told Mr. Owens I'm going to be
16 answering for you.

17 And what I've heard -- I apologize --
18 Mr. Hilliard say is what my man understood was he
19 got served with a lawsuit, he took it to Paddy,
20 Paddy collected the papers. And my guy's, after
21 discussion with Paddy, belief was he told me or he
22 represented he was going to handle it and he'd file
23 a suit on my behalf. And that -- and that because
24 of that, I get into the wham factors and I have
25 meritorious defenses about I didn't sign or I didn't

1 understand what I was going to sign, and then the
2 prejudice factor that you've argued. And Plaintiff
3 is arguing there is no meritorious defense and he's
4 prejudiced.

5 Now, do y'all agree that there's a
6 threshold question or -- are there four factors you
7 have to look at, or one first and then three?

8 MR. WALLACE: Your Honor, I believe the
9 analysis is is there a reasonable explanation or a
10 good explanation, it's called a good cause analysis.
11 But I believe the threshold question is, why did you
12 not answer? And if that's sufficient, then they go
13 into the other three.

14 THE COURT: Do you agree with that
15 analysis?

16 MR. HILLIARD: I don't believe -- I
17 don't believe that there's anything -- in any of the
18 cases that says that specific thing, Judge. I think
19 that the -- again, it seems to me that the whole of
20 this is discretionary with the Court. And the cases
21 do not say that it would have been an abuse of
22 discretion to go in the other direction if the Court
23 had made that determination. So I don't -- I don't
24 believe there's anything -- I don't necessarily
25 agree with that, no, sir.

1 THE COURT: Mr. Johnson?

2 MR. JOHNSON: There's a reading of the
3 Sundown case that would seem to support that there
4 is a threshold. And Mr. Owens' memorandum holding
5 the wham factors are considered only once the party
6 has put forth the satisfactory explanation for the
7 default. So it seems like there is a threshold, you
8 have to give us a good reason first and then move on
9 to the other factors.

10 THE COURT: Now, as far as the
11 discretion standard, a discretion standard is not
12 unlimited. I mean, a judge doesn't have unlimited
13 discretion.

14 MR. HILLIARD: Yes, sir.

15 THE COURT: And a lower court has got to
16 look at what upper court -- upper appellate court
17 decisions have been to guide trial courts on
18 exercise of discretion. You would agree with that,
19 wouldn't you?

20 MR. HILLIARD: Absolutely, yes, sir.

21 THE COURT: I'm going to go back and
22 read the memos and read the cases, and then I will
23 send out a decision memorandum asking somebody to do
24 it.

25 MR. HILLIARD: Judge, would you at all

1 be willing to entertain an additional memorandum
2 within the next few days?

3 THE COURT: Certainly. Y'all can just
4 copy each other.

5 MR. HILLIARD: I will.

6 THE COURT: You can do it by e-mail if
7 you'd like to but, I mean, next week is a short week
8 so I won't -- what's your time limit on this?
9 Mr. Hilliard, what --

10 MR. HILLIARD: Tuesday?

11 THE COURT: Tuesday is the 23rd. So if
12 anything is going to be submitted, it's got to be
13 submitted by three o'clock on the 23rd, Tuesday the
14 23rd. I don't want to get into the five o'clock
15 mode. Three o'clock on the 23rd.

16 MR. HILLIARD: And to your e-mail -- by
17 three o'clock to your e-mail?

18 THE COURT: And then certainly if you
19 guys want to submit it, you've got time to respond.
20 What we'll do is if something is submitted, I'll
21 read what's submitted and then I will send an e-mail
22 out that says I've read everything, I've decided
23 this. Or if it raises an issue, I'll give you guys
24 time to respond.

25 MR. WALLACE: Your Honor, if I may point

42

1 out one more thing. You asked the question about
2 what -- when do they count from, what point do they
3 count from? And I just found -- I knew I had it
4 somewhere. The Richardson case, which is the 2009
5 Supreme Court case, we were talking about the time
6 limits of the motion to set aside, they counted from
7 the point of entry of default. Not from point of
8 when they noticed that they were in default, but
9 they said 60 days from entry of default. Of course,
10 using that time frame, it's been four months or 120
11 days since the entry of default before the filing of
12 the motion to set aside. So on the timeliness
13 factor, it's the first wham factor.

14 THE COURT: Thank you. Appreciate y'all
15 coming up.

16 MR. HILLIARD: Thank you very much,
17 Judge.

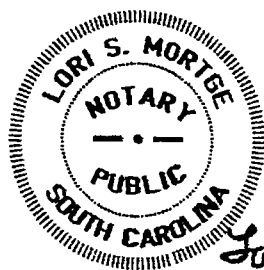
18 (The preceding was concluded at 10:35
19 a.m.)

1 CERTIFICATE OF REPORTER
2

3 I, Lori S. Mortge, Certified Court
4 Reporter and Notary Public for the State of South
5 Carolina at Large, do hereby certify that the
6 foregoing transcript is a true, accurate, and
7 complete record.

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto affixed
12 my official seal this 21st day of June, 2011 at West
13 Columbia, Lexington County, South Carolina.
14



19 *Lori S. Mortge, CCR*

20 Lori S. Mortge, CCR
21 My Commission expires
22 December 13, 2016
23
24
25

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF LEXINGTON

3
4 REGIONS BANK,

5 Plaintiff,

6 vs.

CASE NO. 2009-CP-32-05373

7 WILLIAM S. OWENS,
8 DAVID S. HOSTETLER, ROLAND G. PADDY,
9 AND GREER STATE BANK,

10 Defendants.

11
12 HEARING BEFORE: THE HONORABLE JAMES O. SPENCE

13 DATE: December 3, 2010

14 TIME: 9:45 a.m.

15 LOCATION: Lexington County Courthouse
16 205 East Main Street, Room 2A
Lexington, SC

17 REPORTED BY: Susan M. Valsecchi, RPR, CRR
18 Certified Realtime Reporter
19

20 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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ALSO PRESENT:
Gregory J. Kaye

(INDEX AT REAR OF TRANSCRIPT)

1 THE COURT: We are here on Regions Bank
2 versus Owens, et al., 2009-CP-5373. It is a
3 contested foreclosure case.

4 We have various counsel here
5 representing various parties. So before we begin,
6 if each attorney will please stand, announce your
7 name and who you're representing.

8 MR. WALLACE: Good morning, Your Honor,
9 Bruce Wallace. I represent the Plaintiff Regions
10 Bank.

11 THE COURT: Thank you.

12 MR. HILLIARD: Good morning, Your
13 Honor, John Hilliard from Georgetown. I represent
14 William S. Owens.

15 MR. GARDNER: Good morning, Your Honor,
16 my name is Lex Gardner. I also represent
17 Mr. William Owens.

18 MR. JOHNSON: I'm Wes Johnson
19 representing Roland Paddy.

20 THE COURT: Thank you.

21 MR. HILLIARD: Judge, at this time, on
22 behalf of Mr. Owens -- and we have received Your
23 Honor's order denying our motion to set aside the
24 entry of default and to allow us to file an answer.

25 We acknowledge and recognize that that

1 motion has been denied, and at this time we would
2 respectfully renew that motion. And it is our
3 belief and understanding from the pretrial
4 conference that we had just a moment ago and also
5 from opposing counsel that that would not be
6 immediately appealable, the denial of that motion
7 and the denial of our motion today would not be
8 immediately appealable.

9 THE COURT: Mr. Wallace?

10 MR. WALLACE: Thank you, Your Honor.
11 First, let me state I agree with Mr. Hilliard's
12 presentation of the standard for appeal. I believe
13 denials and grantings of motions to set aside are
14 not immediately appealable, that the parties have
15 to wait until the end of the presentation of
16 evidence and the entry of judgment in this case,
17 before they can appeal such an order, so we do
18 agree on that.

19 And, obviously, Your Honor, for the
20 reasons that the Court denied the motion and the
21 reasons we advanced in our two memoranda, we would
22 ask the Court again to deny the motion to set aside
23 entry.

24 THE COURT: Thank you. Mr. Johnson?

25 MR. JOHNSON: I have nothing on this

1 issue, Your Honor.

2 THE COURT: Thank you.

3 I appreciate the memorandum and the
4 argument. I will stand by the original ruling.

5 MR. HILLIARD: Thank you very much,
6 Your Honor.

7 MR. WALLACE: Thank you, sir.

8 THE COURT: Mr. Wallace, your case.

9 MR. WALLACE: Thank you, Your Honor.
10 Again, my name is Bruce Wallace. I'm an attorney
11 from Charleston, South Carolina, with the law firm
12 Nexsen Pruet, and I represent the Plaintiff Regions
13 Bank.

14 With me today on behalf of Regions Bank
15 is Mr. Gregory Kaye. He's going to be our sole
16 witness today, Your Honor. And as a preliminary
17 matter, I had a couple of things that I
18 hand-delivered to opposing counsel that I would
19 like to hand up to the Court that I believe is
20 consistent with the Court's standing order with the
21 documents to be brought to the Court in foreclosure
22 cases. So if I may approach, Your Honor.

23 THE COURT: Certainly.

24 MR. WALLACE: I'm handing to the Court,
25 Your Honor, a copy of the certificate of service

1 demonstrating hand delivery of the enclosed
2 documents.

3 The documents that we hand-delivered
4 today were our pretrial brief, which is a copy
5 included for the Court, a draft of a proposed
6 notice of sale, a draft of proposed order and
7 judgment, decree of foreclosure.

8 And I've also handed up, Your Honor, a
9 designation of deposition excerpts from Mr. Roland
10 Paddy who is a party to this matter. And we have
11 handed those to and served those on opposing
12 counsel as well.

13 And, Your Honor, we served and handed
14 up to the Court an Affidavit of Debt that we filed
15 this morning signed by Mr. Kaye. Obviously, Mr.
16 Kaye is here to testify to the debt itself, but it
17 was my understanding of the Court's sort of
18 standing order that we needed to file such an
19 affidavit in addition to having a live witness;
20 we've done both. And we're prepared to proceed at
21 the Court's direction.

22 THE COURT: Thank you. For future
23 clarification, the Affidavit of Debt executed by
24 the client is just in uncontested cases. Obviously
25 in a contested case, the client's got to testify.

1 MR. WALLACE: Yes, Your Honor.

2 THE COURT: But that's not a problem.

3 MR. WALLACE: Yes, Your Honor.

4 THE COURT: Counsel, anything?

5 Mr. Gardner?

6 MR. HILLIARD: No, Your Honor.

7 MR. GARDNER: No, Your Honor.

8 MR. JOHNSON: No, Your Honor.

9 THE COURT: You may call your witness.

10 MR. WALLACE: Thank you, Your Honor.

11 The Plaintiff calls Gregory Kaye to the stand.

12 (The oath was administered to the
13 witness by the bailiff.)

14 THE BAILIFF: Have a seat on the
15 witness stand and state your full name for the
16 record.

17 THE COURT: Mr. Kaye, there's water.

18 THE WITNESS: Thank you. My name is
19 Gregory James Kaye.

20 MR. WALLACE: May I proceed, Your
21 Honor?

22 THE COURT: Yes, sir.

23 MR. WALLACE: Thank you, Your Honor.

24 GREGORY JAMES KAYE

25 being first duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. WALLACE:

3 Q. Mr. Kaye, if you will please give your
4 title and place of employment for the record.

5 A. I am a vice president of community
6 banking at Regions Bank.

7 Q. And do you have personal knowledge of
8 the loan made to the Defendants in this matter,
9 Roland Paddy, William Owens and David Hostetler?

10 A. I do.

11 Q. Okay. Now, I'll go ahead and ask you,
12 can you tell the Court whether Regions Bank made a
13 loan to the Defendants?

14 A. Yes.

15 Q. Okay. Do you recall the amount of the
16 loan made to the Defendants, the original amount?

17 A. I believe it was \$700,000.

18 MR. WALLACE: Your Honor, may I
19 approach the witness with exhibits?

20 THE COURT: Certainly. Have y'all
21 exchanged exhibits?

22 MR. WALLACE: We have not had an
23 opportunity to exchange exhibits, Your Honor.

24 THE COURT: Obviously, if any of the
25 defense has an objection to an exhibit, please

1 raise it upon it being handed to you for review.

2 MR. HILLIARD: Yes, sir.

3 (PLF. EXH. 1, original Promissory Note
4 in the amount of \$700,000, was marked for
5 identification.)

6 MR. WALLACE: Your Honor, I have copies
7 for the Court if the Court would like them.

8 THE COURT: Yes, sir.

9 BY MR. WALLACE:

10 Q. Mr. Kaye, I'm handing you what's been
11 marked as Exhibit Number 1, if you can identify
12 that for the record.

13 A. Yes.

14 Q. Tell the Court what Exhibit Number 1
15 is?

16 A. This is the original note for the loan
17 and it is \$700,000.

18 Q. Is it a true and accurate copy of the
19 original note?

20 A. Yes.

21 Q. Okay. And does Regions Bank possess
22 the actual original note?

23 A. Yes.

24 Q. Your Honor, I would like to move
25 Exhibit 1 into evidence.

1 THE COURT: Objection, anybody?

2 MR. HILLIARD: Judge, I'm seeking
3 advice from the Court, a ruling from the Court,
4 regarding our opportunity to participate in this
5 part of it, recognizing that our answer has not
6 been allowed, so we would certainly -- if we have
7 the opportunity to object to this, we would object
8 to it. There's been no foundation laid as to the
9 accuracy of the signatures of the individuals
10 involved. All this is is a piece of paper that
11 purports to be a promissory note, so there's no
12 foundation for it at this point to connect it to
13 these individuals.

14 THE COURT: All right. Thank you.
15 Mr. Johnson for Mr. Paddy?

16 MR. JOHNSON: Your Honor, this appears
17 to be the note that Mr. Paddy provided to me. I
18 have no objection to it.

19 THE COURT: All right, thank you.
20 Mr. Wallace?

21 BY MR. WALLACE:

22 Q. Your Honor, first, I can establish a
23 little more foundation if the Court requires it.
24 But second of all, I would point to the deposition
25 excerpts we filed with the Court served on opposing

1 counsel wherein Mr. Paddy went under oath,
2 testified that he, Mr. Hostetler, and Mr. Owens,
3 signed the note which has ended up as Exhibit
4 Number 1.

5 It was marked as Exhibit Number 2 to
6 Mr. Owens' deposition and then Mr. Paddy was
7 questioned about it in his deposition, all of which
8 is attached to the deposition excerpts filed with
9 the Court, sir, and opposing counsel.

10 THE COURT: Thank you. I'm going to
11 overrule the objection, because I think
12 Mr. Hilliard has raised a valid point in that if he
13 is in essence in default because of my earlier
14 ruling, then all he can do today is contest
15 damages. So that's the ruling. And, again, as we
16 discussed before trial, I believe what y'all are
17 limited to today is cross-examination of damages,
18 not a defense here to the note or to the mortgage.

19 MR. HILLIARD: Right. I didn't want to
20 give up an opportunity to make an objection, but I
21 didn't want to spend a lot of time on it if it was
22 improper.

23 THE COURT: Yes, sir, I understand, and
24 I appreciate the manner in which you made it.

25 MR. HILLIARD: Thank you, Your Honor.

1 THE COURT: So the note goes in as
2 Plaintiff's Number 1.

3 MR. WALLACE: Thank you, Your Honor.

4 (PLF. EXH. 2, Mortgage, was marked for
5 identification.)

6 MR. WALLACE: Your Honor, I have handed
7 up Exhibit Number 2 to the witness.

8 BY MR. WALLACE:

9 Q. Mr. Kaye, can you tell the Court
10 whether the borrowers, the Defendants in this
11 action, pledged any collateral to secure the loan
12 that's evidenced by Exhibit Number 1?

13 A. Yes, the acreage in Lexington.

14 Q. All right. Can you tell --

15 A. And I believe there's a building on
16 that as well.

17 Q. Can you tell the Court whether the
18 Defendants executed and delivered a written
19 mortgage involving that property?

20 A. Yes, they did.

21 Q. All right. I have handed you Exhibit
22 Number 2, if you can identify that for the Court.

23 A. This is a mortgage.

24 Q. Okay. And can you tell whether or not
25 that mortgage is a certified true and correct copy

1 from the records of the Register of Deeds for
2 Lexington County?

3 A. Yes, it is.

4 Q. I ask you to hand up Exhibit Number 2
5 to the Court.

6 MR. WALLACE: Your Honor, I would ask
7 that you take judicial notice that Exhibit Number 2
8 is a certified copy of the mortgage from the
9 Register of Deeds for Lexington County.

10 THE COURT: Thank you. Mr. Johnson,
11 anything?

12 MR. JOHNSON: No objection, Your Honor.

13 THE COURT: Thank you. Number 2 is
14 admitted as the mortgage recorded in record book
15 10261 at Page 186.

16 MR. WALLACE: Thank you, Your Honor.

17 BY MR. WALLACE:

18 Q. Now, Mr. Kaye, can you tell the Court,
19 did at some point the promissory note which is
20 marked as Exhibit 1, did it mature?

21 A. Yes, it did.

22 Q. Okay. What if anything did the bank do
23 upon maturity of the promissory note which is
24 Exhibit 1?

25 A. Upon maturity over the course of this,

1 we have either extended or done short-term renewals
2 on the note to continue it going forward.

3 Q. Okay. Those extensions or renewals
4 that the bank would have done, would those have
5 been pursuant to conversations with the Defendants?

6 A. Yes.

7 Q. Okay.

8 A. Specifically with Mr. Paddy.

9 Q. Okay. And would those have been
10 conversations that you personally had with
11 Mr. Paddy?

12 A. Yes.

13 (PLF. EXH. 3, Extension of the maturity
14 date for loan dated July 18, 2007, was marked for
15 identification.)

16 MR. WALLACE: Your Honor, I'm handing
17 up Plaintiff's Exhibit Number 3.

18 BY MR. WALLACE:

19 Q. Mr. Kaye, if you can identify
20 Plaintiff's Exhibit Number 3 for the record.

21 A. Yes, this is the extension. It's dated
22 July 18th, 2007.

23 Q. Okay. And what was the purpose of the
24 extension?

25 A. More or less to continue the note.

1 When we do underwriting, there are two things we're
2 looking at, which was the fact that this is a
3 land -- more or less viewed as a land project. And
4 if it's not going to go vertical, we simply don't
5 have an intention of doing a long-term renewal. So
6 in this case, we extended the note that offered the
7 client the ability to continue it going forward.

8 Q. Okay. And as a condition of extending
9 the note, did you require all three of the
10 Defendants to sign the extension agreement which is
11 Exhibit 3?

12 A. Yes, we did.

13 MR. WALLACE: Your Honor, we would ask
14 to move Exhibit 3 into the record.

15 THE COURT: Mr. Johnson?

16 MR. JOHNSON: No objection, Your Honor.

17 THE COURT: Without objection, Number
18 3, the bank's letter dated July 18th, 2007 about
19 renewal.

20 BY MR. WALLACE:

21 Q. Mr. Kaye, can you tell the Court the
22 new maturity date that's evidenced in Exhibit 3?

23 A. This moved the maturity date from July
24 8th to November 5th, 2007.

25 Q. Okay. Now, at some point did that new

1 maturity date of November 5th, 2007 come to pass?

2 A. Yes.

3 Q. And what did the bank do, if anything,
4 on maturity of the extension agreement which is
5 memorialized in Exhibit 3?

6 A. I believe at that point we continued to
7 extend.

8 (PLF. EXH. 4, extension letter dated
9 November the 26, 2007, was marked for
10 identification.)

11 MR. WALLACE: Your Honor, I'm handing
12 up Exhibit Number 4 to the witness, Plaintiff's
13 Exhibit Number 4.

14 BY MR. WALLACE:

15 Q. Mr. Kaye, I have handed you Plaintiff's
16 Exhibit Number 4. Will you please identify that
17 for the record.

18 A. This is an additional extension on that
19 note dated from 11/5/2007 to continue the note to
20 January 4th, 2008.

21 Q. Can you tell the Court whether Exhibit
22 Number 4 was the product of further conversations
23 with the Defendants?

24 A. Yes, it was.

25 Q. Okay. Were these conversations that

1 you were party to?

2 A. Yes.

3 Q. And can you tell the Court whether your
4 signature appears on Exhibit 4?

5 A. Yes, it does.

6 Q. And then can you tell the Court what
7 other signatures appear on Exhibit 4?

8 A. Mr. Paddy, Mr. Hostetler and Mr. Owens.

9 THE COURT: Mr. Johnson?

10 MR. JOHNSON: No objection, Your Honor.

11 THE COURT: Plaintiff's Number 4,
12 extension letter dated November the 26th, 2007
13 admitted as Number 4.

14 MR. WALLACE: Thank you, Your Honor.

15 BY MR. WALLACE:

16 Q. Now, Mr. Kaye, can you tell the Court
17 based on Exhibit Number 4 what the new maturity
18 date then was extended to?

19 A. The new maturity date was extended to
20 January 4th, 2008.

21 Q. Can you tell the Court whether that
22 maturity date came to pass?

23 A. Yes, it did.

24 Q. And what if anything did the bank do
25 upon the maturity of the indebtedness as of January

1 4th, 2008?

2 A. I believe it was also an extension or
3 renewal was to follow that.

4 Q. Now, you have mentioned the terms
5 extension and renewal. Is there a difference in
6 your mind?

7 A. There is, I guess, from a bank policy
8 standpoint. An extension is more or less just
9 continuing that specific note out usually a short
10 period of time, 60 to 90 days. The bank likes to
11 see a renewal of that existing note which usually
12 exceeds at least six months to a year, at an
13 absolute minimum. More or less, I guess it's more
14 of a bank policy than any other way to put it, but
15 it's still the same. Same note, same debt.

16 Q. Okay.

17 MR. WALLACE: Your Honor, I'm handing
18 up Plaintiff's Exhibit 5 to the witness.

19 (PLF. EXH. 5, promissory note dated
20 January 25, 2008, was marked for identification.)

21 BY MR. WALLACE:

22 Q. Mr. Kaye, if you will identify
23 Plaintiff's Exhibit 5 for the record.

24 A. This is a renewal of that note carrying
25 it from January 25th to July 25th, 2008.

1 Q. And were you personally involved in the
2 negotiations and discussions with the Defendants
3 involving Plaintiff's Exhibit 5?

4 A. I was.

5 Q. Okay. Looking to Page 2, can you
6 identify the signatures that appear there?

7 A. Yes, those are the signatures of the
8 client, or the clients. Do you need the names?

9 Q. Yes, sir.

10 A. Mr. Paddy, Mr. Owens and Mr. Hostetler.

11 MR. WALLACE: Now, Your Honor, we move
12 Exhibit 5 into evidence.

13 THE COURT: Mr. Johnson?

14 MR. JOHNSON: No objection, Your Honor.

15 THE COURT: Without objection,
16 Plaintiff's Number 5, promissory note dated January
17 25th, 2008.

18 MR. WALLACE: Thank you, Your Honor.

19 BY MR. WALLACE:

20 Q. Mr. Kaye, can you identify for the
21 record and publish what the new maturity date of
22 Exhibit 5 was?

23 A. Yes, THE new maturity date moved to
24 July 25th, 2008.

25 Q. So this was effectively a six-month

1 renewal?

2 A. Correct.

3 Q. And what if anything did the bank do
4 upon the maturity of Exhibit 5 which would have
5 taken place approximately July 25th, 2008?

6 A. I believe we extended the note at that
7 point.

8 MR. WALLACE: Your Honor, I'm handing
9 up Plaintiff's Exhibit 6 to the witness.

10 (PLF. EXH. 6, extension dated July
11 25th, 2008, was marked for identification.)

12 BY MR. WALLACE:

13 Q. Mr. Kaye, if you can identify
14 Plaintiff's Exhibit 6 for the record.

15 A. This is another extension that we did.

16 Q. Okay. And just so I understand, maybe
17 for the Court's clarification, Exhibit 6 is an
18 extension of the indebtedness, as opposed to a
19 renewal.

20 A. Correct.

21 Q. Did you sign Exhibit 6?

22 A. Yes, I did.

23 Q. Okay. Can you tell the Court whether
24 Exhibit 6 is a product of negotiations to which you
25 were personally involved?

1 A. Yes, I was.

2 Q. Okay. And looking at Exhibit 6 on
3 pages 1 and 2, can you identify the signatures that
4 appear thereon?

5 A. Yes, that's the signatures of
6 Mr. Paddy, Mr. Hostetler and Mr. Owens.

7 Q. And who signed on behalf of the
8 Plaintiff, Regions Bank?

9 A. I did.

10 MR. WALLACE: All right. Your Honor, I
11 move Exhibit 6 into evidence for Plaintiff.

12 MR. JOHNSON: No objection, Your Honor.

13 THE COURT: Without objection, Number
14 6, dated July 25th, 2008.

15 MR. WALLACE: Thank you, Your Honor.

16 BY MR. WALLACE:

17 Q. Mr. Kaye, what was the maturity date
18 for the exhibit which is Number 6?

19 A. This moved the maturity date from July
20 25th, 2008 to October 23rd, 2008.

21 Q. Thank you. And what if anything did
22 the bank do upon the maturity of this extension in
23 October of 2008?

24 A. I believe we extended again.

25 MR. WALLACE: Your Honor, I'm handing

1 up Plaintiff's Exhibit 7 to the witness.

2 (PLF. EXH. 7, an extension dated
3 11/20/08 extending the note to January 25th of
4 2009, was marked for identification.)

5 BY MR. WALLACE:

6 Q. Mr. Kaye, could you identify for the
7 record Plaintiff's Exhibit 7.

8 A. Yes, this is an extension that carried
9 the note to January 25th of 2009.

10 Q. And can you tell the Court whether you
11 were involved in the negotiations of Exhibit 7?

12 A. I was.

13 Q. Okay. And can you tell the Court all
14 of the signatures that appear on Plaintiff's
15 Exhibit 7?

16 A. My signature, as well as Mr. Paddy,
17 and, um, partners in charge, Mr. Hostetler and
18 Mr. Owens.

19 MR. WALLACE: Your Honor, I move
20 Plaintiff's Exhibit 7 into evidence.

21 MR. JOHNSON: No objection.

22 THE COURT: No objection, Plaintiff's 7
23 dated 11/20/08.

24 MR. WALLACE: Thank you, Your Honor.

25 BY MR. WALLACE:

1 Q. Mr. Kaye, can you tell the Court from
2 reviewing Plaintiff's Exhibit 7 whether the
3 maturity was further extended at that point?

4 A. I can't remember if we extended past
5 that, to be honest.

6 Q. So based on Plaintiff's Exhibit 7, what
7 was the maturity date of the indebtedness at that
8 time?

9 A. January 25th, 2009.

10 Q. Okay.

11 (PLF. EXH. 8, a renewal dated
12 3/31/2009, was marked for identification.)

13 MR. WALLACE: Your Honor, I'm handing
14 up Plaintiff's Exhibit 8 to the witness.

15 BY MR. WALLACE:

16 Q. Mr. Kaye, can you identify for the
17 record Plaintiff's Exhibit 8?

18 A. Yes, this is a renewal dated 3/31/2009
19 that basically renewed the maturity of the note to
20 July 1st of 2009.

21 Q. Okay. Now, looking at it, can you tell
22 the Court whether that's the original renewal or is
23 that a copy?

24 A. This appears to be the original.

25 Q. Okay. And can you tell the Court whose

1 signatures appear on Exhibit 8?

2 A. Mr. Paddy, Mr. Owens and Mr. Hostetler.

3 Q. Does it appear whether Mr. Paddy or
4 Mr. Owens or Mr. Hostetler signed individually or
5 in a representative capacity?

6 A. Representative capacity for Mr. Owens
7 and Hostetler.

8 Q. Okay. And what was the purpose of this
9 renewal?

10 A. This was to extend the note basically
11 another four months in this case, or three,
12 actually. I think at this point we -- in
13 discussion with Mr. Paddy, he had discussed
14 possibly the sale of the property, so we were
15 trying to give him more time in order to move the
16 property and more or less make the bank whole by
17 paying off the note.

18 Q. Okay. And had the Defendants not
19 signed this note, what would the bank have done?

20 A. At that point, proceed with collection
21 of the amount due.

22 MR. WALLACE: Your Honor, at this point
23 we would move Plaintiff's Exhibit 8 into evidence.

24 MR. JOHNSON: No objection, Your Honor.

25 THE COURT: No objection, Number 8,

1 dated 3/31/2009.

2 BY MR. WALLACE:

3 Q. Mr. Kaye, can you publish to the Court
4 the new maturity date as evidenced by the
5 promissory note which is Plaintiff's Exhibit 8?

6 A. Yes, it's July 1st, 2009.

7 Q. Okay. Now, can you recall whether the
8 bank requested additional collateral from the
9 Defendants in consideration for the further
10 extension of the note?

11 A. Yes, I believe an Assignment of Rent
12 was taken as well.

13 MR. WALLACE: Your Honor, I'm handing
14 up Plaintiff's Exhibit 9 to the witness.

15 (PLF. EXH. 9, Assignment of Rents, was
16 marked for identification.)

17 BY MR. WALLACE:

18 Q. Mr. Kaye, can you identify Plaintiff's
19 Exhibit 9 as well?

20 A. Yes, this is the Assignment of Rents.

21 Q. Was this the Assignment of Rents that
22 you were discussing a minute ago?

23 A. Yes.

24 Q. And the bank required this for what
25 purpose?

1 A. As additional collateral securing the
2 note.

3 MR. WALLACE: Your Honor, I'd ask the
4 Court -- Mr. Kaye, if you could hand up the
5 original of Exhibit 9 to the Court, Your Honor, I
6 would ask that the Court take judicial notice of
7 the fact that this is a certified copy and move it
8 into evidence.

9 MR. JOHNSON: No objection, Your Honor.

10 THE COURT: Without objection, it would
11 be Plaintiff's Number 9. It is an Assignment of
12 Rents recorded in the ROD for Lexington County in
13 book 13572 at Page 317.

14 MR. WALLACE: Thank you, Your Honor.

15 BY MR. WALLACE:

16 Q. Mr. Kaye, can you the tell the Court
17 whether the Defendants executed any further
18 extensions or renewals of the indebtedness
19 following the execution of Plaintiff's Exhibit 8
20 and 9?

21 A. I can't remember if they had. I think
22 we might have extended one more time.

23 Q. Okay. If there are no documents
24 evidencing that extension, what would your -- what
25 would the bank's position be as to regarding the

1 maturity of the note?

2 A. The bank's position at that point would
3 be to look for a payoff of the balance.

4 Q. Did at some point the bank engage an
5 attorney for the purposes of looking for the payoff
6 of the note?

7 A. Yes, we did.

8 Q. Was that my law firm, Nexsen Pruet?

9 A. That is correct.

10 (PLF. EXH. 10, a letter from Nexsen
11 Pruet Law Firm to Defendants Paddy, Hostetler and
12 Owens dated September 11th, 2009, was marked for
13 identification.)

14 MR. WALLACE: Your Honor, I'm handing
15 Plaintiff's Exhibit 10 to the witness.

16 BY MR. WALLACE:

17 Q. Mr. Kaye, can you identify Plaintiff's
18 Exhibit 10 for the record.

19 A. This is the default letter that was
20 sent to the client.

21 Q. Okay. And by clients, you mean the
22 Defendants?

23 A. Yes. Sorry.

24 Q. That's okay. Are you aware of whether
25 the Defendants ever cured the defaults set forth in

1 Exhibit 10?

2 A. I'm not aware that they've cured that.

3 MR. WALLACE: Your Honor, I move
4 Exhibit 10 into the record.

5 THE COURT: Mr. Johnson?

6 MR. JOHNSON: No objection.

7 THE COURT: Without objection,
8 Plaintiff's Number 10 is a letter from Nexsen Pruet
9 Law Firm to Defendants Paddy, Hostetler and Owens
10 dated September 11th, 2009.

11 BY MR. WALLACE:

12 Q. Mr. Kaye, as a result of the
13 Defendants' failure to respond to the default
14 notice set forth in Plaintiff's Exhibit 10, did
15 your company, the bank, instruct Nexsen Pruet to do
16 anything further with regards to collection of the
17 indebtedness?

18 A. Honestly, I'm not sure, outside of
19 pursuing it.

20 Q. Okay. Well, can you tell the Court
21 whether Nexsen Pruet initiated foreclosure
22 proceedings, for instance?

23 A. Yes, they did.

24 Q. I realize that's kind of a difficult
25 question.

1 And as a result of pursuing foreclosure
2 proceedings, can you tell the Court whether Regions
3 Bank has incurred attorneys fees?

4 A. That is correct.

5 Q. Now, have you taken an opportunity to
6 determine the outstanding indebtedness owed by the
7 Defendants on the loan which is represented by the
8 various exhibits in evidence?

9 A. Yes, we have.

10 Q. Okay. Do you recall the indebtedness
11 that they owe?

12 A. I don't recall specifically, but I did
13 sign an affidavit that covers that.

14 Q. Okay. Would looking at your Affidavit
15 of Default that you signed, would that refresh your
16 recollection as to the amount owed?

17 A. Yes.

18 MR. WALLACE: Your Honor, I'm going to
19 hand up the Affidavit of Debt signed by Mr. Kaye
20 for the purposes of refreshing his recollection.
21 As I indicated previously, Your Honor, we've
22 already provided copies of this to counsel for the
23 Defendants, but I've also handed another copy just
24 now.

25 BY MR. WALLACE:

1 Q. Mr. Kaye, would you identify for the
2 record and tell the Court what the principal
3 balance on the note is as of today?

4 A. The principal balance is \$658,187.32.

5 Q. Can you tell the Court what the accrued
6 interest is on the note?

7 A. The accrued interest is \$72,440.40.

8 Q. Okay. And did the bank do any
9 protective advances?

10 A. Yes, protective advances, \$15,623.32.

11 Q. Okay. And what were those related to?

12 A. Ad valorem property taxes.

13 Q. Did the bank expend any money in
14 appraisal reports or environmental reports?

15 A. Yes, \$2,800 for environmental and
16 appraisal fees.

17 Q. And what was the purposes of those
18 fees?

19 A. One, I believe, was a phase 1
20 environmental inspection on the property. The
21 other was an appraisal.

22 Q. Okay. And then can you tell the Court
23 from looking at the promissory notes and the
24 renewals if there is a right of the bank to recover
25 attorneys fees in collection?

1 A. There is a right in the note for a
2 minimum of 15 percent, which is what we
3 have -- what I have on the affidavit, and that
4 amount is \$112,357.66.

5 Q. And then what is the total debt owed as
6 a result of the Defendant's default under the loan
7 documents?

8 A. The total debt as of December 3rd when
9 I signed this was \$861,408.70.

10 Q. But you actually signed it on November
11 30th, correct?

12 A. Oh, I'm sorry. As far as the date on
13 this for the debt is December 3rd.

14 Q. Okay, great. Now, can you tell the
15 Court briefly how you came to these figures that
16 were set forth in your Affidavit of Debt.

17 A. The principal balance -- most of these
18 numbers would be coming from basically the Regions
19 computer system. It tabulates these various
20 numbers, including the daily interest rate.

21 Q. Okay. And the daily interest rate is
22 set forth in the promissory note?

23 A. Yes, it is.

24 Q. And then the protective advances, how
25 did you calculate those?

1 A. That would be from the property tax
2 bills we received, and simply paying those.

3 Q. Okay. So Regions Bank actually paid
4 the property tax bills and they entered those
5 amounts?

6 A. Correct.

7 Q. And the same thing, how did you come up
8 with the costs as set forth in the environmental
9 and appraisal reports?

10 A. Those would be the bills or fees from
11 engaging the various entities to do the
12 environmental inspection, as well as the appraisal.

13 MR. WALLACE: Your Honor, I have no
14 further questions at this time.

15 THE COURT: Mr. Johnson, cross?

16 MR. JOHNSON: Yes, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. JOHNSON:

19 Q. Mr. Kaye, how much has the bank
20 actually expended on attorneys fees at this point?

21 MR. WALLACE: Objection, Your Honor,
22 relevance.

23 THE COURT: Well, I'm going to allow
24 that line of questioning. I understand what the
25 attorney fee clause says, but I also understand

1 there is a case, Boozer versus Middleton which
2 relates to this issue, so I'm going to allow this
3 line of questioning.

4 MR. JOHNSON: Thank you, Your Honor.

5 THE WITNESS: Honestly, I'm not aware
6 of the number to date.

7 BY MR. JOHNSON:

8 Q. Have you paid anything to the
9 attorneys?

10 A. Yes. I believe it's somewhere in the
11 \$20,000 range. I don't know the specific number.

12 Q. Do you think that -- pardon me. What
13 is the hourly rate that you're being charged?

14 A. I don't know.

15 Q. Do you know how many hours the
16 attorneys have expended on this?

17 A. I do not.

18 Q. Have you ever been tasked with hiring
19 an attorney to pursue foreclosure?

20 A. No, our special assets department
21 handles that.

22 Q. Now, there is a provision that -- in
23 the mortgage -- pardon me. I'm sorry. I'm trying
24 to get a copy that I can read.

25 MR. JOHNSON: Pardon me, Your Honor, I

1 apologize. I'm just trying to -- the printing on
2 this is very small. May I ask the witness to read
3 a portion of the mortgage?

4 THE COURT: Yes. Will you identify
5 which page?

6 MR. JOHNSON: I am looking at Page 4 of
7 the original mortgage, Your Honor, and the
8 attorneys fees/expenses paragraph which is the last
9 full paragraph of Page 4 of that mortgage.

10 THE COURT: All right, thank you.

11 BY MR. JOHNSON:

12 Q. Mr. Kaye, you can read yours.

13 A. Yes.

14 Q. If you can read --

15 A. Okay, I will do my best.

16 Q. If not, this one is a little bit
17 clearer. If you will just read the first sentence.

18 A. Okay. If lender institutes any suit or
19 action to enforce any of the terms of this
20 mortgage, lender shall be entitled to recover such
21 sum as the Court may adjudge reasonable as
22 attorneys fees at trial and upon any appeal.

23 Q. Okay. So that paragraph says that the
24 judge can award reasonable attorneys fees.

25 A. Yes.

1 Q. Do you think \$112,000 is reasonable
2 attorneys fees?

3 MR. WALLACE: Objection, Your Honor.
4 If I may.

5 THE COURT: Yes, sir.

6 MR. WALLACE: Your Honor, under the
7 case of West versus Gladney, it's clear when
8 there's a contractual provision for a percentage of
9 the indebtedness to be paid as attorneys fees, the
10 reasonableness of the fees or even the
11 reasonableness of the clause is not to be subjected
12 to court review or to any other collateral attack.

13 THE COURT: Mr. Johnson?

14 MR. JOHNSON: Your Honor, I apologize,
15 I'm not familiar with that case and exactly what
16 the exact holding is, but the mortgage itself says
17 that the Court may adjudge reasonable -- that the
18 lender shall be entitled to recover such fees as
19 the Court may adjudge reasonable.

20 THE COURT: I'm going to deny the
21 objection which was made. I want to explain what
22 we're going to do with attorney fees from here on
23 out. I'm going to allow y'all to continue your
24 cross-examination of this witness, but we can't
25 have a full attorney fee issue examination at this,

1 point for two reasons: One, you only get attorney
2 fees if you win, and I haven't decided that. And,
3 two, Plaintiff hasn't done all of their -- they
4 don't know -- they haven't done all of their hours
5 yet.

6 So what I normally do in a contested
7 foreclosure case, you can ask your questions of the
8 bank witness now; but if they win, I require that
9 the lender's attorney serve an attorney fee
10 affidavit with a time sheet, detailing hours, on
11 all Defendants. Defendants have ten days to review
12 that; if they contest that, they give notice to the
13 Court and we come back and have a hearing. Because
14 the questioning of the reasonableness of the fees
15 incurred is legal and actual.

16 MR. JOHNSON: Yes, Your Honor.

17 THE COURT: And I will take argument on
18 that, because I understand there's an old case that
19 says if it's contractual, it says contractual. But
20 I also understand there's a lot of case law after
21 that that seems to impose a reasonableness cap on
22 it. And I will direct everybody's attention to the
23 2010 Master in Equity Bench/Bar Seminar where Judge
24 Ralph King Anderson has a very detailed attorney
25 fee analysis in South Carolina. It's called

1 Attorney Fees: How to Get Them and Keep Them on
2 Appeal. And it's every case you have ever wanted
3 to know about attorney fees, and it addresses these
4 issues. But, first, if lender wins, then they
5 would be entitled to it. So, today, the question
6 should be restricted just to the bank officer about
7 his understanding. But we've got to come back,
8 because you have to prove entitlement and then you
9 have to prove hours, and they've got a right to
10 cross. Everybody understand that?

11 MR. JOHNSON: Yes, Your Honor.

12 MR. HILLIARD: Yes, Your Honor. Thank
13 you.

14 THE COURT: Any problem with that
15 mechanism?

16 MR. HILLIARD: None from us, Judge.

17 MR. WALLACE: None from the Plaintiff,
18 Your Honor.

19 BY MR. JOHNSON:

20 Q. Thank you. Which of the Defendants
21 have you ever met?

22 A. I have not met any of the Defendants in
23 this case.

24 Q. Which of the Defendants have you ever
25 spoken with?

1 A. Mr. Paddy is the only Defendant I have
2 spoken with.

3 MR. JOHNSON: That's all I have, Your
4 Honor.

5 THE COURT: Yes, sir.

6 MR. HILLIARD: Thank you, Your Honor.
7 In recognition of Your Honor's inclination and
8 certainly reserving our opportunity to perhaps
9 re-call this witness at that additional hearing,
10 Judge, is that --

11 THE COURT: Yes, sir.

12 MR. HILLIARD: Thank you.

13 CROSS-EXAMINATION

14 BY MR. HILLIARD:

15 Q. As I understood your testimony here
16 today, you don't have any independent recollection
17 of any of the numbers on this affidavit. Is that
18 correct?

19 A. As far as the affidavit in front of me?

20 Q. Right. You don't know -- for example,
21 the testimony that you gave about the principal
22 balance on the note as of December 3rd, you don't
23 have any independent recollection of what that
24 number is.

25 A. I do from the time frame of when I was

1 working with the renewals and the extensions of the
2 note, yes, so...

3 Q. Your ability to testify under oath here
4 today regarding the amount that is claimed by the
5 bank is based on this document.

6 A. Yes.

7 Q. And you don't -- as to the specific
8 number, you don't have any independent knowledge of
9 the specific number other than what's on this
10 document.

11 A. Yeah, that's true, and what's in our
12 computer system, I guess, would be how I would
13 answer that.

14 Q. And who runs the computer system to
15 generate this number?

16 A. Regions Bank, our operations division,
17 I would -- I guess that's the only way I could
18 answer that.

19 Q. You commissioned -- or you gave
20 somebody else an instruction to produce a number
21 for you as opposed to -- you didn't produce this
22 number yourself.

23 A. No, I did not.

24 Q. And you can't tell the judge today
25 under oath that it is an accurate number.

1 A. From our computer system, it is.

2 Q. Well, I mean, what you can tell the
3 judge is that you instructed somebody in your
4 employ to go and get you a number connected to this
5 debt and they brought you a number back and you
6 wrote it down on this affidavit.

7 A. That's correct.

8 Q. But that's all you can tell them, is
9 that you instructed somebody else to do it.

10 A. Yeah, that's correct.

11 Q. So, in effect, all the numbers that you
12 have here today are numbers that other people have
13 told you.

14 A. Yes, I guess. I mean -- I don't know
15 how else I would get those numbers, I guess.

16 Q. Okay. But, I mean, and that is -- that
17 is hearsay? Would you agree with that?

18 A. No, I won't -- well --

19 Q. The accrued interest at 8.9 percent,
20 the number that you have there regarding that, you
21 instructed somebody to -- how did you come up with
22 that number?

23 A. That number, I believe, is on the note
24 for extension that was last done. I'm not seeing
25 it off the top of my head, but I'm quite confident

1 that's the interest rate off of the last signed
2 extension. Yeah, it's actually dated on the
3 promissory note dated 3/31/2009, which is Exhibit
4 8.

5 Q. All right, sir. And that would give
6 you -- what does that give you, that promissory
7 note? What does that tell you?

8 A. At that time the balance of the
9 principal was \$642,000, the interest calculation
10 method was at a rate of 8.9 percent per annum. And
11 that's where that number came from as far as the
12 interest calculation for the affidavit.

13 Q. All right. So what I understand you to
14 be saying is that that note tells you that interest
15 is 8.9 percent per annum and that once you
16 calculate that, it turns out to \$72,440 from
17 December the 3rd.

18 A. That's the accrued interest, yes.

19 Q. And the principal balance on that note
20 is how much?

21 A. The principal balance on that note in
22 March of 2009 was \$642,564.

23 Q. So from March to December, how did you
24 figure how much they owed?

25 A. I don't know the answer to that.

1 Q. All right, sir. So the testimony that
2 you have before the Court today is that you don't
3 know how you figured from March to December.
4 That's where we are.

5 A. From March to December or from --

6 Q. Right. The principal balance --

7 A. Well, the note came due in July of
8 2009, so --

9 Q. Okay.

10 A. -- so I lost you on March to December.

11 Q. Well, the note was signed in March.

12 A. Right.

13 Q. And in March they owed
14 640-some-odd-thousand dollars?

15 A. Right.

16 Q. And then in July the note came due?

17 A. Correct.

18 Q. And how much did they owe in July?

19 A. I don't know that answer.

20 Q. All right, sir. And if you don't know
21 how much they owed in July, then you charged
22 somebody else with the responsibility of figuring
23 out how much they owed on December the 3rd.

24 A. That's correct. That would have been
25 our special asset department.

1 Q. All right, sir. And thereafter -- we
2 do know from the note how much they owed from
3 December 3rd if the amount they owed on December
4 3rd is accurate?

5 A. That's correct.

6 Q. All right, sir. The protective
7 advances is what the bank has paid Lexington County
8 property taxes; is that what that's about?

9 A. That's my understanding.

10 Q. All right. You have to pay Lexington
11 County their property taxes.

12 A. Yes, sir.

13 Q. How about the environmental and
14 appraisal reports; there's nothing in any of the
15 documents that would require these folks to pay
16 environmental and appraisal reports, is there?

17 A. I'm not aware if there is.

18 Q. All right. So other than the fact that
19 the bank has paid that -- essentially somebody has
20 told you the bank has paid that \$2,800?

21 A. That is correct.

22 Q. But you don't know of anything that
23 would require these folks to pay that fee.

24 A. I personally do not. I would guess
25 there's something in the note that exists to cover

1 that.

2 Q. But that would be a guess?

3 A. That would be a guess, sir.

4 MR. HILLIARD: All right. And then as
5 to the attorney fees, we'll, I guess, talk about
6 that at a later time.

7 But, Your Honor, having explored
8 somewhat more fully the information connected to
9 the numbers, we would object to the entry of those
10 numbers as being hearsay.

11 THE COURT: Hang on. He's got a right
12 to re-cross and then I'll wait until the end of
13 that and I will address factually and legally your
14 hearsay objection.

15 MR. HILLIARD: Thank you, Your Honor.

16 MR. WALLACE: Thank you, Your Honor.

17 THE COURT: Redirect.

18 MR. WALLACE: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. WALLACE:

21 Q. First of all, I'll sort of go in a
22 backwards direction. I'll direct your attention to
23 Exhibit Number 2, Mr. Kaye, and ask you to look at
24 Paragraph 2 under the bold statement, Lender's
25 Right to Enter, about the fourth paragraph, third

1 headed paragraph on Page 2 of Plaintiff's Exhibit
2 2.

3 A. Okay, Lender's Right to Enter.

4 Q. Yes, sir. If you will read that aloud
5 into the record.

6 A. Lender and lender's agents and
7 representatives may enter upon the real property at
8 all reasonable times to attend to lender's interest
9 and to inspect the real property for purposes of
10 grantor's compliance with the terms and conditions
11 of this mortgage.

12 Q. Can you tell the Court whether the
13 Environmental Phase 1 Assessment that the bank paid
14 for was done pursuant to this paragraph of the
15 mortgage, which is Plaintiff's Exhibit 2?

16 A. I cannot. That would have been done by
17 our special assets department.

18 Q. Okay. Do you know any other purpose
19 that it would have been used for?

20 A. I do not.

21 Q. Are you aware of what purposes the bank
22 normally employs someone to conduct a phase 1?

23 A. That is typically the purpose.

24 Q. Is it the bank's habit to engage
25 someone for the purposes of determining the

1 borrower's compliance with those provisions of the
2 mortgage?

3 A. Yes.

4 Q. Now, Mr. Hilliard asked you numerous
5 times if you had other people give you this
6 information. Can you tell the Court whether the
7 information that's contained in your affidavit to
8 which you've also testified today is kept in the
9 normal course of business by Regions Bank?

10 A. It is.

11 Q. So that for the purposes of the
12 principal balance on the note, that's kept by
13 Regions Bank in the normal course of business?

14 A. Yes, it is.

15 Q. And for the purposes of the interest
16 accrued, that's kept and calculated by Regions Bank
17 in the normal course of business?

18 A. Yes.

19 Q. Okay. With regard to the protective
20 advances, the amount of the protective advances for
21 ad valorem real property taxes, that information is
22 kept by Regions Bank in the normal course of
23 business?

24 A. Yes, it is.

25 Q. Okay. And then of course the attorneys

1 fees and costs, that's a straightforward
2 calculation?

3 A. That is correct.

4 Q. And then, again, with the environmental
5 and appraisal reports, those numbers are kept by
6 regions in the normal ordinary course of business?

7 A. Yes.

8 Q. Okay. Let's see. Now, you testified
9 that you asked somebody to bring you the number.
10 Isn't it true -- or can you tell the Court whether
11 you looked at computer printouts to determine the
12 accuracy of these numbers?

13 A. I did.

14 Q. Okay. And when you looked at those
15 computer printouts, can you tell the Court the
16 source of those computer printouts?

17 A. The source of those computer printouts
18 was our special assets department.

19 Q. Okay. But the computer system --

20 A. The computer system, but
21 that's -- that's who I contacted.

22 Q. Okay. And the printouts are a product
23 of what program?

24 A. It would be Regions' operational
25 system.

1 Q. Now, is that a program maintained in
2 the normal course -- ordinary course of business by
3 Regions Bank?

4 A. Yes, it's our program that we use
5 throughout our sixteen states of operation.

6 Q. And are you aware of any inaccuracies
7 in the calculation of the interest with regard to
8 this program?

9 A. I am not.

10 MR. WALLACE: Your Honor, I apologize,
11 but in looking at Mr. Kay's affidavit, I believe
12 there might be a mathematical error. And if I may,
13 I would like to explore that with Mr. Kaye.

14 THE COURT: Certainly.

15 MR. WALLACE: Just in an order of
16 candor with the Court, it appears that in answering
17 Mr. Hilliard's examination regarding increase in
18 principal, I think I know the answer. So I would
19 like to hand up a pad of paper to Mr. Kaye for
20 purposes of calculations, or if I could use that
21 whiteboard.

22 THE COURT: Let's -- is it going to be
23 a lot of calculations?

24 MR. WALLACE: No, sir. It's going to
25 be a simple subtraction.

1 THE COURT: Let's just do it on this
2 pad, then.

3 MR. HILLIARD: Good for me, Judge.

4 THE COURT: If we're going do a bunch
5 of numbers, we'd use the whiteboard, but...

6 MR. WALLACE: Yes, Your Honor.

7 BY MR. WALLACE:

8 Q. Mr. Kaye, I would ask you to take the
9 principal balance set forth in the top line of your
10 Affidavit of Debt and write that out.

11 A. Okay. That's the \$658,000 number?

12 Q. Yes, sir. And subtract from it the
13 protective advances and tell the Court what the
14 figure is you reached.

15 THE COURT: If you would like to use a
16 calculator, I have one of two. I occasionally have
17 to use calculators in here. Off the record.

18 (Off-the-record discussion.)

19 THE COURT: Back on.

20 BY MR. WALLACE:

21 Q. Okay.

22 A. Okay. If my calculations are correct
23 it's \$642,564.02.

24 Q. Okay. Tell the Court what --

25 A. I'm sorry, \$642,564.

1 Q. \$642,564?

2 A. Yes.

3 Q. And what's the principal stated in the
4 March 2009 note, which is Exhibit 8?

5 A. \$642,564.

6 Q. That's the same number that you've just
7 testified to?

8 A. Yes.

9 Q. So it appears that your Affidavit of
10 Debt actually has a double counting?

11 A. It does. It appears that we have
12 protective advances counted twice in this number.

13 Q. So for purposes of clarifying the total
14 debt, you would have to take out that protective
15 advances figure?

16 A. That is correct.

17 Q. Would you do that, please, and then
18 testify to the Court what the total debt should be
19 with that adjustment?

20 A. Okay. That would adjust the total debt
21 number to \$845,785.38.

22 MR. WALLACE: Your Honor, that's all
23 the questions I have at this time.

24 THE COURT: All right. I'm going to
25 let either of y'all cross and then I've got a

1 question if it's not asked by either of you two
2 gentlemen. All right. Mr. Johnson and then
3 Mr. Hilliard.

4 RECROSS-EXAMINATION

5 BY MR. JOHNSON:

6 Q. Thank you, Your Honor. Referring back
7 to Exhibit 8, which is the last of the notes that
8 was executed, which shows that principal balance of
9 \$642,564, would that figure have included all of
10 the interest due to that date?

11 A. I don't know the answer to that. It
12 should.

13 Q. It should include the interest due to
14 that date. So any further interest should be
15 payable from that date forward, correct?

16 A. That should be accurate.

17 Q. Okay. You've testified that the
18 accrued interest on this is \$72,440.40 at \$118.67
19 per day?

20 A. Correct.

21 Q. I did the calculations on that and that
22 appears to be over 710 days' worth of interest. If
23 this note was dated March of 2009, to date has not
24 been over 710 days. Do you think that interest
25 calculation is correct?

1 A. I do not know. I would have to check
2 with our special assets department. That's where I
3 got the numbers from.

4 Q. So you're not sure that number is
5 correct.

6 MR. WALLACE: Objection.

7 BY MR. JOHNSON:

8 Q. Are there any other numbers on here
9 that --

10 MR. WALLACE: Your Honor, that
11 misstates his testimony.

12 MR. JOHNSON: I'm sorry. I didn't
13 hear.

14 THE COURT: I think he's objecting that
15 you've in essence restated his answer as a
16 question, but he's on cross, so he's got some
17 leeway, so I'm going to overrule that objection and
18 allow the question as one of clarification.

19 MR. JOHNSON: Thank you.

20 MR. WALLACE: Thank you, Your Honor.

21 BY MR. JOHNSON:

22 Q. Are there any other numbers on here
23 that you're not comfortable with?

24 A. No. I've seen -- as far as the tax
25 amounts, I have seen that, as well as the appraisal

1 and the environmental bills, so, no, I'm
2 comfortable with the rest of these numbers.

3 MR. JOHNSON: Okay. Thank you.

4 RECROSS-EXAMINATION

5 BY MR. HILLIARD:

6 Q. And so that I can understand -- and I
7 will acknowledge that I'm not a math person, I was
8 an English and philosophy major.

9 But as I understood the question and
10 answer about the \$72,000, um, that was a simple
11 mathematical question that he asked you about how
12 many days there are between December -- well, I'm
13 sorry, let me ask the question a different way.

14 You are unsure here today about the
15 accuracy of the \$72,440 figure. That is, in fact
16 what you said.

17 MR. WALLACE: Objection, Your Honor. I
18 don't believe that's what he said.

19 THE COURT: Well, he's on cross. Let
20 him answer. He can develop -- he can respond to
21 that --

22 THE WITNESS: I would think -- well,
23 those numbers came from our special asset
24 department. That's what I verified before filling
25 this out and signing it. So I would verify that

1 with our special asset department.

2 MR. HILLIARD: You would, but...

3 THE WITNESS: I mean, that's what I
4 would have to do to investigate that number being
5 different.

6 BY MR. HILLIARD:

7 Q. But it could be different.

8 A. That's the number I was given from our
9 special assets department.

10 Q. All right, sir. But we know for
11 certain without any question -- well, let me ask
12 you this. You believed -- when you signed this
13 affidavit, you believed it to be true.

14 A. Yes, sir.

15 Q. And you believed everything on it with
16 equal belief?

17 A. Correct.

18 Q. And we know for certain that by our
19 conversation here today that if you win everything
20 connected to this case, that we saved \$15,623.32
21 while looking at this affidavit, right?

22 A. I think the principal balance does need
23 to be adjusted.

24 Q. All right, sir. But, I mean, the
25 answer to that question is this affidavit is

1 factually incorrect?

2 A. The principal amount is.

3 Q. And you believe that to be true with
4 the same level of belief as to every other thing on
5 here.

6 A. Yeah, I do.

7 Q. And so other than the thing that we saw
8 and pointed out, the other things could be
9 incorrect as well?

10 A. Um, it is possible.

11 Q. All right, sir. And the environmental
12 and appraisal reports, you don't know what that's
13 about, connected to this case.

14 A. Connected to this case, I do not. I
15 did not engage them.

16 Q. And in other situations the bank has
17 paid people to go out and look at property?

18 A. They have.

19 Q. But the fact that you have the right to
20 go out and look at property yourself doesn't mean
21 that the borrower ought to have to pay for you to
22 hire somebody to go out and look at it, right?

23 A. I wouldn't agree with that. In every
24 loan I do, typically we do an environmental
25 inspection, or that of a search on it. The only

1 reason I did not do these is because at that point
2 our special assets department was overseeing it,
3 and it would have been done typically.

4 MR. HILLIARD: That's all I have.
5 Thank you, sir.

6 MR. WALLACE: I don't have any further
7 questions at this point, Your Honor.

8 THE COURT: Thank you. Anything
9 further from this witness?

10 MR. HILLIARD: No, sir, Your Honor.

11 THE COURT: I want to -- you can step
12 down now because I'm going to address some issues
13 about the debt and then I'm going to address some
14 issues about the hearsay objection.

15 MR. JOHNSON: Thank you, Your Honor.

16 THE COURT: The originals need to go to
17 Madam Court Reporter. All of those documents need
18 to go to the court reporter.

19 All right. I note that under Rule 71
20 that deals with foreclosures, part of what the
21 Master of Equities has to do in foreclosures is
22 establish the debt and interest and costs and
23 things like that.

24 The debt affidavit through today or the
25 total debt cannot be calculated because we don't

1 know the attorney fees issues.

2 The amount that has been testified to
3 today includes an attorney fee award of
4 \$112,357.66, which is a 15-percent number from the
5 number we've already subtracted from. So what I'm
6 going to do is, as with the attorney fee affidavit,
7 I'm going to leave the record open to allow y'all
8 to circulate additional debt information, if they
9 win, for that second hearing, because we can't
10 establish a debt with a 15-percent attorney fee
11 that, A, we don't know we're entitled to, to start
12 with, B, we don't know if the case law knows it,
13 and, C, the amount that's on this sheet is based
14 upon a number that we've already subtracted from,
15 if that makes sense.

16 The second thing is, as to the hearsay
17 objection, if y'all will give me a moment, I'm
18 going to pull up a case for you.

19 And I may be wrong on my analysis of
20 the law, but South Carolina has 803(b)(6), which
21 allows for business records testimony by a records
22 custodian or an other qualified witness, providing
23 they provide a foundation. I believe that that has
24 a two-prong analysis. One is are they competent to
25 testify as a qualified person on records testimony

1 and then is their testimony persuasive.

2 Now, in this instance I find that the
3 witness is certainly competent to testify as a
4 qualified person. He's testified about his work,
5 his relationship with the bank, his involvement
6 with the notes and the renewals and all of that.

7 The second part of the issue about
8 whether he is persuasive relates to Mr. Hilliard's
9 hearsay objection, because there's a common
10 objection often made in a 30(b)(6) instance or a
11 records custodian that says this guy doesn't have
12 firsthand knowledge; he wasn't the guy who was
13 there in the note, he wasn't the guy who did the
14 debt calculation, he wasn't the guy who actually
15 did all of this; other people in the bank did.

16 There is a case that is called MidFirst
17 Bank versus C.W. Haynes; it's a 1994 case. It's a
18 federal court case, 893 F. Supp 1304, which had
19 some yellow flags in it but not as to this issue.
20 And Judge, I believe it was Joe Anderson, addresses
21 this issue and basically states that a corporate
22 witness or a qualified witness is a little
23 different type of witness than an individual
24 testifying, simply because it is a corporate and
25 there is a right to rely on certain business

1 records if it is established that they've been kept
2 in the ordinary course of business, unless you are
3 attacking either the computer program's wrong or
4 the numbers are wrong, like y'all have done.

5 So that being said, I'm going to deny
6 the hearsay objection and I'm going to find he's
7 qualified as another qualified person.

8 I'm going to, again, leave the record
9 open for the attorney fee issue and the debt
10 information.

11 And at that point, y'all, if once you
12 exchange that information, if you would like to,
13 you can re-call this witness to question him about
14 the debt information, because we can't establish
15 the final debt information at this hearing.

16 And the fact that he's qualified as
17 another qualified person doesn't necessarily mean
18 he's persuasive, because if his math's wrong, his
19 math's wrong. And we've shown in one instance the
20 math's wrong. But just because the math's wrong in
21 one calculation doesn't necessarily logically mean
22 it's wrong in all of the other instances.

23 Now, the other issue that I
24 would -- because y'all -- somebody had asked about
25 the right to write a memo or a brief. If you will

1 address the issue of the environmental report and
2 the appraisal -- now, there is language in -- you
3 will need to refer to your mortgage documents about
4 that. I believe -- I believe on judicial notice or
5 just -- well, judicial notice -- a phase 1 is a
6 term of art. A phase 1, I believe, is an
7 environmental paper search. I believe a phase 2 is
8 when you actually go out and punch holes in the
9 ground and take ground samples or water samples.

10 The reason that's important, whether
11 it's a phase 1 or a phase 2, is I believe under a
12 mortgage, while you may have a right to do some
13 things, you have to show it is a reasonable
14 exercise to do things. So simply because you have
15 a right to enter a property doesn't mean you can
16 pay somebody 50 dollars every week to drive by and
17 walk on the property and knock on the door and say
18 do you live here. There has to be a reasonable
19 exercise of the right. So if you want to address
20 any issues about their right to do it, please cite
21 the information in the mortgage or the note. And
22 if you have a reasonableness question to it, you
23 can certainly address that.

24 Now, if there is not any South Carolina
25 law on this, there is in Am. Jur, there is a

1 Restatement of Property Foreclosures, it's a 1990,
2 it has a lot of cases in other states about issues
3 like this.

4 So if you want to spend the time and
5 research over the \$2,800 charge, you certainly can,
6 but I just want to give y'all some guidance on kind
7 of how I see that. Does that make sense?

8 MR. WALLACE: It makes sense to the
9 Plaintiff, Your Honor.

10 MR. JOHNSON: Yes, sir.

11 MR. HILLIARD: Judge, the one thing
12 that I would point out is that at least where we
13 are right now, the witness has indicated to the
14 Court that he doesn't have any knowledge of that
15 charge in this case. That was his testimony, as I
16 recollect it, at least. And I acknowledge that
17 there was an attempt to rehabilitate the situation
18 through, what's your ordinary practice and what's
19 normally done? But in this case, he had no
20 knowledge of that particular part of this case. So
21 as a threshold matter, I would submit to the Court
22 that they haven't really established that that
23 charge goes to this case.

24 THE COURT: All right. And, again, we
25 would have to -- we all can submit deposition -- I

1 mean transcript testimony on that -- but I seem to
2 hear testimony that, that's what I got from the
3 records; I don't know about it personally, but
4 that's what I got from the record file. And I
5 think, under a qualified witness, that's all he's
6 got to show.

7 Because, theoretically, if he had not
8 been the person who had negotiated these notes,
9 that would have been the same standard. He would
10 have said, I don't have any firsthand knowledge of
11 that, but these are the notes and the renewals that
12 were in the file; I don't think he has to, if he's
13 qualified as a qualified person under business
14 records.

15 Otherwise, any time you have a
16 corporation or a mortgage loan, you would have to
17 bring the witnesses, the loan officer, the people
18 who did the calculations, you'd have to do all of
19 that. And I think 803(b)(6) allows for a qualified
20 witness to testify to that, but they still have to
21 be persuasive.

22 MR. HILLIARD: Yes, sir.

23 THE COURT: So I think if the testimony
24 is, it was in the file, I got it, then that's good.
25 Now, whether the mortgage allowed for it, whether

1 it was a reasonable use given the scope of the
2 property and the loan, I will hear other argument
3 on that.

4 MR. HILLIARD: Yes, sir.

5 MR. WALLACE: Your Honor, if I may
6 briefly respond.

7 THE COURT: Yes, sir.

8 MR. WALLACE: The Court heard the
9 testimony correctly, except I go one step further.
10 Upon redirect Mr. Kaye testified that the purpose
11 of the environmental assessment, the phase 1, was
12 for the purposes of that clause on Page 2 of
13 Exhibit 2, that it is the bank's habit to engage
14 those reports for the purposes of confirming
15 compliance with that mortgage provision.

16 So we believe that the record does
17 reflect both the need for it and the reasonableness
18 of it and the allowance under the loan documents to
19 do it. So that's all I have, Your Honor.

20 THE COURT: All right. And, again, if
21 y'all want to address that in your memo, you can.
22 Because, again, even though a document allows for
23 it, that doesn't mean the Court has to approve it,
24 because there is an implied covenant of fair
25 dealing and reasonableness in debt obligations and

1 you have to exercise this stuff rationally and with
2 good faith. And if it's, you know, one phase 1,
3 that's something. You know, if it was a situation
4 where you did a phase 1 and updated it every three
5 months, you know, I don't know that that type of
6 thing is reasonable. But I don't know what the
7 phase 1 was based on. So I think you may have a
8 right to it, but you've still got to show what's
9 reasonable.

10 MR. HILLIARD: And would you agree,
11 Your Honor, that they have the burden of going
12 forward on the reasonableness of what it is that
13 they have done? I mean, it's not --

14 THE COURT: Yes, because what I'm
15 anticipating, again, is -- if the ruling after the
16 memos is, the bank has proven their right to
17 foreclosure -- because nobody's denying there's
18 been a default; the only question is, what's the
19 debt? And we can't establish the debt until we
20 know the attorneys fees and what all the costs and
21 charges are. So at the point that we -- if you
22 exchange information and y'all aren't satisfied,
23 you get another crack at it, just like you did the
24 attorney. And then we will establish the debt,
25 because they have to prove it.

1 MR. HILLIARD: Yes, sir. Thank you
2 very much, Your Honor.

3 THE COURT: Mr. Wallace?

4 MR. WALLACE: Your Honor, if I
5 understand the Court's ruling, then, the two things
6 that are being left open for further hearings in
7 this court are the issue of attorneys fees and the
8 issue of the environmental assessment and appraisal
9 fees?

10 THE COURT: Well, I mean, I'm assuming
11 that we're going to get a corrected debt affidavit
12 that says these are the numbers; and the background
13 information on that will be furnished to them
14 because they have raised an issue about, A, I want
15 to know something about the environmental and the
16 appraisal. Is there an appraisal? That type
17 thing.

18 So after you exchange that
19 documentation, if they're not satisfied with it,
20 they can say, when we reconvene on this, I want to
21 talk to attorneys and I want to talk to the bank
22 officer; because if they go back and they do this
23 math and they find out that the bank said there was
24 83 days between default and today that we
25 calculated interest, and there's only 46, that

1 needs to be inquired into.

2 MR. WALLACE: Yes, sir.

3 THE COURT: Because we've got to
4 establish the debt and everybody has got a right to
5 determine what the true debt is. That's a little
6 unorthodox from what I normally do, but we've got
7 an issue here and we want to get the right number.

8 MR. HILLIARD: Thank you, Your Honor.

9 THE COURT: Anything further?

10 MR. WALLACE: Your Honor, with regard
11 to -- I understand the Court's normal procedure and
12 you want to inquire into the attorneys fees issue;
13 I presume I'm allowed, in circulating our time
14 records, to redact attorney/client privileged
15 things.

16 THE COURT: Absolutely. You can redact
17 all of the normal -- you don't -- I mean, you
18 don't -- y'all know what you do, what's reasonable
19 and normal in redacting stuff in your letters and
20 your transmittals and your time sheets, certainly.

21 All right. So what I want is
22 maybe -- do y'all need the transcript before you
23 submit your memos?

24 MR. HILLIARD: I would like the
25 transcript, Your Honor.

1 THE COURT: All right.

2 MR. WALLACE: If he's ordering it,
3 Judge, I might as well get a copy.

4 THE COURT: That's good enough for me.
5 What I'm going to do, then, is, Madam Court
6 Reporter, when the transcript is prepared, if you
7 will mail a copy to all of the attorneys and copy
8 the Court and say, the transcript's ready, pay me,
9 and you'll get a copy. And after that y'all
10 got -- well, you've got to take care of the court
11 reporter.

12 MR. HILLIARD: No question there.
13 Everybody's got to take care of the court reporter,
14 Judge, absolutely.

15 THE COURT: And then after that you've
16 got 14 days, so two weeks, to do your memo. And
17 then obviously when you submit your memo, you will
18 do it to me in Word Perfect at our e-mail -- and
19 it's in the book -- and copy everybody. And then I
20 will do a decision memorandum that says, A, either
21 they win or they don't. Okay, they win or they
22 don't.

23 If Plaintiff wins, then the next thing
24 I will do is I will say, Plaintiff wins; now,
25 Plaintiff, you need to submit attorney fee

1 affidavit with detailed time chart and amended debt
2 affidavit with supporting documentation to counsel.
3 And then counsel's got ten days after that to say
4 we're okay with it or we want to reopen and
5 re-cross, because they can't cross you today on
6 your attorney fees.

7 MR. WALLACE: I understand that, Your
8 Honor.

9 I presume that your decision memorandum
10 will also address the issue of whether it's 15
11 percent or whether we go to the hourly rate stuff.

12 THE COURT: Yes, if y'all will argue
13 that then, that's fine too.

14 MR. WALLACE: Because obviously that
15 would resolve one of those things you want us to
16 provide.

17 THE COURT: That's right. That's a
18 good point.

19 MR. WALLACE: So from your decision
20 memo, Your Honor, then we have ten days to exchange
21 or to provide any additional factual documentation
22 and then for them to indicate to the Court, hey, we
23 want another hearing.

24 THE COURT: That's right. If you
25 resolve the attorney fee issue, if you resolve the

1 debt, if you settle it, you can certainly do that.
2 Otherwise, they have a -- the way the system is set
3 up is it's just structurally impossible to do it in
4 a fair way. They've got a right to cross-examine
5 you, but you don't have all of your stuff today,
6 because you don't know what your post-hearing stuff
7 is going to be. So you've got to have a second
8 hearing to give everybody an equal right to it.
9 All right. Anything else?

10 MR. WALLACE: Nothing from the
11 Plaintiff, Your Honor.

12 THE COURT: Mr. Hilliard? Mr. Johnson?

13 MR. JOHNSON: Nothing, Your Honor.

14 THE COURT: Mr. Gardner?

15 MR. GARDNER: No, sir.

16 MR. HILLIARD: No, sir.

17 THE COURT: Thank you all.

18 (Off-the-record discussion.)

19 MR. HILLIARD: I just wanted to renew
20 our motion at the conclusion of their case for Your
21 Honor to change your ruling and to allow us --
22 based on the testimony that you've heard, we would
23 renew our motion to be allowed to answer and to
24 proceed.

25 THE COURT: I will again deny that. I

1 didn't hear anything at all in the testimony that
2 related to the reasons to vacate other than one of
3 the reasons to vacate was your client was claiming
4 he had not signed any of the documents, and all of
5 the documents contain his signature purportedly,
6 either by him signing, or there may have been one
7 or two by Mr. Paddy who signed, so I would again
8 respectfully deny your motion.

9 MR. HILLIARD: Thank you, Your Honor.

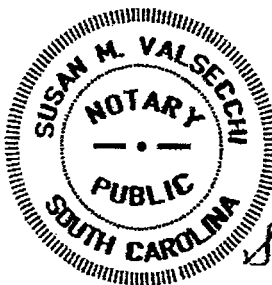
10 (The hearing was concluded at 11:08
11 a.m.)
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1 CERTIFICATE OF REPORTER
2

3 I, Susan M. Valsecchi, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto
12 affixed my official seal this 15th day of December,
13 2010 at Columbia, Richland County, South Carolina.
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19



24 Susan M. Valsecchi, RPR, CRR
25 My Commission expires
January 4, 2015

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16	Nexsen Pruet Law Firm to		
17	Defendants Paddy, Hostetler		
18	and Owens dated September		
19	11th, 2009		



ROLAND G PADDY
20314792889001SF1

92889001000000*



PROMISSORY NOTE

3

current note

Principal	Amount	Interest	Rate	Date of Note	Signature	Initials
\$700,000.00	\$700,000.00	7.00%	7.00%	June 24, 2005	ROLAND G PADDY, DAVID S HOSTETLER, and WILLIAM H OWENS	

Reference in the shaded area is for Lender's use only and does not limit the applicability of this document to any particular loan or item. Any item above containing **** has been omitted due to text length limitations.

Borrower: ROLAND G PADDY (SSN: [REDACTED] 866), DAVID S HOSTETLER (SSN: [REDACTED] 7346), and WILLIAM H OWENS (SSN: [REDACTED] 1047)
MYRTLE BEACH, SC 29577-0000

Lender: REGIONS BANK
GREENVILLE
290 SOUTH PLEASANTBURG DRIVE
GREENVILLE, SC 29607

Principal Amount: \$700,000.00 Interest Rate: 7.000% Date of Note: June 24, 2005

PROMISE TO PAY. ROLAND G PADDY, DAVID S HOSTETLER and WILLIAM H OWENS ("Borrower") jointly and severally promise to pay to REGIONS BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of Seven Hundred Thousand & 00/100 Dollars (\$700,000.00), together with interest at the rate of 7.000% per annum on the unpaid principal balance from June 24, 2005, until paid in full.

PAYMENT. Borrower will pay this loan in 23 regular payments of \$6,349.61 each and one irregular last payment estimated at \$651,755.31. Borrower's first payment is due August 8, 2005, and all subsequent payments are due on the same day of each month after that. Borrower's final payment will be due on July 8, 2007, and will be for all principal and all accrued interest not yet paid. Payments include principal and interest. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

PREPAYMENT. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: REGIONS BANK, GREENVILLE, 290 SOUTH PLEASANTBURG DRIVE, GREENVILLE, SC 29607.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the total sum due under this Note will bear interest from the date of acceleration or maturity at the interest rate on this Note. The interest rate will not exceed the maximum rate permitted by applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The death of Borrower or the dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party due or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES/EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on this Note and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender

PROMISSORY NOTE
(Continued)

Loan No: 20314792889001

Page 2

or Borrower against the other.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of South Carolina.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

COLLATERAL. Borrower acknowledges this Note is secured by MORTGAGE DATED JUNE 24, 2005 FROM BORROWER (S) COVERING REAL ESTATE LOCATED AT 107.11 ACRES, 163 LOVE LANE BATESBURG SC 29008 LEXINGTON COUNTY.

ARBITRATION. Borrower and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Note or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act or omission of any party or collateral securing this Note shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including holding or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any collateral securing this Note, including any claim to amend, reformat, or otherwise modify any agreement relating to the collateral securing this Note, shall also be arbitrated, provided any however that the exercise of this right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction over the subject matter of the dispute. This arbitration agreement shall not preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, stoppage, waiver, laches, and other defenses which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for those purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

REQUESTS FOR SPECIAL SERVICES: In general, there are no borrower-paid fees associated with the routine servicing of a loan or line of credit. Borrower, however, may occasionally find it necessary to request services for which there is a charge. The services that fall outside of routine servicing include, without limitation, providing the following documents upon request: annual amortization schedules, duplicate year-end statements, copies of loan documents or periodic statements, payment histories, and replacement coupon books. Borrower agrees to pay the fees imposed by Lender in connection with providing the requested services, as in effect from time to time. Borrower also agrees to pay the principal and other fees imposed by Lender if these services are requested on an expedited basis. All such fees shall be fully earned and non-refundable whether or not paid upon Lender's demand (provided, that Lender, in its discretion, may add the fees to the principal indebtedness due, and accrue interest thereon, and the same shall be due, if not sooner demanded by Lender, upon the maturity of the indebtedness without further demand). The fees shall not be deemed to be interest or charges for the use of money. If Borrower requests services or documents as part of Lender's procedures for resolving a billing error on a line of credit, Lender will not impose, or will reverse, the fee.

NOTICE CONCERNING APPRAISAL WAIVER. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgement is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and must be used as the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

GENERAL PROVISIONS. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Each Borrower understands and agrees that, with or without notice to Borrower, Lender may with respect to any other Borrower: (a) make one or more additional secured or unsecured loans or otherwise extend additional credit; (b) allow, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of any indebtedness, including increases and decreases of the rate of interest on the indebtedness; (c) exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any security, with or without the substitution of new collateral; (d) apply such security and direct the order of its application to any or all of its debts thereof, including without limitation, any non-judicial sale permitted by the terms of the controlling security agreements, as Lender in its discretion may determine; (e) release, substitute, agree not to sue, or deal with any one or more of Borrower's assets, endorsements, or other guarantors on any terms or in any manner Lender may choose; and (f) determine how, when and what application of payments and credits shall be made on any of the indebtedness owing by such other Borrower. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral, or may, fail to realize upon or perfect Lender's security interest in the collateral and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, EACH BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE AND THE ATTACHED NOTICE TO COSIGNER. EACH BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

Roland G Paddy
ROLAND G PADDY

xi David S. Hostetler
DAVID S. HOSTETLER

William H Owens
WILLIAM H OWENS

Instrument: 2005034699

Book/Page: R 10261 : 186

Date/Time: 07/01/2005 16:22:44:030

Document: 01

2005034699 FILED, RECORDED, INDEXED
07/01/2005 16:22:44:030
Rec Fee: \$13.00 St Fee: \$0.00
Co Fee: \$0.00 Pages: 17
Lexington County ROD Debra M. Gunter
MORTGAGE BkPg 10261:186



WHEN RECORDED MAIL TO:
REGIONS BANK
GREENVILLE
290 SOUTH PLEASANTBURG DRIVE
GREENVILLE, SC 29607

A TRUE COPY

DR: 10261 Pp: 186-192
RECORDED UP DEEDS, LEXINGTON CO.
11-23-10
Debra M. Gunter
AL

SPACE ABOVE THIS LINE IS FOR DEEDS' USE ONLY



DOC48600020314792889001000000

MORTGAGE

MAXIMUM LIEN. The amount of indebtedness secured by this Mortgage, including the outstanding amount of the Note and all future advances shall at no time exceed the principal amount of \$1,050,000.00, plus interest, reasonable attorneys' fees, court costs and the expenses to preserve and protect the Property. Interest under the Note will be deferred, accrued or capitalized, but Lender shall not be required to defer, accrue or capitalize any interest except as provided in the Note.

THIS MORTGAGE dated June 24, 2006, is made and executed between ROLAND G PADDY, DAVID S HOSTETLER and WILLIAM H OWENS (referred to below as "Grantor") and REGIONS BANK, whose address is 290 SOUTH PLEASANTBURG DRIVE, GREENVILLE, SC 29607 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, grants, and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in LEXINGTON County, State of South Carolina:

See EXHIBIT "A", which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.

The Real Property or its address is commonly known as 107.11 ACRES, 153 LOVE LANE, BATESBURG, SC 29006.

CROSS-COLLATERALIZATION. In addition to the Note, this Mortgage secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable. If the Lender is required to give notice of the right to cancel under Truth in Lending in connection with any additional loans, extensions of credit and other liabilities or obligations of Grantor to Lender, then this Mortgage shall not secure additional loans or obligations unless and until such notice is given.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

FUTURE ADVANCES. In addition to the Note, this Mortgage secures all future advances made by Lender to Grantor whether or not the advances are made pursuant to a commitment. Specifically, without limitation, this Mortgage secures, in addition to the amounts specified in the Note, all future amounts Lender in its discretion may loan to Grantor, together with all interest thereon; however, in no event shall such future advances (excluding interest) exceed in the aggregate \$350,000.00. This Mortgage shall remain an open mortgage of record to secure future advances in accordance with Section 29-3-60, as amended, Code of Laws of South Carolina (1976) even in the event all sums secured by this Mortgage may be fully paid at any one time; however, upon request of Grantor, Lender will cause this Mortgage to be released and cancelled of record upon full payment of all indebtedness then owing, and upon such cancellation of this Mortgage of record, this Mortgage shall become null and void. Such release shall be without charge to Grantor; however, Grantor shall pay all costs of recordation, if any, and all documentary stamps due on the Note evidencing future advances secured by this Mortgage.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due and shall strictly perform all of Grantor's obligations under this Mortgage.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for

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Loan No: 20314792889001

**MORTGAGE
(Continued)**

Page 2

Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those sets forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property, whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by South Carolina law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property. If any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Mortgage:

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of ten (10) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance. If available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Mortgage or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Mortgage or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Mortgage also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

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WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Mortgage:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and excepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Mortgage:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the indebtedness secured by this Mortgage; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Real and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Mortgage, and the Related Documents, and (2) the liens and security interests created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Grantor pays all the indebtedness, including without limitation all future advances, when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Real and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Default on Other Payments. Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Mortgage or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Default in Favor of Third Parties. Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the indebtedness or Grantor's ability to perform Grantor's obligations under this Mortgage or any related document.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this

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Mortgage or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Mortgage or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The death of Grantor, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or its liability under, any Guaranty of the indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Mortgage within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of the Property and, as mortgagee-in-possession, collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Judicial Foreclosure. Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

Nonjudicial Sale. If permitted by applicable law, Lender may foreclose Grantor's interest in all or in any part of the Personal Property or the Real Property by non-judicial sale.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

Appraisal. Grantor hereby waives the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained by Lender against Grantor in the event of foreclosure under this Mortgage.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default, or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the indebtedness.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on the indebtedness and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveys, reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

NOTICES. Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be

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given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

NOTICE CONCERNING APPRAISAL WAIVER. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgement is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Mortgage:

Amendments. This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Arbitration. Grantor and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Mortgage or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Property shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Property, including any claim to rescind, reform, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Mortgage shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

Caption Headings. Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

Governing Law. This Mortgage will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Mortgage has been accepted by Lender in the State of South Carolina.

Joint and Several Liability. All obligations of Grantor under this Mortgage shall be joint and several, and all references to Grantor shall mean each and every Grantor. This means that each Grantor signing below is responsible for all obligations in this Mortgage.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any person or circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other person or circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Mortgage shall not affect the legality, validity or enforceability of any other provision of this Mortgage.

Merger. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Successors and Assigns. Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Mortgage.

Waive Jury. All parties to this Mortgage hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of South Carolina as to all indebtedness secured by this Mortgage.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Mortgage. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means ROLAND G PADDY, DAVID S HOSTETLER and WILLIAM H OWENS and includes all co-signers and co-makers signing the Note.

Default. The word "Default" means the Default set forth in this Mortgage in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 8901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

Grantor. The word "Grantor" means ROLAND G PADDY, DAVID S HOSTETLER and WILLIAM H OWENS.

Guaranty. The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

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Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, earned interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as provided in this Mortgage. Specifically, without limitation, indebtedness includes the future advances set forth in the Future Advances provision, together with all interest thereon and all amounts that may be indirectly secured by the Cross-Collateralization provision of this Mortgage.

Lender. The word "Lender" means REGIONS BANK, its successors and assigns.

Mortgage. The word "Mortgage" means this Mortgage between Grantor and Lender.

Note. The word "Note" means the promissory note dated June 24, 2006, in the original principal amount of \$700,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of this Mortgage is July 8, 2007.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accretions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

EACH GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND EACH GRANTOR AGREES TO ITS TERMS.

GRANTOR:

X

ROLAND G PADDY

X

DAVID B HOBSTLER

X

WILLIAM H OWENS

Signed, acknowledged and delivered in the presence of:

X

Witness

X

Witness

INDIVIDUAL ACKNOWLEDGMENT

STATE OF

South Carolina

)

) SS

COUNTY OF

Horry

)

PERSONALLY appeared before me and made oath that he or she saw the within-named Grantor(s) sign, seal, and, as his or her act and deed, deliver the within-written Mortgage for the uses and purposes therein mentioned, and that he or she with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this

24th

day of

June

A.D. 20

2005

My Commission expires:

MICHELE PADDY REFOSCO

NOTARY PUBLIC for SOUTH CAROLINA

My Commission Expires: 5 September 2011

(Witness)

Gail M. Sowers

Notary Public

(Seal)

EXHIBIT "A"

All that certain piece, parcel or tract of land, together with the improvements thereon, containing ninety-nine and thirty-seven hundredths (99.37) acres, more or less; situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as "Tract G" on a Plat prepared by C.L. Hartley, RLS, dated 29 March 1912 and recorded in the office of the Lexington County Register of Deeds in Plat Book 49-G at page 109, and having the following metes and bounds: One the North by property now or formerly of Felix Burgess and measuring thereon a distance of fifty-seven (57) chains, more or less; One the East by property now or formerly of Johnson and Johnson and measuring thereon a distance of thirteen and forty-four hundredths (13.44) chains, more or less; One the South by property now or formerly of E. Hall and measuring thereon a distance of sixty and forty-six hundredths (60.46) chains, more or less; and One the West by the run of Chinquapin Creek. Further reference is made to that certain boundary survey prepared by James F. Drafts, RLS, dated 21 July 2003 and filed with the Lexington County Register of Deeds on 13 August 2003 in Record Book 8522 at page 73.

Derivation: This being the identical property conveyed to the Mortgagors by Deed of D&E of Myrtle Beach, LLC, dated 06/24/2005 and recorded 07/1/2005 in the Lexington County Register of Deeds office in Deed Book ~~15861~~ at page 104.

TMS No.: 009300-04-005

This document not to scale

000243

Debra M. Gunter

Lexington County Register of Deeds



July 18, 2007



Re: Loan to Roland G. Paddy, David S. Hostetler and William H. Owens (the "Borrower"), dated 06/24/2005, in the Original Principal Amount of \$700,000.00; Loan Account No. 203-1479288-9001 (the "Loan")

Dear Roland, David, and William:

This letter confirms our agreement to extend the maturity date for this Loan from 07/08/2007 (the "Old Maturity") to 11/05/2007 (the "New Maturity"), subject to the following terms and conditions:

1. We must receive payment in full of all accrued and unpaid interest in the amount of \$55,045.54 and all unpaid late fees and other charges in the amount of \$0.00, which amounts are outstanding on the Loan as of the date of this letter, by no later than ten (10) days from the date of this letter.
2. We must receive a copy of this letter, executed by Borrower in the space provided below, by no later than ten (10) days from the date of this letter.

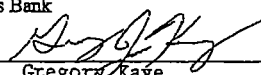
If Borrower should fail to satisfy any of the conditions listed above, the New Maturity shall be null and void, and the Old Maturity shall be deemed to be in full force and effect.

By executing this letter below, Borrower affirms the indebtedness owed to us regarding the Loan and agrees that as of the date of this letter the outstanding principal balance on the Loan is \$647,984.04, with accrued and unpaid interest, late fees and other charges in the amounts shown above. Borrower further covenants, represents and warrants that, as of the date Borrower executes this letter, Borrower has no defenses, setoffs, rights of recoupment, counterclaims or claims of any nature whatsoever in respect of the Loan (including, but not limited to, claims arising from fraud, misrepresentation, breach of contract, breach of commitment, impairment of collateral or waiver of any terms or provisions of any documents executed or delivered in connection with the Loan), Borrower hereby releasing any such defenses, claims, etc. Borrower agrees to execute such other instruments or documents as we may reasonably request in order to further document the New Maturity.

This letter is not intended to be, and shall not be deemed or construed to be, a novation with regard to the Loan, and except as expressly modified by this letter, all terms, conditions, and provisions of the Loan (including, without limitation, Borrower's obligation to make monthly payments of interest, or principal and interest, as the terms of the Loan documents may provide), and all documents and instruments evidencing the Loan, remain and continue in full force and effect. This letter constitutes no obligation on our part to renew or refinance the Loan, or to further extend the maturity date, upon the New Maturity, and we have not waived any, and we reserve all of, our rights and remedies under any and all of the Loan documents with respect to any existing or future default, whether known or unknown to us.

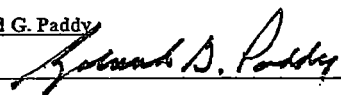
Sincerely,

Regions Bank

By: 
Gregory Kaye
Title: Vice President

Acknowledged and Agreed:

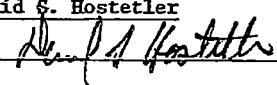
Roland G. Paddy

By: 

Title: _____

Date: 7/27/07

David S. Hostetler

By: 

Title: _____

Date: 7/27/07

William H. Owens

By: 

Title: _____

Date: 7/27/07



November 26, 2007



Re: Loan to Roland G. Paddy, David S. Hostetler and William H. Owens (the "Borrower"),
dated 06/24/2005, in the Original Principal Amount of \$700,000.00; Loan Account No. 203-
1479288-9001 (the "Loan")

Dear Roland, David, and William:

This letter confirms our agreement to extend the maturity date for this Loan from 11/05/2007 (the "Old Maturity") to 01/04/2008 (the "New Maturity"), subject to the following terms and conditions:

1. We must receive payment in full of all accrued and unpaid interest in the amount of \$56,129.46 and all unpaid late fees and other charges in the amount of \$0.00, which amounts are outstanding on the Loan as of the date of this letter, by no later than ten (10) days from the date of this letter.
2. We must receive a copy of this letter, executed by Borrower in the space provided below, by no later than ten (10) days from the date of this letter.

If Borrower should fail to satisfy any of the conditions listed above, the New Maturity shall be null and void, and the Old Maturity shall be deemed to be in full force and effect.

By executing this letter below, Borrower affirms the indebtedness owed to us regarding the Loan and agrees that as of the date of this letter the outstanding principal balance on the Loan is \$642,955.90, with accrued and unpaid interest, late fees and other charges in the amounts shown above. Borrower further covenants, represents and warrants that, as of the date Borrower executes this letter, Borrower has no defenses, setoffs, rights of recoupment, counterclaims or claims of any nature whatsoever in respect of the Loan (including, but not limited to, claims arising from fraud, misrepresentation, breach of contract, breach of commitment, impairment of collateral or waiver of any terms or provisions of any documents executed or delivered in connection with the Loan), Borrower hereby releasing any such defenses, claims, etc. Borrower agrees to execute such other instruments or documents as we may reasonably request in order to further document the New Maturity.

This letter is not intended to be, and shall not be deemed or construed to be, a novation with regard to the Loan, and except as expressly modified by this letter, all terms, conditions, and provisions of the Loan (including, without limitation, Borrower's obligation to make monthly payments of interest, or principal and interest, as the terms of the Loan documents may provide), and all documents and instruments evidencing the Loan, remain and continue in full force and effect. This letter constitutes no obligation on our part to renew or refinance the Loan, or to further extend the maturity date, upon the New Maturity, and we have not waived any, and we reserve all of our rights and remedies under any and all of the Loan documents with respect to any existing or future default, whether known or unknown to us.

Sincerely,

Regions Bank

By: [Signature]

Title: VP

Acknowledged and Agreed:

Roland G. Paddy

By: [Signature]

Title: _____

Date: 11/29/07

David S. Hostetler

By: [Signature]

Date: 11/29/07

William H. Owens

By: [Signature]

Date: 11/29/07

Regions00571

Extension Letter.doc
01/2004

000245



PROMISSORY NOTE

Principal	Loan Date	Maturity	Bank/APP	County	City
\$642,956.00	01-25-2008	07-25-2008	50793	00000000700004470	YACMS

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "has been omitted due to text length limitations."

Borrower: ROLAND G PADDY (SSN: 000000-0866), DAVID HOSTETLER (SSN: 000000-7340) and WILLIAM H OWENS (SSN: 000000-1047)
MYRTLE BEACH, SC 29577

Lender: REGIONS BANK
GREENVILLE
200 SOUTH PLEASANTBURG DRIVE
GREENVILLE, SC 28607

Principal Amount: \$642,956.00

Interest Rate: 7.300%

Date of Note: January 25, 2008

PROMISE TO PAY. ROLAND G PADDY, DAVID HOSTETLER and WILLIAM H OWENS ("Borrower") jointly and severally promise to pay to REGIONS BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of Six Hundred Forty-two Thousand Nine Hundred Fifty-six & 00/100 Dollars (\$642,956.00), together with interest at the rate of 7.300% per annum on the unpaid principal balance from January 25, 2008, until paid in full. The interest rate may change under the terms and conditions of the "INTEREST AFTER DEFAULT" section.

PAYMENT. Borrower will pay this loan in one principal payment of \$642,956.00 plus interest on July 25, 2008. This payment due on July 25, 2008, will be for all principal and all accrued interest not yet paid. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning February 25, 2008, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied to amounts due under this loan in such order as Lender may determine in Lender's sole discretion. Lender reserves the right to apply payments to outstanding indebtedness and obligations in any order that Lender may determine in its sole discretion and Lender may change the methodology for the application of payments at any time without notice to Borrower. The annual interest rate for this Note is computed on a 360/360 basis that is, by applying the rate of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

PREPAYMENT PENALTY. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Upon prepayment of this Note, Lender is entitled to the following prepayment penalty: Borrower shall have the right to prepay the loan in whole at any time by payment of the remaining principal balance of the loan plus accrued interest to the date of such prepayment, together with any applicable premium, unless such premium is prohibited by applicable law. A premium equal to 2% of the outstanding loan balance will be due at the time of the prepayment, 80 or fewer monthly payments have been made on the loan and more than 6 months remain until the scheduled maturity date of the loan. However, where there is an involuntary prepayment, such as in the event of acceleration, no premium will be due. Except for the foregoing, Borrower may pay all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Regions Bank, P.O. Box 218 Birmingham, AL 35201.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the total sum due under this Note will continue to accrue interest at the interest rate under this Note.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The death of Borrower or the dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or foreclosure proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Borrower gives Lender written notice of the creditor or foreclosure proceeding and deposits with Lender monies or a surety bond for the creditor or foreclosure proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insolvency. Lender in good faith believes itself insolvent.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on this Note and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for

000246

000247



Date: July 25, 2008



Re: Loan to Roland G. Paddy, David Hostetler, William H. Owens (the "Borrower"), dated 01/25/2008, in the Original Principal Amount of \$642,956.00; Loan Account No. 733/7000048470 (the "Loan")

Dear Mr. Paddy, Mr. Hostetler and Mr. Owens:

This letter confirms our agreement to extend the maturity date for this Loan from 07/25/2008 (the "Old Maturity") to 10/23/2008 (the "New Maturity"), subject to the following terms and conditions:

1. We must receive payment in full of all accrued and unpaid interest in the amount of \$4,302.43 and all unpaid late fees and other charges in the amount of \$175.00, which amounts are outstanding on the Loan as of the date of this letter, by no later than ten (10) days from the date of this letter.
2. We must receive a copy of this letter, executed by Borrower in the space provided below, by no later than ten (10) days from the date of this letter.

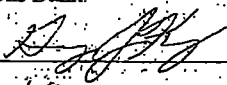
If Borrower should fail to satisfy any of the conditions listed above, the New Maturity shall be null and void, and the Old Maturity shall be deemed to be full force and effect.

By executing this letter below, Borrower affirms the indebtedness owed to us regarding the Loan and agrees that as of the date of this letter the outstanding principal balance on the Loan is \$642,955.00, with accrued and unpaid interest, late fees and other charges in the amounts shown above. Borrower further covenants, represents and warrants that, as of the date Borrower executes this letter, Borrower has no defenses, setoffs, rights of recoupment, counterclaims or claims of any nature whatsoever in respect of the Loan (including, but not limited to, claims arising from fraud, misrepresentation, breach of contract, breach of commitment, impairment of collateral or waiver of any terms or provisions of any documents executed or delivered in connection with the Loan), Borrower hereby releasing any such defenses, claims, etc. Borrower agrees to execute such other instruments or documents as we may reasonably request in order to further document the New Maturity.

This letter is not intended to be, and shall not be deemed or construed to be, a novation, with regard to the Loan, and except as expressly modified by this letter, all terms, conditions, and provisions of the Loan (including, without limitation, Borrower's obligation to make monthly payments of interest, or principal and interest, as the terms of the Loan documents may provide), and all documents and instruments evidencing the Loan, remain and continue in full force and effect. This letter constitutes no obligation on our part to renew or refinance the Loan, or to further extend the maturity date, upon the New Maturity, and we have not waived any, and we reserve all of, our rights and remedies under any and all of the Loan documents with respect to any existing or future default, whether known or unknown to us.

Sincerely,

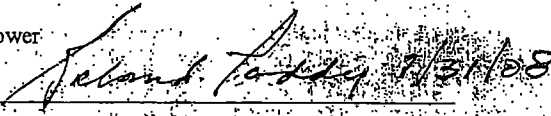
Regions Bank

By: 

Title: 

Date: 7/25/08

Borrower

By: 

Title:

Date: _____

Borrower

By: _____

Date: _____

Borrower

William Herman Owens

Date: _____

7/31/08



Date: 11/20/08



Re: Loan to Roland G. Paddy, David Hostetler and William H. Owens (the "Borrower"), dated 1/25/2008, in the Original Principal Amount of \$642,956.00; Loan Account No. 733/7000048470 (the "Loan")

Dear Mr. Paddy, Mr. Hostetler and Mr. Owens:

This letter confirms our agreement to extend the maturity date for this Loan from 10/25/08 (the "Old Maturity") to 1/25/09 (the "New Maturity"), subject to the following terms and conditions:

1. We must receive payment in full of all accrued and unpaid interest in the amount of \$15,376.00 and all unpaid late fees and other charges in the amount of \$3,887.82, which amounts are outstanding on the Loan as of the date of this letter, by no later than ten (10) days from the date of this letter.
2. We must receive a copy of this letter, executed by Borrower in the space provided below, by no later than ten (10) days from the date of this letter.

15,376.00
3,887.82
19,263.82

If Borrower should fail to satisfy any of the conditions listed above, the New Maturity shall be null and void, and the Old Maturity shall be deemed to be full force and effect.

By executing this letter below, Borrower affirms the indebtedness owed to us regarding the Loan and agrees that as of the date of this letter the outstanding principal balance on the Loan is \$642,563.87, with accrued and unpaid interest, late fees and other charges in the amounts shown above. Borrower further covenants, represents and warrants that, as of the date Borrower executes this letter, Borrower has no defenses, setoffs, rights of recoupment, counterclaims or claims of any nature whatsoever in respect of the Loan (including, but not limited to, claims arising from fraud, misrepresentation, breach of contract, breach of commitment, impairment of collateral or waiver of any terms or provisions of any documents executed or delivered in connection with the Loan), Borrower hereby releasing any such defenses, claims, etc. Borrower agrees to execute such other instruments or documents as we may reasonably request in order to further document the New Maturity.

This letter is not intended to be, and shall not be deemed or construed to be, a novation with regard to the Loan, and except as expressly modified by this letter, all terms, conditions, and provisions of the Loan (including, without limitation, Borrower's obligation to make monthly payments of interest, or principal and interest, as the terms of the Loan documents may provide), and all documents and instruments evidencing the Loan, remain and continue in full force and effect. This letter constitutes no obligation on our part to renew or refinance the Loan, or to further extend the maturity date, upon the New Maturity, and we have not waived any, and we reserve all of, our rights and remedies under any and all of the Loan documents with respect to any existing or future default, whether known or unknown to us.

Sincerely,

Regions Bank

By:

Title: VP

Date: 12/1/08

Borrower

By:

Title: Partner in charge

David Hostetler
Herman Owens

Extension Letter.dot
03/2008

REGIONS
PROMISSORY NOTE

Principal	Orig Date	Maturity	Bank/Inst	Loan No.	Account	Officer
\$3,250,000	03-15-2009	07-15-2009	50733	400000072000089748		YAM/42

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing ***** has been omitted due to text length limitations.

Borrower: ROLAND G PADDY (SSN: [REDACTED]-0556), DAVID
S HOSTETLER (SSN: [REDACTED]-7348) and WILLIAM
H OWENS (SSN: [REDACTED]-1047)
[REDACTED]
MYRTLE BEACH, SC 29577

Lender: REGION8 BANK
PO BOX 2224
BIRMINGHAM, AL 35240

Principal Amount: \$642,564.00

Date of Note: March 31, 2009

PROMISE TO PAY. ROLAND G PADDY, DAVID S HOSTETLER and WILLIAM H OWENS ("Borrower") jointly and severally promise to pay to FORTISBANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of Six Hundred Forty-two Thousand Five Hundred Sixty-four & 00/100 Dollars (\$642,564.00), together with interest on the unpaid principal balance from March 31, 2009, calculated as described in the "INTEREST CALCULATION METHOD" paragraph using an interest rate of 6.900% per annum based on a year of 360 days, until paid in full. The interest rate may change under the terms and conditions of the "INTEREST AFTER DEFAULT" section.

PAYMENT. Borrower will pay this loan in one principal payment of \$642,564.00 plus interest on July 1, 2009. This payment due on July 1, 2009, will be for all principal and all accrued interest not yet paid. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning May 1, 2009, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied to amounts due under this loan in such order as Lender may determine in Lender's sole discretion. Lender reserves the right to apply payments to outstanding indebtedness and obligations in any order that Lender may determine in its sole discretion and Lender may change the methodology for the application of payments at any time without notice to Borrower. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

INTEREST CALCULATION METHOD. Interest on this Note is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method.

PREPAYMENT PENALTY. Borrower agrees that all lost fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Upon prepayment of this Note, Lender is entitled to the following prepayment penalty: Borrower shall be liable to pay the loan balance in whole at any time by payment of the remaining principal balance of the loan plus accrued interest to the date of such prepayment, together with any applicable premium, unless such premium is prohibited by applicable law. A premium equal to 2% of the outstanding loan balance will be due if, at the time of the prepayment, 60 or fewer monthly payments have been made on the loan and more than 6 months remain until the scheduled maturity date of the loan. However, where there is an involuntary prepayment, such as in the event of acceleration, no premium will be due. Except for the foregoing, Borrower may pay all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to otherwise in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower makes a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Regions Bank, P.O. Box 2224 Birmingham, AL 35246.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$10.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased by 2.000 percentage points. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The death of Borrower or the dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on this Note and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.



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GOVERNING LAW. With respect to interest (as defined by federal law) this Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Alabama without regard to its conflicts of laws provisions. In all other respects, this Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. The loan transaction that is evidenced by this Note has been approved, made, and funded, and all necessary loan documents have been accepted by Lender in the State of Alabama.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

NOTICE CONCERNING APPRAISAL WAIVER. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

PRIOR NOTE. This note is made and executed for the purpose of continuing, modifying and amending the terms of that certain promissory note in the principal amount of \$ 5642,966.00 , dated 01-25-2008 , executed by the Borrower and payable to the Bank or its predecessor or assignor. This note shall constitute a true modification or amendment of the terms of the original note which shall continue in full force and effect except as specifically modified herein. This note shall not constitute a novation, payment in full or satisfaction of the original note, nor shall this note in any other way supersede the original note or any of the Loan Documents. This note shall continue to be secured by any and all collateral securing the original note.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Each Borrower understands and agrees that, with or without notice to Borrower, Lender may with respect to any other Borrower (a) make one or more additional secured or unsecured loans or otherwise extend additional credit; (b) alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of any indebtedness, including increases and decreases of the rate of interest on the indebtedness; (c) exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any security, with or without the substitution of new collateral; (d) apply such security and direct the order or manner of sale thereof, including without limitation, any non-judicial sale permitted by the terms of the controlling security agreements, as Lender in its discretion may determine; (e) release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; and (f) determine how, when and what application of payments and credits shall be made on any other indebtedness owing by such other Borrower. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, EACH BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. EACH BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

★ Roland G. Paddy
ROLAND G. PADDY

★ William H. Owens
x Roland G. Paddy *[Signature]*
WILLIAM H. OWENS, BY ROLAND G. PADDY,
HIS ATTORNEY-IN-FACT

★ David S. Hostetler
x Roland G. Paddy *[Signature]*
DAVID S. HOSTETLER, BY ROLAND G. PADDY,
HIS ATTORNEY-IN-FACT

Instrument: 2009020819

Book/Page: R 13572 : 317

Date/Time: 05/05/2009 13:43:15:523

Document: 01

2009020819 FILED, RECORDED, INDEXED
 2009-05-05 13:43:15:523
 REC FEE: \$12.00 ST FEE: \$0.00
 CO FEE: \$0.00 Pages: 6
 Lexington County R.O.D. Debra M. Gunter
 ASSIGNMENT OF LEASES Bk:Pg 13572:317

RECORDATION REQUESTED BY:
 REGIONS BANK
 PO BOX 2224
 BIRMINGHAM, AL 35244

WHEN RECORDED MAIL TO:
 Regions Bank
 Attn: Collateral Management Area
 P.O. Box 1854
 Birmingham, AL 35201

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY



10000004607330000000700009374800000000

20090760947001 ASSIGNMENT OF RENTS

THIS ASSIGNMENT OF RENTS dated March 31, 2008, is made and executed between ROLAND G PADDY, A Single Adult Person; DAVID S HOSTETLER, A Single Adult Person; WILLIAM H OWENS, A Single Adult Person (referred to below as "Grantor") and REGIONS BANK, whose address is PO BOX 2224, BIRMINGHAM, AL 35244 (referred to below as "Lender").

ASSIGNMENT. For valuable consideration, Grantor hereby assigns, grants a continuing security interest in, and conveys to Lender all of Grantor's right, title, and interest in and to the Rents from the following described Property located in LEXINGTON County, State of South Carolina:

ATTACHED EXHIBIT A

The Property or its address is commonly known as 107.11 ACRES, 153 LOVE LANE, BATESBURG, SC 29808.

CROSS-COLLATERALIZATION. In addition to the Note, this Assignment secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

THIS ASSIGNMENT IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE, THIS ASSIGNMENT, AND THE RELATED DOCUMENTS. THIS ASSIGNMENT IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Assignment or any Related Documents, Grantor shall pay to Lender all amounts secured by this Assignment as they become due, and shall strictly perform all of Grantor's obligations under this Assignment. Unless and until Lender exercises its right to collect the Rents as provided below and so long as there is no default under this Assignment, Grantor may remain in possession and control of and operate and manage the Property and collect the Rents, provided that the granting of the right to collect the Rents shall not constitute Lender's consent to the use of cash collateral in a bankruptcy proceeding.

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that:

Ownership. Grantor is entitled to receive the Rents free and clear of all rights, loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

Right to Assign. Grantor has the full right, power and authority to enter into this Assignment and to assign and convey the Rents to Lender.

No Prior Assignment. Grantor has not previously assigned or conveyed the Rents to any other person by any instrument now in force.

No Further Transfer. Grantor will not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Rents except as provided in this Assignment.

LENDER'S RIGHT TO RECEIVE AND COLLECT RENTS. Lender shall have the right at any time, and even though no default shall have occurred under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority:

Notice to Tenants. Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all Rents to be paid directly to Lender or Lender's agent.

Enter the Property. Lender may enter upon and take possession of the Property demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other persons from the Property.

Maintain the Property. Lender may enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Property in proper repair and condition, and also to pay all taxes, assessments and water utilities, and the premiums on fire and other insurance effected by Lender on the Property.

Compliance with Laws. Lender may do any and all things to execute and comply with the laws of the State of South Carolina and also all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property.

Lease the Property. Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate.

Employ Agents. Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the Property, including the collection and application of Rents.

Other Acts. Lender may do all such other things and acts with respect to the Property as Lender may deem appropriate and may act exclusively and solely in the place and stead of Grantor and to have all of the powers of Grantor for the purposes stated above.

No Requirement to Act. Lender shall not be required to do any of the foregoing acts or things, and the fact that Lender shall have performed one or more of the foregoing acts or things shall not require Lender to do any other specific act or thing.

A TRUE COPY

Book 13572 Pages 317-322
 REGISTER OF DEEDS, LEXINGTON CO.

11-22-2010

This document not to scale

Debra M. Gunter

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Lexington County Register of Deeds

ASSIGNMENT OF RENTS (Continued)

Loan No: 00000007000093748

Page 2

APPLICATION OF RENTS. All costs and expenses incurred by Lender in connection with the Property shall be for Grantor's account and Lender may pay such costs and expenses from the Rents. Lender, in its sole discretion, shall determine the application of any and all Rents received by it; however, any such Rents received by Lender which are not applied to such costs and expenses shall be applied to the Indebtedness. All expenditures made by Lender under this Assignment and not reimbursed from the Rents shall become a part of the Indebtedness secured by this Assignment, and shall be payable on demand, with interest at the Note rate from date of expenditure until paid.

FULL PERFORMANCE. If Grantor pays all of the Indebtedness when due and otherwise performs all the obligations imposed upon Grantor under this Assignment, the Note, and the Related Documents, Lender shall execute and deliver to Grantor a suitable satisfaction of this Assignment and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Property. Any termination fee required by law shall be paid by Grantor, if permitted by applicable law.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Assignment or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Assignment or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Rents or the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note, or the maximum rate permitted by law, whichever is less, from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy, or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Assignment also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Assignment:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Assignment or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Default on Other Payments. Failure of Grantor within the time required by this Assignment to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Default in Favor of Third Parties. Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or ability to perform Grantor's obligations under this Assignment or any of the Related Documents.

Fals Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Assignment or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Assignment or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The death of Grantor, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or foreclosure proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against the Rents or any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Grantor gives Lender written notice of the creditor or foreclosure proceeding and deposits with Lender monies or a surety bond for the creditor or foreclosure proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Property Damage or Loss. The Property is lost, stolen, substantially damaged, sold, or borrowed against.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the Indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insolvency. Lender in good faith believes itself insolvent.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of any Event of Default and at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty that Grantor would be required to pay.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender shall have all the rights provided for in the Lender's Right to Receive and Collect Rents Section, above. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Other Remedies. Lender shall have all other rights and remedies provided in this Assignment or the Note or by law.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Assignment, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Assignment, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on the Indebtedness and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

LEASES, RENTS AND OTHER COLLATERAL. Grantor is currently the landlord under those certain leases described on Exhibit "B" attached hereto and made a part hereof as if fully set forth herein. As used in this document (1) the term "Leases" shall include all leases in which Grantor is landlord, by assignment or otherwise, now on the Property, or which may hereafter be placed thereon, and (2) without in any way

Lexington County Register of Deeds

Debra M. Gunter

Loan No: 0000000700003748

ASSIGNMENT OF RENTS
(Continued)

Page 3

limiting the generality of the definition contained elsewhere in this document, the term "Rents" shall include all of the rents, issues, revenues and profits now due or to become due and derived from the Property, all supporting obligations, all proceeds and products of, and additions and accessions to, any of the foregoing, and all books, documents and records related to any of the foregoing collateral. Grantor shall keep accurate and complete records of Grantor's Lessees and shall promptly deliver to Lender on demand (a) a detailed schedule, in form and substance acceptable to Lender, of all then-existing Lessees ("Schedule of Lessees"), (b) the original of all documents evidencing or relating to the Lessees so scheduled, (c) such other information relating to the then-existing Lessees as Lender shall reasonably request, and (d) formal written assignments or schedules specifically describing the Lessee and confirming Lender's security interest therein. No substitution by Grantor to Lender of a Schedule of Lessees or other particular identification of Lessees, Rents or other collateral shall be necessary to vest in Lender security title to and a security interest in such and every such item of collateral of Grantor now existing or hereafter created and acquired, but rather such title and security interest shall vest in Lender immediately upon the creation or acquisition of any such item of collateral hereafter created or acquired, without the necessity for any other or further action by Grantor or Lender.

COVENANTS, REPRESENTATIONS AND WARRANTIES AS TO LESSEES. Grantor shall not be entitled to, and hereby covenants and agrees that it will not, without the written consent of Lender: (a) cancel any Lease or accept a surrender thereof, except in accordance with the conditions and contingencies as set out therein; (b) modify any Lease so as to decrease the term of such Lease, reduce the rent or change the time of payment of same, or diminish the obligation of the tenant with regard to the payment of taxes and insurance; (c) consent to an assignment of the beneficial interest in or under any Lease which will relieve the tenant of liability for the payment of rent and the performance of the terms and conditions of the Lease; or (d) collect the Rents for more than one month in advance. Any of the foregoing acts, if done without the written consent of Lender, shall be null and void. Grantor shall have the right to modify any Lease or take any other action with respect thereto which does not violate the specific provisions of this paragraph. Grantor makes the following warranties and representations to Lender as to each and every Lease, whether now existing or acquired, created or arising from time to time hereafter, unless otherwise disclosed in writing by Grantor to Lender: (a) the Lease is an original, genuine, bona fide and legally binding obligation, enforceable in accordance with its terms; (b) the Lease is not subject to any claim of reduction, counterclaim, set-off, recoupment, or any claim for credits, allowances or adjustments by the tenant for any reason; (c) the amount shown as the balance due on the Lease on Grantor's books and in any Schedule of Lessees, invoices or other documents delivered to Lender with respect to the Lease is validly and legally owing under the Lease and is not contingent for any reason, and, to the best of Grantor's knowledge, there are no facts, events or occurrences which in any way impair the validity or collectability thereof; (d) all statements made in any Schedule of Lessees or other documents submitted or delivered to Lender in connection with the Lease are true and correct, and all laws and regulations applicable to the transaction giving rise to the Lease have been fully complied with; (e) the Lease does not arise out of a contract with, or order from, a tenant that by its terms forbids the assignment of that Lease to Lender or makes such assignment void or unenforceable; (f) the Lease arose in the ordinary course of Grantor's business; (g) no notice has been received with respect to any tenant of anything which reflects adversely on the general creditworthiness and financial condition of the tenant.

GENERAL REPRESENTATION, WARRANTIES, COVENANTS AND AGREEMENTS. Grantor represents, warrants, covenants and agrees that: (a) Grantor will hold in Grantor's principal place of business, or other location approved by Lender, and make available to Lender as requested, all of Grantor's records containing any entries as to collateral. Upon request of Lender such records will be segregated and marked by Grantor with Lender's name in a manner satisfactory to Lender. (b) Grantor's address or location of the office where Grantor keeps and will keep Grantor's records concerning all of the Lessees is set forth in the first paragraph of this Assignment, and Grantor shall not change the address or the location of the office where Grantor keeps and will keep Grantor's records concerning all of the Lessees without the prior written consent of Lender. (c) Grantor's address or the location of Grantor's principal place of business or chief executive office is as has been previously provided to Lender by Grantor, and Grantor shall not change the address or the location of Grantor's principal place of business or chief executive office without the prior written consent of Lender. (d) Grantor's legal name is as set forth in the first paragraph of this Assignment, and Grantor shall not alter or change its legal name without the prior written consent of Lender. (e) Grantor's state of incorporation or registration (if Grantor was created by such state filing) is the state in the certificate of Grantor's legal name and location delivered to Lender at the execution of this Assignment, and Grantor shall not change the state of its incorporation or registration (if Grantor was created by such state filing) without the prior written consent of Lender. (f) Grantor shall not alter or change its legal form or status (corporate, partnership or otherwise) without the prior written consent of Lender. (g) Grantor shall not merge, in one transaction or a series of related transactions, into or consolidate with any other entity without the prior written consent of Lender. (h) Grantor shall not file a release, amendment, partial release, or termination statement with respect to any of the collateral without Lender's prior written consent. (i) Grantor shall diligently perform all of Grantor's obligations under each and every Lease strictly in accordance with the terms thereof and will not consent or permit any breach on Grantor's part in connection with any such Lease. (j) Promptly after Grantor's learning thereof, Grantor shall inform Lender in writing of any material adverse change in any of Grantor's representations and warranties under this Assignment.

VISITATION. Grantor shall permit representatives of Lender from time to time to visit and inspect the collateral, all records related thereto, the premises upon which any of the collateral is located, and any of the other offices and properties of Grantor; to examine the assets and books of corporation, or if not by other responsible persons, and to discuss the same with the Borrower; and to verify the amount, quantity, value and condition of, or any other matter relating to, the collateral, at such reasonable times and intervals as Lender may desire. Such inspections shall be conducted at Grantor's cost and expense.

FURTHER ASSURANCES. Grantor authorizes Lender to perfect, preserve, continue, amend and maintain Lender's interest in the collateral by whatever actions Lender in its sole discretion deems appropriate under applicable law, including without limitation (1) the filing by Lender of financing statements describing the collateral, or (2) Lender's placing a legend on any Lease that gives notice of Grantor's security interest. Grantor shall assist and cooperate with Lender in taking such actions and shall pay all costs and expenses incurred by Lender in taking such actions. In addition, at Grantor's cost and expense and upon request of Lender, Grantor shall duly execute and deliver, or cause to be duly executed and delivered, to Lender such further instruments and do and cause to be done such further acts as may be reasonably necessary or proper in the opinion of Lender or its counsel to carry out more effectively the provisions and purposes of this Assignment. Grantor hereby irrevocably appoints Lender or any other person whom Lender may designate as Grantor's attorney-in-fact to execute, deliver and record any such instruments in Grantor's name, and to indorse and collect any and all checks or other instruments which represent in whole or part proceeds of any collateral. Such power of attorney being coupled with an interest is irrevocable until the indebtedness has been paid in full and this Assignment terminated by Lender as provided herein.

USE AND OPERATION. Whenever any of the collateral is in the possession or control of Lender, whether for perfection, enforcement or otherwise, Grantor agrees to Lender's unrestricted use and operation of the collateral. Grantor waives any rights it may have to require Lender to keep all nonfungible collateral segregated or separately identifiable and agrees that Lender may commingle such collateral (fungible or otherwise) with its own without any liability to Lender for so doing.

CERTIFICATION OF GRANTOR. At least annually, Grantor shall give Lender a certification, in written or other record form, attesting that Grantor has not sold any of the collateral unless expressly permitted by this Assignment and has not changed any of the following without the prior written consent of Lender: (a) Grantor's name; (b) the state of Grantor's incorporation or registration (if Grantor was created by such state filing); (c) Grantor's chief executive office; (d) Grantor's principal place of business.

ASSIGNMENT BY LENDER. Lender may assign its rights and interest under this Assignment. If an assignment is made by Lender, Grantor (or its heirs, successors and assigns or any other person who becomes bound by this Assignment as Grantor) shall render performance under this Assignment to such assignee, and Grantor (or its heirs, successors and assigns or any other person who becomes bound by this Assignment as the Grantor) hereby waives and will not assert against Lender's assignee any claims, defenses, or setoffs which Grantor could assert against Lender except defenses that cannot be waived.

REINSTATEMENT. This Assignment, the obligations of Grantor hereunder, and the fees, rights, powers and remedies of Lender hereunder, shall continue to be effective, or be automatically reinstated, as the case may be, if at any time any amount applied to the payment of any of the indebtedness is received or must otherwise be restored or returned to Grantor, the Borrower or any other person (or paid to the creditors of any of them, or to any custodian, receiver, trustee or other officer with similar powers with respect to any of them, or with respect to any part of their property) upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Grantor, the Borrower or any such person, or upon or as a result of the appointment of a custodian, receiver, trustee or other officer with respect to any of them, or with respect to any part of their property, or otherwise, as long as such payment has not been made.

GRANTOR LIABLE ON LESSEES. Notwithstanding anything in this Assignment to the contrary (a) Grantor shall remain liable under the Lessees to perform all of Grantor's duties and obligations thereunder to the same extent as if this Assignment had not been executed, (b) the exercise by Lender of any rights hereunder shall not release Grantor from any of Grantor's obligations under the Lessees, and (c) Lender shall not have any obligation or liability under the Lessees by reason of this Assignment or the receipt by Lender of any payment hereunder, nor shall Lender be obligated to perform any of the obligations of Grantor under the Lessees, to take any action to collect, file and enforce any claim for payment assigned to Lender hereunder, or to make any inquiry as to the nature or sufficiency of any payment received by it or the adequacy of any performance by any party.

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000255

Lexington County Register of Deeds

Debra M. Gunter

Loan No: 00000007000083748

**ASSIGNMENT OF RENTS
(Continued)**

Page 4

NO OBLIGATIONS OF LENDER; INDEMNIFICATION. Lender does not by virtue of this Assignment or any of the transactions contemplated by the loan documents assume any duties, liabilities or obligations with respect to any of the collateral interests expressly assumed by Lender under a separate agreement in writing, and this Assignment shall not be deemed to confer on Lender any duties or obligations that would make Lender directly or derivatively liable for any person's negligent, reckless or willful conduct. Grantor agrees to indemnify and hold Lender harmless against and with respect to any damage, claim, action, loss, cost, expense, liability, penalty or interest (including without limitation attorney's fees) and all costs and expenses of all actions, suits, proceedings, demands, assessments, claims and judgments directly or indirectly resulting from, occurring in connection with, or arising out of: (a) any inaccurate representation made by Grantor or Borrower in this Assignment or any other loan document; (b) any breach of any of the warranties or obligations of Grantor or Borrower under this Assignment or any other loan document; and (c) the collateral, or the face of Lender thereon. The provisions of this Section shall survive the payment of the indebtedness in full and the termination, satisfaction, release (in whole or in part) or foreclosure of this Assignment.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Assignment:

Amendments. This Assignment, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Assignment. No alteration or amendment to this Assignment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Caption Headings. Caption headings in this Assignment are for convenience purposes only and are not to be used to interpret or define the provisions of this Assignment.

Governing Law. With respect to interest (as defined by federal law) this Assignment will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Alabama without regard to its conflicts of law provisions. In all other respects, this Assignment will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. The loan transaction that is evidenced by the Note and this Assignment has been approved, made, and funded, and all necessary loan documents have been accepted by Lender in the State of Alabama.

Joint and Several Liability. All obligations of Grantor under this Assignment shall be joint and several, and all references to Grantor shall mean each and every Grantor. This means that each Grantor signing below is responsible for all obligations in this Assignment.

Merger. There shall be no merger of the interest or estate created by this assignment with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Interpretation. (1) In all cases where there is more than one Borrower or Grantor, then all words used in this Assignment in the singular shall be deemed to have been used in the plural where the context and construction so require. (2) If more than one person signs this Assignment as "Grantor," the obligations of each Grantor are joint and several. This means that if Lender brings a lawsuit, Lender may sue any one or more of the Grantors. If Borrower and Grantor are not the same person, Lender need not sue Borrower first, and that Borrower need not be joined in any lawsuit. (3) The names given to paragraphs or sections in this Assignment are for convenience purposes only. They are not to be used to interpret or define the provisions of this Assignment.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Assignment unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Assignment shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Assignment. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Assignment, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Assignment shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Assignment. Any party may change its address for notices under this Assignment by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Power of Attorney. The various agencies and powers of attorney conveyed on Lender under this Assignment are granted for purposes of security and may not be revoked by Grantor until such time as the same are rescinded by Lender.

Severability. If a court of competent jurisdiction finds any provision of this Assignment to be illegal, invalid, or unenforceable as to any person or circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other person or circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Assignment. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Assignment shall not affect the legality, validity or enforceability of any other provision of this Assignment.

Successors and Assigns. Subject to any limitations stated in this Assignment on transfer of Grantor's interest, this Assignment shall be binding upon and true to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Assignment and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Assignment or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Assignment.

Waiver Jury. All parties to this Assignment hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of South Carolina as to all indebtedness secured by this Assignment.

Waiver of Right of Redemption. NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS ASSIGNMENT, GRANTOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE ON GRANTOR'S BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF GRANTOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS ASSIGNMENT.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Assignment. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, in the context may require. Words and terms not otherwise defined in this Assignment shall have the meanings attributed to such terms in the Uniform Commercial Code:

Assignment. The word "Assignment" means the ASSIGNMENT OF RENTS, as this ASSIGNMENT OF RENTS may be amended or modified from time to time, together with all exhibits and schedule attached to this ASSIGNMENT OF RENTS from time to time.

Borrower. The word "Borrower" means ROLAND Q PADDY, DAVID S HOSTETLER and WILLIAM H OWENS.

Default. The word "Default" means the Default set forth in this Assignment in the section titled "Default".

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Assignment in the default section of this Assignment.

Grantor. The word "Grantor" means ROLAND Q PADDY, DAVID S HOSTETLER and WILLIAM H OWENS.

Guaranty. The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

Indebtedness. The word "Indebtedness" means all principal, earned interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender

ASSIGNMENT OF RENTS (Continued)

Loan No: 00000007000093748

Page 5

to enforce Grantor's obligations under this Assignment, together with interest on such amounts as provided in this Assignment. Specifically, without limitation, indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Assignment.

Lender. The word "Lender" means REGIONS BANK, its successors and assigns.

Note. The word "Note" means the promissory note dated March 31, 2009, in the original principal amount of \$542,564.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Assignment" section of this Assignment.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

Rents. The word "Rents" means all of Grantor's present and future rights, title and interest in, to and under any and all present and future leases, including, without limitation, all rents, revenue, income, issues, royalties, bonuses, accounts receivable, cash or security deposits, advance rentals, profits and proceeds from the Property, and other payments and benefits derived or to be derived from such leases of every kind and nature, whether due now or later, including without limitation Grantor's right to enforce such leases and to receive and collect payment and proceeds thereunder.

THE UNDERSIGNED ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS ASSIGNMENT. THIS DOCUMENT IS EXECUTED ON MARCH 31, 2009.

GRANTOR:

* Roland G. Paddy
ROLAND G. PADDY

* David S. Hestler
x Roland G. Paddy HIF
DAVID S. HESTLER, BY ROLAND G. PADDY,
HIS ATTORNEY-IN-FACT

* William H. Owens
x Roland G. Paddy HIF
WILLIAM H. OWENS, BY ROLAND G. PADDY,
HIS ATTORNEY-IN-FACT

Noted, acknowledged and delivered in the presence of
* James W. Latham
JAMES W. LATHAM
Witness SIGN

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Maryland)
COUNTY OF Worcester) ss

PERSONALLY appeared before me and made oath that he or she saw the within-named Grantor(s) sign, seal, and, as his or her act and deed, deliver the within-written Assignment for the uses and purposes therein mentioned, and that he or she with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 31st
day of March A.D. 20 09
* Brenda R. Post (Notary Public)
My Commission expires: My Commission Expires
July 1, 2009

* [Signature]
Witness SIGN

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K3CFILPU1014.F0 TR-284973 PR-6821

NEXSEN|PRUET



M. Jeffrey Vinzani
Member
Admitted in SC

September 11, 2009

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Roland G. Paddy
[REDACTED]
Myrtle Beach, SC 29578-2273

Mr. William H. Owens
[REDACTED]
Myrtle Beach, SC 29577

Mr. David S. Hostetler
[REDACTED]
Myrtle Beach, SC 29588

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach

Re: \$700,000 loan (the "Loan") extended by Regions Bank (the "Lender") to Roland G. Paddy, David S. Hostetler and William H. Owens (the "Borrowers"), as evidenced by that certain Promissory Note dated June 24, 2005 in the original principal amount of \$700,000 (the "Note")

Dear Messrs. Paddy, Owens and Hostetler:

This firm has been retained to represent the Lender as the holder of the above-referenced Loan, which Loan is evidenced by the above-referenced Note. Unless otherwise provided, all capitalized terms used herein shall have the meanings attributed to them in the Note.

This letter is to notify the Borrowers that the Loan is in default under the provisions of the Note, the Business Loan Agreement dated June 24, 2005, and other documents evidencing and securing the Loan (such documents being collectively referred to as the "Loan Documents").

Please be advised that the Loan is in default by virtue of (i) the Borrowers' failure to pay to Lender when due various monthly installments of principal and accrued interest under the Note; (ii) the Borrowers' failure to pay to Lender on the maturity date of July 1, 2009, all principal and accrued but unpaid interest under the Note; and (iii) the Borrowers' failure to

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1778
F 843.414.8221
E JVinzani@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

NPCHAR1:505143.1-LT-(MJV) 024340-00000

000258

Mr. Roland G. Paddy
Mr. David S. Hostetler
Mr. William H. Owens
September 11, 2009
Page 2

pay to Lender late charges incurred due to Borrowers' failure to pay such installments within ten (10) days of their respective due dates.

As a result of such payment defaults, the Lender has elected to accelerate the outstanding principal balance plus all accrued but unpaid interest under the Note thereby making the entire balance thereunder immediately due and payable.

As of September 11, 2009 (the "Calculation Date"), the outstanding principal balance of the Loan is \$642,564.00 and accrued interest is in the amount of \$16,203.31. Therefore, the Lender has calculated the total payoff amount for the Note as of the Calculation Date to be \$658,767.31. The Lender may also charge late charges as referenced above.

DEMAND IS HEREBY MADE THAT THE FULL AMOUNT NOW DUE AND OWING ON THE NOTE, TOGETHER WITH ACCRUED INTEREST AND LATE CHARGES DUE AND OWING THROUGH THE DATE PAYMENT IS RECEIVED, MUST BE PAID IN FULL ON OR BEFORE 12 NOON ON SEPTEMBER 22, 2009.

Please be advised that in the event that all required amounts due under the Note are not paid in full by Noon on September 22, 2009, the Lender will pursue, in such order as the Lender elects, any and all remedies available to it under the terms of the Loan Documents, at law, or in equity, against all available collateral provided as security for the Loan and/or individuals or entities responsible for repayment of the Loan, to ensure the full repayment of the Loan pursuant to the terms of the Note. Nothing contained in this letter shall constitute a waiver of any rights of the Lender to pursue such rights and remedies.

In addition, the Note provides that the Borrowers will pay all costs and expenses of collection of the Note, including reasonable attorney's fees, and all expenses incurred in connection with the protection or realization of any collateral.

Neither this letter nor any statements by or on behalf of the Lender about the amounts due and owing under the Note and other Loan Documents shall constitute a waiver of any rights of the Lender to collect additional amounts to which the Lender may be lawfully entitled pursuant to the terms of the Loan Documents, at law, or in equity. PLEASE BE ADVISED THAT THE NOTE PROVIDES THAT THE LENDER MAY ASSESS A LATE CHARGE IN AN AMOUNT OF FIVE PERCENT (5%) OF SUCH MONTHLY INSTALLMENT NOT PAID WITHIN 10 DAYS OF WHEN SUCH PAYMENT IS DUE. Additionally, any and all payments or partial payments toward the Loan that Lender has received or may receive in the future may be applied by the Lender in any manner that the Lender deems appropriate in its sole discretion, whether toward principal, interest, late fees, and/or expenses. The Lender may accept and apply any such payment without affecting or modifying the terms of the letter or waiving any of Lender's rights.

Borrowers are hereby advised that any negotiations between the Borrowers and Lender shall not constitute a waiver of the Lender's right to exercise its rights and remedies under the terms of the Loan Documents, at law, or in equity, including, but not limited to,

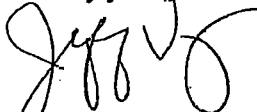
Mr. Roland G. Paddy
Mr. David S. Hostetler
Mr. William H. Owens
September 11, 2009
Page 3

those described in this letter. No waiver shall be effective against the Lender unless set forth in writing and duly executed by an authorized representative of the Lender. Borrowers shall not be entitled to rely upon any verbal statements made or purported to be made by or on behalf of the Lender in connection with any alleged agreements on behalf of the Lender to refrain from exercising any of its rights under the terms of the Loan Documents, at law, or in equity.

THE LENDER IS ATTEMPTING TO COLLECT THE INDEBTEDNESS EVIDENCED BY THE NOTE AND OTHER LOAN DOCUMENTS IN RELATION TO THE NOTE, AND ANY INFORMATION OBTAINED BY THE LENDER WILL BE USED FOR SUCH PURPOSE.

I trust that you will make arrangements on behalf of the Borrowers to pay the outstanding amounts in full so that collection of the indebtedness through other means will not be necessary. Should the Borrowers fail to respond or fail to pay the amounts owed under the Note, or otherwise fail to strictly comply with the Note or the other documents executed in connection with the Loan, the Lender has directed me to immediately commence all proceedings available to collect the indebtedness.

Sincerely yours,



M. Jeffrey Vinzani

cc: Bill Henderson (via e-mail)


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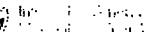
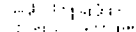
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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF LEXINGTON CASE NO. 2009-CP-32-5373

REGIONS BANK,

Plaintiff,

vs.

WILLIAM S. OWENS,
DAVID S. HOSTETLER, ROLAND G. PADDY,
AND GREER STATE BANK,

Defendants.

HEARING
BEFORE:

THE HONORABLE JAMES O. SPENCE

DATE:

March 4, 2011

TIME:

10:44 A.M.

LOCATION:

Lexington County Courthouse
205 East Main Street, Room 2A
Columbia, SC

REPORTED BY:

WANDA K. CECIL
Certified Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Greenville, SC
(864) 234-7030

Charlotte, NC
(704) 573-3919

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF
3 REGIONS BANK:4 NEXSEN PRUET, LLC
5 BY: BRUCE WALLACE
6 205 King Street, Suite 400
7 Charleston, SC 29401
8 (843) 720-1760
9 bwallace@nexsenpruet.com10 ATTORNEYS FOR THE DEFENDANT
11 WILLIAM S. OWENS:12 HILLIARD LAW FIRM, LLC
13 BY: JOHN M. HILLIARD, III
14 408 Cleland Street
15 Georgetown, SC 29440
16 (843) 527-1500
17 hilliardlawfirm@sccc.tv18 PAVILACK LAW FIRM, LLC
19 BY: LEX GARDNER
20 2311 South Kings Highway
21 Myrtle Beach, SC 29577
22 (843) 448-9471
23 law@lexgardner.com24 ATTORNEYS FOR THE DEFENDANT
25 ROLAND G. PADDY:BARFIELD & JOHNSON
BY: W. WESLEY JOHNSON, JR.
111 East Main Street, Suite D
Lexington, SC 29072
(803) 957-4000
main@barfieldjohnson.com

(INDEX AT REAR OF TRANSCRIPT)

1 THE COURT: Everyone please be seated.
2 We are here on Regions versus Owens, et al. It's
3 2009-CP-32-5373. Plaintiff's attorney is Bruce
4 Wallace. I believe Mr. Paddy's attorney is Mr.
5 Johnson and then Mr. Owens' attorney is Mr. Gardner
6 and Mr. Hilliard.

7 MR. HILLIARD: Yes, sir. Thank you,
8 Your Honor.

9 THE COURT: We have three, I believe,
10 three -- roughly three items. We have Defendant
11 Owens' motion for reconsideration. We have an
12 attorney fee issue, environmental fee issue, and a
13 debt issue. They're all kind of lumped into one.
14 And I believe with earlier conversation with
15 counsel, with a phone status conference and then
16 just in chambers, we have decided to do the motion
17 to reconsider first and then we will move into the
18 debt testimony.

19 MR. WALLACE: Yes, sir.

20 THE COURT: Is that correct?

21 MR. HILLIARD: Yeah.

22 THE COURT: Okay.

23 MR. HILLIARD: That's correct.

24 THE COURT: All right. Your motion.

25 MR. HILLIARD: Thank you, Your Honor.

1 Judge, we are seeking to have the Court --
2 acknowledging certainly your previous ruling; but to
3 have you, based on the presentation of your order,
4 to have you reconsider your previous ruling. And we
5 are seeking to have the Court make specific findings
6 of fact on the record for each of the factors
7 enumerated in the Wham versus Shearson Lehman
8 Brothers case and that, we believe, is absent from
9 the -- from the Court's order.

10 We would submit to the Court that, based
11 on the showing that we've previously made, that
12 there is good cause under Rule 55C to overturn the
13 default and to allow us to submit an answer in the
14 case. And I -- our notion of Your Honor's ruling
15 was that the Court has effectively imputed the
16 negligence of another individual on to our client in
17 order to establish the fact or establish the
18 proposition that he -- that there was not good cause
19 for him to have the opportunity to submit an answer.

20 And so, in that regard, we would ask
21 Your Honor to reconsider your previous ruling and to
22 amplify -- in the event you again deny our motion to
23 reopen the case and allow us to file an answer, in
24 the event you still hold to that position, Your
25 Honor, we would ask you to amplify your order in

1 that regard.

2 THE COURT: Thank you.

3 MR. WALLACE: May it please the Court,
4 Your Honor, Bruce Wallace for the plaintiff. Your
5 Honor, I would note a couple of things in response
6 and I'll make my argument as brief as possible. The
7 Court heard the motion, ruled on it in, I believe,
8 November of last year. Mr. Owens' counsel made this
9 motion to reconsider at the hearing of December 3rd,
10 made essentially the same arguments. The Court
11 denied the motion to reconsider at that time, and
12 then filed the subject written motion to reconsider
13 on December 10th and raising, perhaps for the first
14 time, the fact that there's no findings under the
15 Wham factors. And I'll address that first, Your
16 Honor.

17 Dixon versus Besco Engineering at 320
18 South Carolina Reporter 174, Court of Appeals, 1995.
19 The Court specifically held that the Trial Court
20 does not have to address in its findings the fact of
21 Wham factors. That is not a basis for reversal and
22 it's not abuse of discretion if the Court does not
23 do that. Now, that Dixon versus Besco Engineering
24 case is still good law for that point. It's been
25 cited through other cases and I apologize, I don't

1 have the citations before the Court; but it's still
2 the law of the land so to speak in this limited
3 area, that the Court need not find specifically with
4 regard to the Wham factors.

5 With regard to the imputed negligence,
6 it's my understanding of the Court's order that
7 actually the basis for refusing to set aside the
8 entry of default was twofold. First, Mr. Owens
9 didn't file an answer. Secondly, Mr. Owens' excuse
10 or explanation was not sufficient good cause to
11 warrant setting aside the entry of default.

12 Mr. Hilliard suggests in his motion and
13 I think it is a little bit in his argument today
14 that the rule imputing the failure to file an answer
15 for lawyers and insurance companies should not be
16 applied in this case. And it seems to me, Your
17 Honor, that it should be, but for the reason that
18 it's even less reasonable and less of a good cause
19 to rely on a co-defendant, who has no training in
20 the law, who has no training in litigation, to file
21 an answer on your behalf.

22 Now, if you cannot rely on your lawyer,
23 who does have the training, how could it be possibly
24 reasonable to rely on a person that is a novice in
25 responding to lawsuits? And so it's not necessarily

1 imputation of Mr. Paddy's negligence, but the fact
2 that the reliance on Mr. Paddy in the first place is
3 inexcusable. And that's my understanding of the
4 Court's order. That's my understanding of the
5 Court's reasoning, but it is analogous to relying on
6 a third party and I think the analysis holds true.

7 THE COURT: All right. Thank you. All
8 right. What I'd like to hear from y'all -- hang on.
9 Mr. Johnson?

10 MR. JOHNSON: Nothing, Your Honor.

11 THE COURT: All right. Thank you. All
12 right. A couple of things that I'd like to hear
13 from you. In the two cases that plaintiff has
14 relied on chiefly, you can't rely on lawyer, you
15 can't rely on your insurance company, the negligence
16 of the lawyer and the insurance company was imputed
17 to the client.

18 Now, what they're arguing in this case
19 is that the school case, I don't know -- the case
20 where the teacher was sued and brought -- took the
21 petition to or the complaint to the superintendent
22 or the principal or somebody. In that case,
23 excusable neglect was allowed and there's an
24 argument been made, I know don't know necessarily
25 that's what the case holds; but there's an argument

1 that made that says it's excusable neglect in
2 essence because these guys aren't in the business of
3 doing lawsuits and that's the distinguishing thing.

4 So what I want to know is is, A, is that
5 a -- is that a legal consideration that these cases
6 hold? Second thing I want to know is is, in the two
7 cases plaintiff is relying on, plaintiff -- the law
8 case and the insurance case, I think it's pretty
9 clear that, if you hire a lawyer, he has a
10 contractual obligation to file an answer on your
11 behalf. Your insurance contract normally says, you
12 get sued, you bring the complaint in, I've got to
13 provide for a defense, file an answer, all that. So
14 they're contractually obligated to do that.

15 In this case, as I understand the facts,
16 we have two partners. And refresh my recollection,
17 but I don't recall any testimony that said that
18 there was any contractual obligation in the
19 partnership agreement that would require one of them
20 to answer for the other one. In other words, I
21 don't recall there being any contractual obligation
22 for Mr. Paddy to sign on behalf of -- to file an
23 answer on behalf of Mr. Owens.

24 Now, what I've heard or what I
25 understand defendants to be arguing is is, A, we had

1 a right to rely on Mr. Paddy filing an answer
2 because we were partners and because of the
3 circumstances we had a right to rely. You know, the
4 deposition excerpts said what they said. We had a
5 right to rely on him based on what we said and what
6 he said, based on the context and the circumstances.
7 And what I want to know is is, A, one, is there
8 anything in all these cases or there's a February
9 26th case, Miriam Rodriguez versus Alexander
10 Gutteriz, Opinion 4786, that goes through the same
11 issue, cites the five -- the fact -- the Wham
12 factors, explains that.

13 Is there anything in that that says, A,
14 a partner has a legal right to rely on another
15 partner to file an answer on his behalf and, B, is
16 the evidence that was presented to me at the hearing
17 was that factually compelling that I should find as
18 a matter of fact that Mr. Paddy told Mr. Owens or
19 led him to believe to his detriment that he would
20 file the answer for him? Because I think there's a
21 legal question and a factual question. And what I
22 remember from the earlier hearing was, even if there
23 was some obligation by them being partners, I don't
24 recall being persuaded by what I was read in the
25 deposition that Mr. Owens should have walked away

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1 saying he's going -- I'm sure he's going to file the
2 answer for me.

3 And I believe when I questioned Mr.
4 Johnson about that, Mr. Johnson's representations
5 were essentially the same thing. It was their
6 position that they had not represented him. So
7 that's what I want to know, because if there is a --
8 if there's a legal obligation to answer, I want to
9 know that and I want to know why factually -- I
10 mean, I don't understand factually how he relied on
11 him.

12 And what I'm asking is is I think the
13 school case, how is that -- is that the same
14 situation you have? Are you saying the situation
15 between the teacher and the person up the chain, by
16 the teacher delivering it to him and thinking I've
17 delivered it to the superintendent of the teacher,
18 that's excusable neglect, is the same thing as a
19 partner saying, here's the lawsuit, I've been sued?
20 Because that's what I took your memo to mean.

21 Yes, sir.

22 MR. HILLIARD: I believe they are
23 analogous, Judge, and the reason that we put that
24 together is that the -- if you believe that
25 something is happening and you are mistaken in that

1 belief, that is if you have developed a situation
2 where in the course -- and this is borne out
3 throughout the testimony in regards to the
4 deposition and as it makes sense as you go through
5 this situation, all of the testimony was to the
6 effect that Mr. Owens came into this deal at the
7 urging and on the responsibility of Mr. Paddy. And
8 that he, Mr. Paddy, was the one who -- you know, it
9 was a very informal sort of thing. Mr. Paddy was
10 the one who was dealing with the bank. Mr. Paddy
11 was the one who was dealing with everybody in the
12 case.

13 Mr. Owens loaned Mr. Paddy some money
14 and Mr. Paddy was representing to Mr. Owens, well,
15 Mr. Owens, if you want to get your money back, then
16 you're going to have to do these things. And that's
17 throughout the deposition, that Mr. Owens would have
18 to do these things in order to get his money back
19 from the loan that he made to Mr. Paddy. That is,
20 he put cash out to Mr. Paddy and everything else
21 that happened connected to this situation was as a
22 consequence of Mr. Owens loaning money to Mr. Paddy.
23 So Mr. Paddy came and said, sign these documents.
24 And that's our position. Mr. Paddy came.

25 And then, after that, Mr. Owens gets a

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1 set of documents where he's been sued and he goes to
2 Mr. Paddy, who has been throughout this the person
3 who has been running the show. And he hands him
4 those papers and says, well, here, these are the
5 papers. I've been sued. And Mr. Paddy says, I've
6 got a lawyer. We will -- I have a lawyer to -- and
7 I'm reading now, Judge, from page 83 of the
8 transcript.

9 THE COURT: Well, hang on, because I
10 know -- I've seen what the transcript says.

11 MR. HILLIARD: All right, sir.

12 THE COURT: What I want to know is is
13 what was the legal relationship between Owens and
14 Paddy? They were partners. Is that what you're
15 claiming the legal relationship is?

16 MR. HILLIARD: For some purposes, they
17 were partners; but I don't know that they were
18 partners for all purposes.

19 THE COURT: All right. And let me ask
20 you by another analogy. Husband and wife get sued.

21 MR. HILLIARD: All right, sir.

22 THE COURT: Process server comes to the
23 door and the husband's home, serves the husband
24 personally. He says, I'm serving the husband -- I'm
25 serving the wife by serving the husband. Tells the

1 wife about it. He files an answer. And the lawyer
2 is confused, signs the lawsuit or files the lawsuit
3 just on behalf of the husband. Can the wife then
4 come in and say, I thought my husband was going to
5 take care of it?

6 MR. HILLIARD: If in fact her defenses
7 were different and if her exposure is different, I
8 would say that she could.

9 THE COURT: All right. Does she have to
10 have a right to rely on what her husband said?

11 MR. HILLIARD: Does she have to have
12 that? In order for her to have any -- if she is
13 going to have any due process, she has to be able to
14 rely on that. In other words, if she's -- if she's
15 going to have an opportunity to be present and I
16 mean, that -- I think that's what kind of carries it
17 over into the what's their damage. That's the thing
18 that brings it over to how are they harmed if --
19 it's clearly harm to the wife if she doesn't have
20 the opportunity to answer, in the same way that it's
21 harm to Mr. Owens if he doesn't have an opportunity
22 to answer. So if there's harm to Mr. Owens and no
23 harm to the bank, then why not let him answer?
24 Maybe that's it.

25 THE COURT: But that's not -- that's not

14

1 the legal standard. I mean, if the standard was
2 just I'm going to be harmed if I'm in default --

3 MR. HILLIARD: Right.

4 THE COURT: -- we'd never have a
5 default, because someone could always come in and
6 say I'm going to be harmed by being in default. So
7 what I'm trying to make sure I understand in my mind
8 here is --

9 MR. HILLIARD: Yes, sir.

10 THE COURT: -- is y'all are -- I mean,
11 did Paddy -- are you claiming he frauded your guy?
12 He told your guy, I'll do it and then he didn't? He
13 committed fraud. Or are you claiming he negligently
14 didn't do it? He told him, I'll do it and then he
15 forget to or is it a case of Owens reaching a
16 conclusion that was different from what Paddy
17 thought when they walked away from the discussion?

18 MR. HILLIARD: I think there is a fourth
19 option.

20 THE COURT: All right. What's the
21 fourth option?

22 MR. HILLIARD: I think the fourth
23 option, Judge, is that -- I think that Paddy
24 believed that it didn't matter. And so when Paddy
25 is at the conversation with Owens, I think Paddy is

1 saying to Owens, I got this taken care of, thinking
2 that it doesn't matter. I don't know that he
3 intentionally misled Owens in that regard, but I
4 think that he didn't want Owens to really get
5 involved in it because he didn't want Owens to know
6 everything that there was going on. At the same
7 time, I think he believed -- and this is maybe too
8 much speculation on my part, but I don't know that
9 he intended for Mr. Owens to be harmed by that. I
10 think he really believed it didn't matter.

11 THE COURT: All right. Thank you.

12 MR. HILLIARD: Thank you, Your Honor.

13 THE COURT: All right. Mr. Johnson?

14 MR. JOHNSON: Yes, sir.

15 THE COURT: Mr. Johnson, I'm going to
16 ask you the same three questions. Based on your
17 reading of the depositions and you being his
18 attorney, do you believe that your client had a
19 legal obligation to answer? Do you believe he told
20 him he was going to and then forget to? Or do you
21 believe it was an Option Number 3, that they had a
22 discussion, Owens walked away with a conclusion and
23 Paddy didn't have the same conclusion?

24 MR. JOHNSON: I don't think that Mr.
25 Paddy has a legal obligation to answer for Mr.

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1 Owens. I think that Option 3 may be relevant. I
2 think they may have a different impression of what
3 the conversation was just based on my reading of the
4 depositions. I don't have -- Mr. Paddy says -- the
5 question is: And when you talked to him, you told
6 him that you had a lawyer in Columbia to handle it
7 or a lawyer up there to handle it? And Mr. Paddy
8 says: I have a lawyer to keep check on the -- what
9 was going on, yes. So. . .

10 THE COURT: He didn't say we?

11 MR. JOHNSON: He didn't say we.

12 THE COURT: He didn't say I'm going to
13 going to file an answer on behalf of us?

14 MR. JOHNSON: Further questioning: All
15 right. So it's reasonable for him to believe that
16 you would have gotten a lawyer for him as well as
17 you, if that's what he believed? There was an
18 objection by plaintiff's counsel at that point.
19 Then the deponent's answer is: Well, my assumption
20 was that whatever happened to me was going to happen
21 to him and to Hostetler and I would know about it,
22 if that answers your question.

23 So I think that -- and then earlier or
24 in Mr. -- I don't have Mr. Owens' deposition in
25 front of me; but Mr. Owens, his deposition

1 testimony, if I'm remembering correctly, said that
2 he was under the impression that Mr. Paddy was going
3 to hire a lawyer on his behalf. So again, I don't
4 think that Mr. Paddy had an obligation to; but I
5 think that, if Mr. Owens' testimony is to be
6 believed, they might have had a misunderstanding
7 about what's going on. I don't know that there was
8 a misunderstanding, because I don't know if Mr.
9 Owens -- I don't know what he really thought. All I
10 know is what he said in the deposition.

11 THE COURT: Okay. Thank you. Mr.
12 Wallace.

13 MR. WALLACE: Thank your, Your Honor. I
14 would answer all the questions in the negative. I
15 don't believe that Mr. Paddy had a legal obligation
16 to file an answer on behalf of Mr. Owens. I don't
17 believe that he told Mr. Owens that he would and
18 then later changed his mind or simply just didn't.
19 And I -- well, actually, the third question I'd say
20 I would answer in the affirmative. They obviously,
21 based on the deposition transcripts provided to the
22 Court, had a conversation and they each had a
23 different impression of what was discussed.

24 Going back to the Court's earlier
25 inquiries, I don't believe they're partners. I

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1 don't there's testimony or evidence to support the
2 conclusion in this case that they are partners in
3 the legal sense; but even if they were partners, I
4 don't believe that creates in one partner the legal
5 obligation to defend the case on behalf of another
6 partner.

7 With regards to the Court's scenario of
8 the husband and wife, I think for reasons of public
9 policy, mainly doing to considerations most of us
10 who are married would understand, a husband probably
11 does have an obligation to file an answer on behalf
12 of his wife or at least not screw that up if he ever
13 wants to be married for very long.

14 THE COURT: All right. What about two
15 brothers?

16 MR. WALLACE: I don't think -- I don't
17 think there's public policy to support one brother
18 filing an answer on behalf of another, even again if
19 they're partners. I'm not aware of any law that
20 requires an obligation arising out of the
21 relationship for either partners, brothers or even
22 fathers and sons.

23 THE COURT: All right. If you boil it
24 down to I thought he was going to answer for me.

25 MR. WALLACE: Yes, sir.

1 THE COURT: Is that enough to vacate a
2 default?

3 MR. WALLACE: Your Honor, I do not
4 believe it is under the existing case law because --

5 THE COURT: All right. Hold on one
6 second. Talk to me about the school case.

7 MR. WALLACE: Okay.

8 THE COURT: All right.

9 MR. WALLACE: The school --

10 THE COURT: Talk to me about that
11 because the teacher said, I gave it to the guy, I
12 thought he was going to answer to me -- he was going
13 to answer for me. All right. Distinguish that,
14 please.

15 MR. WALLACE: Well, I think in that
16 case, you're talking about a person with limited
17 education, with limited experience with the law.
18 She pushes it up the ladder to somebody who does
19 have it. But also, I would note there's another --
20 there's another case that's similarly analogous that
21 has an entirely different conclusion. That's the
22 Besco Engineering case, where they pushed it up to
23 counsel to handle and counsel didn't handle it.

24 Again, you've got this -- I see the
25 school case as an opposite and really sort of

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1 outlier under the jurisprudence of our State; but
2 even then, I would say that you've got that one
3 person taking the case, the school case, and giving
4 it up to their supervision, who is not legally
5 trained. And so it makes sense that you would kick
6 it up the ladder there.

7 Here, you've got two people of the same
8 commercial knowledge, if you will, the same
9 position. You're not having a subordinate kick it
10 up to his supervisor. You're having a borrower
11 kicking it to another borrower. They're both being
12 sued in this case, where as the school case is
13 different. And so I think it's distinguishable in
14 that regard, but I also think that that case is
15 frankly wrongly decided on its facts.

16 In this case, the thing that focuses it
17 for me and what I think the critical factor is
18 there's no absolute reason. There's no reason for
19 him to rely on a co-defendant. There's no
20 obligation arising between the two of them such that
21 it's reasonable to go to your co-defendant and say,
22 hey, I got sued. Oh, I see you got sued, too.
23 You'll answer for me and walk away believing that
24 that's a reasonable thing.

25 We all have to answer for our own torts.

1 That's what the law says. We all have to answer for
2 our own incompletes, that's what the law says.
3 Now -- but I would go one step further, Your Honor.
4 If there is a legal obligation such that Mr. Paddy
5 had an obligation to file an answer on behalf of Mr.
6 Owens, then that factual scenario is much more
7 analogous to imputing the negligence of the
8 insurance company and the law firm. So for me, it
9 seems to be that the answer of the Court is that Mr.
10 Owens should not be allowed out of default either
11 way.

12 If Mr. Paddy does not have a legal
13 obligation to file an answer on behalf of Mr. Owens,
14 if his reliance on Mr. Paddy is unreasonable,
15 therefore it does not constitute good cause. If he
16 did have an obligation to file on behalf of Mr.
17 Pad -- Mr. Owens, then Mr. Paddy's failure to do so
18 is not excusable and neglect, if you will. It
19 doesn't constitute good cause for Mr. Owens because
20 of the insurance company and lawyer line of cases.

21 THE COURT: All right. Thank you. I'm
22 going to deny the motion to reconsider.

23 MR. HILLIARD: Could I say one more
24 thing, Judge --

25 THE COURT: Yes, sir.

1 MR. HILLIARD: -- before you move to
2 that. And I would not say this but for the argument
3 already made and that is that, from the depositions,
4 and I know that Your Honor has read part of them;
5 but it is -- it is absolutely high clear, Judge,
6 without any question that Mr. Paddy was the
7 individual who was driving this ship. He was
8 running the show. He was an investor. He was the
9 guy who put this whole deal together.

10 And so the part of this that I rise to
11 talk about now, based on the other argument, is
12 clearly they do not have the same commercial
13 knowledge. I think that it's clear from the
14 depositions that Mr. Paddy is a much more
15 sophisticated individual than Mr. Owens and he was
16 the one who was running this whole thing. He was
17 the one who directed all the activity. He's the one
18 who went to the bank and he's the one who had all
19 the knowledge about this deal.

20 Mr. Owens was just doing what Mr. Paddy
21 said. So that part of what's been said, I would
22 submit to the Court, is just incorrect factually,
23 Your Honor.

24 THE COURT: All right. Wasn't there --
25 in the earlier hearing, wasn't there testimony about

1 who the closing attorney was?

2 MR. HILLIARD: Yes, sir. Mr. Paddy's
3 daughter.

4 THE COURT: All right. And wasn't there
5 testimony that Mr. Paddy's daughter had seen your
6 client on multiple occasions and that he had come in
7 and signed multiple loan documents? Am I
8 misremembering this?

9 MR. HILLIARD: I think she had seen him
10 on a number -- I think that was a social thing
11 rather than -- she had -- she testified that he had
12 been to her office and signed documents. He
13 testified that he had not. She testified that -- I
14 think they both agreed that they had seen each
15 other -- if I'm remembering this correctly, Judge, I
16 think they both testified they had seen each other
17 on some social sorts of occasions; but -- and maybe
18 I'm remembering this incorrectly. Maybe I can get
19 some --

20 MR. WALLACE: Your Honor, Mrs. Refosco,
21 who closed the loan, testified that she had met Mr.
22 Owens over more than six occasions because of the
23 transactions that Mr. Paddy and Mr. Owens had done
24 for the majority of her life. She's known him since
25 she was a child and worked for Mr. Paddy and,

24

1 therefore, knew him personally and had taken
2 numerous loan documents to him -- excuse me, not to
3 him, had witnessed his signature on numerous loan
4 documents.

5 MR. HILLIARD: Okay.

6 MR. WALLACE: So there was a history of
7 dealing between Mr. Paddy and Mr. Owens, to which
8 Ms. Refosco testified in her deposition.

9 THE COURT: All right.

10 MR. HILLIARD: And again --

11 THE COURT: The reason I think that's
12 important is that what you're arguing in essence is
13 that you've got a disparity of knowledge and
14 sophistication and who's running the thing.

15 MR. HILLIARD: Yes, sir.

16 THE COURT: And it may be one was more
17 evolved, but I believe there's testimony that said
18 he's come in and signed loan documents on more than
19 one occasion. It's not a situation where one guy
20 signed everything and just said sign these documents
21 and he was not involved. There was some testimony,
22 I remember from earlier, saying he had come in to
23 this lawyer's office and signed documents and she
24 had witnessed them. I just wanted to make sure I
25 understood the level of financial and business

1 sophistication that existed between the two parties.

2 MR. HILLIARD: And, Judge, from that, I
3 would submit that there's no real difference. If
4 I'm the guy running the boat and I say -- and
5 factually, we disagree that this is what had
6 happened. But even taking it for the benefit of
7 them from their factual view, if I'm the guy running
8 the show and I say, come on down to my daughter's
9 office and sign up some papers. And my guy is down
10 there welding and he quits welding and goes over
11 there and the lady says, here, sign this stuff and
12 he signs it; I don't know that shows that he's got
13 any particular sophistication in business dealings.

14 THE COURT: Well, but law in our State
15 says though, A, you've got responsibility to know
16 what you sign and read.

17 MR. HILLIARD: Yes, sir.

18 THE COURT: And it's not an instance
19 where it was single instance where this happened.
20 So your guy, whether he's a welder or whatever he
21 is, is like everybody else. You're supposed to read
22 and understand legal documents before you sign them.

23 MR. HILLIARD: Yeah. And --

24 THE COURT: And that's what the law of
25 the State says.

1 MR. HILLIARD: Sure. And if he is
2 supposed to have read and understand those
3 documents, he's responsible for those documents.
4 But then he gets served and what we're talking about
5 is several sections down the road. He gets served
6 and he takes it to the same guy that's been telling
7 him to go sign the papers and says, here's this
8 thing we got -- you know, I got served. And the
9 fellow says, I'll take care of it. I got a lawyer.

10 THE COURT: All right. So if I can just
11 boil -- I mean, you're saying he had a right to rely
12 on him because of the circumstances -- of the
13 circumstance of their relationship and what he said
14 and what Mr. Owens said?

15 MR. HILLIARD: Yes, sir.

16 THE COURT: That's in essence what your
17 argument is?

18 MR. HILLIARD: Yes, sir.

19 THE COURT: And your argument in essence
20 is there's no legal right to do it and he was not
21 justifiably relied based on the set of
22 circumstances?

23 MR. WALLACE: That's correct, Your
24 Honor.

25 THE COURT: All right.

1 MR. HILLIARD: Yes, sir.

2 THE COURT: All right. Thank you.

3 MR. HILLIARD: Thank you, Your Honor.

4 MR. WALLACE: Your Honor, if I may
5 briefly address the sophistication argument. One
6 last fact that I think is critical to understanding
7 the sophisticated nature of the two parties in
8 question. Mr. Owens unquestionably loaned \$200,000
9 to Mr. Paddy for this transaction. So regardless of
10 what the structure of the transaction that actually
11 took place, Mr. Owens is quite the sophisticated
12 businessman. And his testimony before the Court is
13 that he and Mr. Paddy had numerous transactions
14 together before this transaction as well.

15 THE COURT: Okay. All right. I mean,
16 the record is going to say what it says --

17 MR. HILLIARD: Yes, sir.

18 THE COURT: -- through the depositions.

19 MR. HILLIARD: Yes, sir.

20 THE COURT: So you've got that and the
21 representations. All right. I understand the
22 arguments, but I'm going to deny the motion to
23 reconsider because I don't believe that -- A, I
24 don't believe there was fraud shown. I don't
25 believe that there was negligence shown and I don't

1 believe, with the totality of the argument, that it
2 was -- it was a justifiable reliance.

3 In the teacher case, the teacher kicked
4 it up to a high chain of authority. There was no
5 higher chain of person here. They were equal
6 people. And I don't think the language said I'm
7 filing. He never said I'm going to file an answer
8 on behalf of you. I understand what they did, but I
9 don't think the legal standard of I thought he was
10 going to file for me, I don't think that's the legal
11 standard under the case law.

12 I understand your argument. I may be
13 wrong, but I just -- I will respectfully deny the
14 motion to reconsider.

15 MR. HILLIARD: Thank you, Your Honor.
16 Judge, would you direct that the order include your
17 finding that in fact they were equal, co-equal in
18 this situation? Is that --

19 THE COURT: I don't -- I don't -- what I
20 mean by that is is that there was not a -- there was
21 not a legal partnership before them which set out
22 duties.

23 MR. HILLIARD: Yes, sir.

24 THE COURT: They were not -- they were
25 two people doing business together, that's what I

1 mean. I don't mean that they were legally
2 equivalent or legally equal. What I'm saying is is
3 there was no partnership. There was no
4 employer/employee relationship. It was two people
5 doing a business deal.

6 MR. HILLIARD: Thank you.

7 THE COURT: And when, Mr. Wallace, when
8 you do do the order, if -- address all the factors.

9 MR. WALLACE: All the Wham factors?

10 THE COURT: All the Wham factors.
11 Address all the factors and also, if you will, you
12 can you use the case I cited as a model to go by
13 because they address all the five factors in there,
14 give a pretty good discussion of it.

15 MR. WALLACE: Is that the Rodriguez
16 case, Your Honor?

17 THE COURT: Yes. Again, that's Opinion
18 4786. It was filed January 26th.

19 MR. WALLACE: I have it here, Your
20 Honor.

21 THE COURT: All right. Okay.

22 MR. HILLIARD: Thank you very much, Your
23 Honor. Thank you, sir.

24 THE COURT: All right. I think we've
25 got testimony now?

30

1 MR. WALLACE: Yes, Your Honor. We're
2 prepared to bring a witness to testify to the
3 correct amount of the debt, of the amount owing.

4 THE COURT: All right. If you'll come
5 forward and be sworn.

6 THE BAILIFF: Put your left hand on the
7 Bible, raise your right hand.

8 GREGORY J. KAYE,
9 being first duly sworn, testified as follows:

10 THE BAILIFF: Give her your name and
11 have a seat up here.

12 THE WITNESS: Gregory Kaye.

13 THE COURT: There's water if you'd like
14 some.

15 THE WITNESS: Thank you, Your Honor.

16 EXAMINATION

17 BY MR. WALLACE:

18 Q. Mr. Kaye, if you'll briefly state your
19 name for the record and your employment relationship
20 with Regions Bank.

21 A. Gregory Kaye, community banker with
22 Regions.

23 Q. Mr. Kaye, you've previously testified on
24 December 3rd before this Court with regard to the
25 plaintiff's debt?

1 A. Correct.

2 MR. WALLACE: Excuse me, Your Honor.

3 Q. The amount of money owed to the
4 plaintiff?

5 A. Correct.

6 Q. And, at that time, counsel for the
7 defendant raised some questions about the
8 calculations of that debt; is that correct?

9 A. That is correct.

10 Q. Have you since gone back and checked the
11 figures related to the amount owed by the defendants
12 under the subject loan in this case?

13 A. I did. I went to our special assets
14 department to more or less get a detailed breakdown
15 of the items involved, simply due to the fact that I
16 didn't -- I had general information and wanted to
17 get it specific.

18 Q. Okay. And based on that, going back to
19 the special assets department, have you since been
20 able to calculate the amount owed as of December 3,
21 2010 by the defendants?

22 A. Yes, sir.

23 Q. And what is that amount?

24 A. \$735,852.39.

25 Q. Okay. And does that include the

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1 principal balance on the note?

2 A. That does.

3 Q. Okay. And does it include the accrued
4 interest?

5 A. Yes.

6 Q. And does it include protected
7 advancements?

8 A. Yes, it does.

9 Q. All right. What about environmental
10 reports?

11 A. Yes.

12 Q. And appraisals?

13 A. Yes.

14 MR. WALLACE: Your Honor, that's all the
15 questions I have for this witness.

16 THE COURT: All right. Thank you.
17 Gentlemen, you got -- you know which order y'all
18 want to cross?

19 EXAMINATION

20 BY MR. JOHNSON:

21 Q. Mr. Kaye, can you tell me what an
22 internal charge down is?

23 A. That's a good question. Basically, the
24 bank has to keep active records of asset values.
25 And so what our special asset department will do

1 is -- that, in a nutshell, is why a reappraisal was
2 done. They will -- they have to make sure that
3 collateral values are accurate for what we keep on
4 the book as assets. And in doing so with this case,
5 the new market value came down to 480,000 and,
6 therefore, they charged down to that \$480,000 amount
7 internally for the asset value.

8 Q. So they -- so the interest being charged
9 at the time of the charge down, the principal amount
10 that interest is being charged on is reduced?

11 A. The principal amount that interest is
12 being charged on is reduced. Correct. And that's
13 a -- I believe that's a federal law.

14 MR. JOHNSON: Nothing further, Your
15 Honor.

16 THE COURT: All right. Hold on a
17 minute. I want to make sure I understand what we're
18 doing now. Are we doing separate questioning on
19 debt and then appraisal fee and attorney fees or are
20 we doing this all at one time?

21 MR. WALLACE: Your Honor, thank you. I
22 understood that the focus of today's hearing was to
23 address some miscalculations of the plaintiff's debt
24 from the December 3rd hearing. We had a double
25 charge for protected advancements and then Mr.

1 Johnson had raised a question about per diem
2 interest calculation, because it didn't make sense
3 with the amount of the principal balance of the note
4 and the interest charged, the 8.9 percent. So my
5 understanding was the purpose of today's hearing was
6 correcting those calculations.

7 We had previously served an amended
8 affidavit of debt and that we were going to simply
9 argue about my client's entitlement to appraisal
10 fees, to recover appraisal fees and the Phase I
11 environmental fees.

12 THE COURT: All right. Is that y'all's
13 understanding?

14 MR. JOHNSON: I'm not exactly sure. I
15 was asking questions just based on Mr. Wallace's
16 direct of the witness. He didn't ask anything about
17 attorney fees, appraisal fees or anything such as
18 that, that's why I did not cross him on any those
19 issues.

20 THE COURT: All right. Because I
21 understood this witness was going to be here and
22 would be necessary for discussion, I'm assuming, on
23 attorney fees and appraisal stuff, too.

24 MR. WALLACE: Your Honor, it was my
25 understanding that the only dispute there is whether

1 my client was entitled to recover attorneys' fees,
2 appraisal fees and environmental fees such that the
3 amount wasn't in dispute versus the amount of the
4 plaintiff's debt beyond those, calculation of the
5 principal, calculation of interest owed under the
6 principal.

7 THE COURT: All right. So y'all are
8 going to make a legal argument just on attorney fee
9 issue and appraisal?

10 MR. HILLIARD: Well, the amount of the
11 attorneys' fees is in dispute.

12 THE COURT: Well, I understand, which he
13 can testify.

14 MR. HILLIARD: Okay.

15 THE COURT: You can put him up and swear
16 him; but the rest of it is just legal where, if we
17 excuse him, we're not going -- we'll be able to go
18 forward with the other two issues.

19 MR. JOHNSON: As I understand it, Mr.
20 Gardner and Mr. Hilliard are going to deal with
21 appraisal fees and environmental report.

22 MR. GARDNER: And environmental report.

23 THE COURT: All right. Okay. So it'll
24 be a legal argument, it will be a legal discussion
25 on that, that you do not need this witness to talk

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1 to.

2 MR. HILLIARD: Well but, I don't want to
3 limit the questions that I ask. Can I have that
4 discussion after I ask my questions? I don't want
5 to limit the questions. By answering that, I don't
6 want to limit the questions that --

7 THE COURT: All right. All right. I'm
8 going to let -- I'm going to be very free with
9 allowing y'all to question him because there's some
10 confusion on this. All right. It's your turn to
11 ask questions now.

12 MR. HILLIARD: All right, sir.

13 EXAMINATION

14 BY MR. HILLIARD:

15 Q. I was going to ask the questions about
16 what the modification was as well, the internal
17 charge down. And I didn't really understand. When
18 you answered his question, I didn't really
19 understand, is that -- so these guys owed -- how
20 much did they owe prior to the charge down?

21 A. I don't have that answer in front of me.
22 I mean, they still owe the same amount. The charge
23 down is totally an internal accounting issue for
24 Regions Bank. It has nothing to do with what the
25 client owes at any time.

1 THE COURT: All right. The Court is
2 going to ask a question because I'm confused.

3 EXAMINATION

4 BY THE COURT:

5 Q. All right. Based on an answer that you
6 gave Mr. Johnson and I want to understand this. All
7 right. Let's just do this by way of a hypothetical
8 question to make sure I understand it. Say the
9 pre-mark down debt is \$100,000.

10 A. Uh-huh.

11 Q. All right. Then they do the
12 appraisal --

13 A. Right.

14 Q. -- find out property values have
15 dropped?

16 A. Right.

17 Q. And they got to show that on their
18 books?

19 A. Right.

20 Q. And they do the appraisal and they turn
21 out, find out that the property is only worth
22 \$70,000?

23 A. Correct.

24 Q. And they show that on the books. What I
25 understood you to then say then is, based on when

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1 that happened, interest was starting to accrue from
2 that date just on 70, not on the 100?

3 A. That is correct.

4 Q. All right.

5 A. But it doesn't change the 100 being a
6 balance that is owed. So it will change interest
7 accrued going forward.

8 Q. Because that's principal?

9 A. Correct.

10 Q. That was the principal?

11 A. Correct.

12 Q. But interest going forward is just based
13 on the 70?

14 A. Correct.

15 Q. And not on the 100?

16 A. Yes. And in the affidavit I had signed,
17 it does break that down.

18 Q. Okay. I just wanted to make sure --

19 A. Yeah. Absolutely.

20 Q. -- I was clear on that, too.

21 A. I had the same conversation with our
22 special asset department to get that detail.

23 Q. Well, it's a good question to ask and
24 understand.

25 A. Yeah.

1 MR. HILLIARD: Thank you, Your Honor.

2 THE COURT: All right.

3 THE WITNESS: Yes, sir.

4 EXAMINATION

5 BY MR. HILLIARD:

6 Q. So on March the 31st of 2009, they owed
7 \$642,564?

8 A. Correct.

9 Q. And then Regions Bank paid taxes in 2008
10 and 2009 and the amount of taxes that you guys paid
11 was \$15,623.32?

12 A. Correct. I believe so, I'm not looking
13 at your --

14 Q. Okay. Well, I'm reading from your
15 affidavit, so this --

16 A. Then yes.

17 Q. Okay. When you wrote the affidavit, you
18 told the truth?

19 A. Yes.

20 Q. And, again, I'm trying to understand.
21 So at that point on October the 24th, when there was
22 the charge down, what that means is they still owed
23 the 642,564, plus the interest, plus the 15,623.
24 They owed all that, but you guys started charging
25 interest at the lower number?

1 A. Correct.

2 Q. So they still owed the big number, but
3 they were only paying interest on the smaller
4 number?

5 A. Exactly. So, in a sense, they had a
6 discounted interest cost.

7 Q. Okay. And then you guys paid \$2,250 to
8 do an environmental investigation?

9 A. Uh-huh.

10 Q. Why did you do that?

11 A. That is for really our special assets
12 department to decide; but whenever real estate is
13 involved, typically if it goes into their
14 department, they will do an appraisal and, if they
15 deem necessary, an environmental search to make sure
16 that the property is in good shape. I believe that
17 is their discretion to do so as often as they want.
18 They did this one time to determine its condition.

19 Q. But why are you suggesting that we
20 should pay for that? If you can do it if you want
21 to and not if you don't, why should we pay for that?

22 A. I believe that's the responsibility of
23 the client inside the note, if I'm not mistaken.

24 Q. You believe that somewhere in the note
25 it says they have a responsibility to pay for an

1 environmental investigation?

2 A. Anything we deem necessary, if I'm not
3 mistaken. You know, whether it's its value or its
4 condition.

5 Q. And then the appraisal. The purpose of
6 appraisal was to do what?

7 A. Ascertain its current value.

8 Q. Okay. You guys are going to auction it
9 off; right?

10 A. I have no idea. That's -- that's not in
11 my hands.

12 Q. But at this point -- at this point, what
13 difference does it make to the bank what it's worth
14 or what environmental problems? I mean, those look
15 like interesting questions maybe before you loaned
16 the money; but once we owe the money, what's the
17 point?

18 A. I really can't answer that question. I
19 don't think that fits in my range of what I do at
20 the bank.

21 Q. So you can't testify to the Judge about
22 the reasonable of the environmental cost?

23 A. The only thing I can testify to is the
24 fact that our special assets department makes that
25 decision and makes that determination and they are

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1 the ones that ordered it.

2 Q. In connection with the -- regarding the
3 obligation of Mr. Owens on this note. Mr. Owens
4 signed the original note, is that your recollection,
5 that Mr. Owens signed the original note?

6 A. That's my recollection; but when I
7 started working on this -- I did not participate in
8 the signing of the original note. I was not the
9 loan originator.

10 Q. Right. Right.

11 A. So my understanding is the answer is
12 yes, but I was not there.

13 Q. So if I were to say to you that Mr.
14 Owens did sign the original note or at least that's
15 kind of where we are at in this point, that would
16 make sense to you?

17 A. It would make sense, yes.

18 Q. And that Mr. Owens did not sign -- there
19 is a supplemental note, is that correct, in this
20 case?

21 A. I just don't recall to be honest.

22 Q. Okay. Well, if I say to you that there
23 is a supplemental note in this case where the
24 interest rate goes up, that would be consistent?
25 You wouldn't take issue with that if I were to say

1 that there's a second note where the interest rate
2 goes up?

3 A. I don't think I'd take issue with it. I
4 just don't recall if there was a supplemental note
5 to it.

6 Q. Okay.

7 A. To the interest rate going up.

8 Q. And a power of attorney was provided or
9 let me show you what's been marked as Exhibit Number
10 5 from the deposition, which is a --

11 MR. WALLACE: Your Honor, I'm going to
12 object to this line of questioning for purposes of
13 Mr. Owens' position. He's in default. The Court
14 has thrice ruled that he won't be let of out
15 default. And it appears that counsel is getting
16 ready to go into issues of whether or not he signed
17 loan documents, which has been deemed admitted by
18 virtue of the Court's rulings of these issues.

19 THE COURT: Well, hold on a minute. He
20 may be -- he's in default and is he in default in
21 the complaint, did you plead all of these documents?

22 MR. WALLACE: I don't believe we pled
23 the power of attorney that he's getting ready to
24 investigate into.

25 THE COURT: All right. He's in default.

1 MR. WALLACE: Yes, sir.

2 THE COURT: But a person in default in a
3 foreclosure case can come in and question debt.

4 MR. WALLACE: Yes, sir.

5 THE COURT: The amount of debt.

6 MR. WALLACE: Yes, sir.

7 THE COURT: As I understand his line of
8 questioning, he's asking about an interest change in
9 a note which could affect the debt.

10 MR. WALLACE: Yes, sir.

11 THE COURT: So I think that line of
12 questioning, if that's what it is, that's proper.

13 MR. WALLACE: Yes, sir.

14 THE COURT: All right. So the objection
15 is overruled.

16 MR. WALLACE: Thank you, Your Honor.

17 MR. HILLIARD: Thank you, Your Honor.

18 And that's exactly the point, Judge.

19 And so let me -- would you mark that,
20 please, Ma'am, for the purposes of this hearing?

21 MR. WALLACE: Your Honor, I believe
22 under the rules, defaulting parties, they're not
23 allowed to introduce evidence though.

24 THE COURT: I believe that -- I'm going
25 to let you introduce it. I'm going to take that

1 subject to advisement. That may be -- that may be
2 correct; but it seems to me, if you can dispute
3 debt, you would have a right to come in and say,
4 here's my check showing my debt.

5 MR. WALLACE: I don't -- I understand
6 the Court's rule.

7 THE COURT: I understand. I'm going to
8 overrule. I'll take that under advisement, but I
9 believe, as long as it is debt calculation, it
10 can come in so long as it doesn't contradict
11 something he's already admitted.

12 I mean, for example, if
13 somebody comes in in a foreclosure and they're in
14 default and they show up at a hearing and the bank
15 says, you were loaned \$200,000. And he comes in
16 with checks showing I only owe you \$40,000, surely
17 he would be able to introduce those checks to show
18 that that's what the debt was.

19 MR. WALLACE: I believe Dixon versus
20 Besco Engineering, Your Honor, stands for the
21 proposition he can't introduce any affirmative
22 evidence with regard to debt. For instance in
23 Besco, they tried to argue that the plaintiff wasn't
24 entitled to lost wages and they tried to introduce
25 evidence that he actually had other wages. Of

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1 course, can't do that. And so there's an issue
2 about -- you can cross examine witnesses in a
3 default situation, but I think -- it was my
4 understanding of the rules at least, it was clear
5 that they can't introduce evidence to that effect.

6 THE COURT: All right. So he -- all
7 right. I'm going to -- I'm going to let it in.

8 MR. WALLACE: Yes, Your Honor.

9 MR. HILLIARD: Let her market it so
10 that -- as long as I keep talking, she can't write,
11 so I'll be quiet for a minute.

12 THE COURT: All right.

13 (EXH. 1, Limited Power of Attorney, was
14 marked for identification.)

15 MR. HILLIARD: I appreciate Your Honor's
16 ruling, Judge, and I think that you are certainly
17 correct. I am going to withdraw it though at this
18 point because I think I can get at this without
19 actually introducing evidence and that is --

20 Q. So you say to the Judge today, that Mr.
21 William S. Owens owes your bank \$735,852.39; is that
22 correct?

23 A. That is correct.

24 Q. And how -- what do you have to show the
25 Judge that proves that he owes that money?

1 A. The information that I put into the
2 affidavit breaks down the various costs from the
3 principal balance on through.

4 Q. All right, sir. And in your affidavit,
5 you say that -- you talk about a note; is that
6 right?

7 A. Correct.

8 Q. You have a note?

9 MR. WALLACE: Your Honor, if I may, the
10 note has been entered in evidence at the December
11 3rd hearing.

12 THE COURT: That's sustained.

13 MR. HILLIARD: All right, sir.

14 Q. And in connection with that note --
15 Excuse me, Judge. I apologize.

16 Q. And the note that you introduced into
17 evidence that is dated --

18 Judge, if it's already introduced into
19 evidence, I would just point out to the Court that
20 it's -- that the note is signed by Roland Paddy.

21 Q. It is not signed by Mr. Owens; is that
22 correct?

23 MR. WALLACE: Your Honor, the exhibit
24 he's referring to is signed by Mr. Paddy as attorney
25 in fact for Mr. Owens.

1 THE COURT: All right. We've already
2 had a hearing on that.

3 MR. WALLACE: Yes, Your Honor.

4 THE COURT: I mean, we can't -- I mean,
5 this is just -- this is debt testimony.

6 MR. HILLIARD: Yes, sir.

7 THE COURT: This not on validity of
8 debt, this is on calculation.

9 MR. HILLIARD: Right.

10 Q. But that note has a different level of
11 interest than is indicated in your affidavit; is
12 that correct?

13 A. I do not know that off the top of my
14 head. I believe there is a note that was signed
15 that shows it escalating to 8.9.

16 MR. HILLIARD: The point of this, Judge,
17 and if I am restricted in regards to this testimony,
18 then certainly just tell me that and I'll sit down
19 connected to that; but my belief is that the note
20 that you have in evidence is signed again by Mr.
21 Paddy as the attorney in fact. And in order for
22 them to have that note, they would have to have a
23 copy of the power of attorney and that's the way
24 that I was getting to the limited power of attorney
25 because I do not believe, based on this power of

1 attorney, that he had the authority to sign that
2 note, so --

3 THE COURT: Well, I don't know that
4 that -- I mean, I think we've had a hearing, haven't
5 we?

6 MR. WALLACE: Yes, Your Honor. All of
7 this was addressed at the December 3rd hearing.

8 THE COURT: I think we've already --
9 we've addressed this and there wasn't a motion to
10 reconsider filed on those issues, so we are stuck
11 with that happened at that hearing. You can ask him
12 about debt calculation, why he used the interest
13 rate, one as opposed to another; but I don't -- it
14 is not proper to go back now and attack the note
15 execution and the validity of the note. I think
16 you're limited subject to how the debt was
17 calculated at this hearing.

18 MR. HILLIARD: All right. In that
19 regard, Your Honor, we will resubmit Exhibit Number
20 1 pursuant to Your Honor's previous ruling.

21 THE COURT: All right. I'm going ask
22 the witness some questions because I'm getting
23 confused --

24 MR. HILLIARD: Thank you, Judge.

25 THE COURT: -- on what's happened. All

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1 right. Mr. Wallace will you give him the revised
2 debt affidavit he's executed, so he can look at it
3 and have it in front of him?

4 MR. WALLACE: Absolutely. Absolutely,
5 Your Honor.

6 THE COURT: All right. If you would do
7 that.

8 MR. WALLACE: If I may approach, Your
9 Honor.

10 THE COURT: Thank you. All right. And
11 the record reflects that the witness now has the
12 revised debt affidavit in front of him that he can
13 refer to.

14 EXAMINATION

15 BY THE COURT:

16 Q. All right. Now, as I understand the
17 line of questioning raised by the defendants is is
18 that there is an interest rate being charged that is
19 different from the initial note and you had answered
20 as a question, I believe there was a note rate
21 change. Was there a note rate change from the
22 initial note?

23 A. That's my understanding, yes.

24 Q. Okay. Well, what's your understanding
25 based on?

1 A. Well, as this note came due, we would
2 look at renewals and extensions and so on. There's
3 also, if I'm not mistaken, in the notes, if it's
4 defaulted, if anything occurs, there's a rate built
5 into that note that could change it to that 8.9.
6 And I'm not looking at the note, so I can't
7 recollect it off the top of my head, but I'm pretty
8 sure that's what that --

9 Q. That's what you based the calculation --

10 A. Correct.

11 Q. -- of 8.9 on?

12 A. Correct.

13 THE COURT: All right. Thank you.

14 MR. WALLACE: Your Honor, if I could
15 help assist the Court here.

16 THE COURT: Yes, sir.

17 MR. WALLACE: Exhibit 8 is the note
18 dated March 31, 2009, which is referenced in Mr.
19 Kaye's amended affidavit of debt, and the interest
20 rate set forth thereon is 8.9 percent. It's Exhibit
21 8 entered into the hearing on December 3rd and
22 that's the debt calculation -- excuse me, that's the
23 interest rate used to calculate the debt there.

24 THE COURT: That's not -- that's not the
25 original note?

1 MR. WALLACE: No, sir. But the original
2 note does have that language as well, which is
3 Exhibit 1.

4 THE COURT: All right. And the Exhibit
5 8 was entered into at the first hearing?

6 MR. WALLACE: I'm sorry, Your Honor, let
7 me back up. The principal calculation for which the
8 debt was -- for the interested as calculated was the
9 principal set forth in Exhibit 8. In other words,
10 at that time, the principal of the note was
11 \$642,564, so all interest had been paid at that
12 point. So there's no 8.9 percent interest going
13 back to the original date of the first note. The
14 original note, Exhibit 1, was \$700,000. It had been
15 paid down to \$642,564 by the time of the last note
16 renewal, which was March 31, 2009. From that date
17 forward, 8.9 percent was charged pursuant to the
18 terms of that.

19 THE COURT: Of the note renewal?

20 MR. WALLACE: Yes, sir.

21 THE COURT: Okay. All right. So the
22 difference between the two interest rates is the
23 original note said something, the note renewal had a
24 different interest rate?

25 MR. WALLACE: Correct, Your Honor.

1 THE COURT: All right. Thank you. All
2 right.

3 MR. HILLIARD: And that's the subject of
4 our questioning. And the point of what we're saying
5 is that, as a matter of the amount of the debt, the
6 amount of money which is what we're talking about
7 today, the damages, the damages are impacted on by
8 the difference in those two amounts. And while the
9 Court has made a determination that Mr. Owens is on
10 the hook connected to the note, the original note,
11 then what we're saying is that the amount of the
12 debt should be based on the amount of the interest
13 from the original note, not the second note, not the
14 renewal, because there is no authority for Mr. Paddy
15 to have signed for Mr. Owens and there's no
16 testimony to the effect that Mr. Owens signed that
17 note.

18 THE COURT: All right. I'll hear from
19 Mr. Wallace, a response.

20 MR. WALLACE: Your Honor, again, it was
21 the validity of the debt, not that calculation of
22 the debt. All of that has been resolved at the
23 December 3rd hearing.

24 THE COURT: I'll overrule that objection
25 because that's correct. That was all brought --

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1 that was all subject to the testimony and cross
2 examination at the first hearing. I'm just on debt
3 now at this point.

4 MR. HILLIARD: Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 Now. . .

7 MR. HILLIARD: That's it. Thank you.

8 THE COURT: All right. I want to -- the
9 court is going to ask a couple of questions, too,
10 about the environmental -- the environmental.

11 Q. In the environmental examination that
12 was done, was it a Phase I or a Phase II?

13 A. It was a Phase I.

14 Q. All right. Do you know the difference
15 between a Phase I and a Phase II?

16 A. I don't know the specific differences.
17 I do know the costs are extremely different.

18 Q. Okay. All right.

19 A. Phase II is much higher.

20 Q. Okay. So you didn't do a Phase II, you
21 did a Phase I?

22 A. Correct.

23 THE COURT: All right. Thank you. All
24 right. Is there any redirect?

25 MR. WALLACE: None from the plaintiff,

1 Your Honor.

2 THE COURT: All right. Thank you. All
3 right. He's excused at this point?

4 MR. HILLIARD: Without objection from
5 us, Judge.

6 MR. JOHNSON: No objection.

7 THE COURT: All right. Thank you.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Travel safety.

10 THE WITNESS: Thank you. I'm okay to
11 leave?

12 THE COURT: Yes, sir.

13 THE WITNESS: Thank you, sir.

14 THE COURT: All right. Now, I guess
15 we're going to hear argument -- I'd like to hear the
16 argument about the, first of all, environmental,
17 then appraisal, then we'll do attorney fees. So I
18 want to hear why the defendants don't believe the
19 environmental costs were, A, authorized or, B,
20 reasonable.

21 MR. HILLIARD: As to whether or not they
22 were authorized, Judge, they're not set out in the
23 contract and there is -- and, quite frankly, the
24 witness' testimony was that he didn't know why they
25 did it. Somebody else made that decision, so

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1 there's no -- we're not starting from the point of
2 that they're not authorized and not reasonable. I
3 would submit to the Court that we're starting from
4 the point of they failed to show that they were
5 authorized or reasonable. All they've done is put
6 them on an affidavit and put them up in front of the
7 Court. There's no testimony to the effect that
8 anything happened, except the bank decided to do
9 that.

10 THE COURT: All right. Thank you. Mr.
11 Johnson.

12 MR. JOHNSON: I agree with the threshold
13 level of the bank not -- not effectively asserting
14 that they had the right to do that to begin with.
15 Now, as for reasonable if -- the reasonableness
16 argument of it would be that they're unreasonable.
17 They're of absolutely no use to the bank. If the
18 bank is going to foreclose, they're going to
19 foreclose whether they have an appraisal,
20 environmental report.

21 THE COURT: Well, let's just talk
22 about -- let's talk about environmental because
23 that's a different fact pattern and issue and policy
24 than appraisal. All right. So let's do -- so just
25 do environmental, because we're going to come back

1 to the appraisal in a minute.

2 MR. JOHNSON: I concur with Mr.
3 Hilliard, the bank did not establish that threshold.

4 THE COURT: All right. Mr. Wallace.

5 MR. WALLACE: Thank you, Your Honor.
6 Two loan documents that are already in evidence give
7 specifically the right to inspect the property. I
8 will point first to a -- first of all, Your Honor, I
9 note we filed a written memorandum with the Court on
10 this issue.

11 THE COURT: All right.

12 MR. WALLACE: I'm sure the Court has
13 read it. So going to page 4 of our memorandum, we
14 quoted from the mortgage, which is Exhibit 2 of the
15 trial record from December 3rd. And the mortgage
16 says this, lender and lender's agents and
17 representative may enter upon the real property at
18 all reasonable times to attend to lender's interests
19 and to inspect the real property for purposes of
20 grantor's compliance with the terms and conditions
21 of this mortgage. Grantor being, of course, the
22 borrowers in this case. Compliance with the terms
23 and conditions of this mortgage. The grantor's
24 warrant, elsewhere in the mortgage, that this
25 property is free of environmental contamination. So

1 therefore, the mortgage grants the lender exclusive
2 authority to come in and inspect to determine if
3 there's any environmental contamination, hence a
4 Phase I environmental report.

5 Now, I go one step further, Your Honor.
6 There's evidence in the record that demonstrated
7 this property, which is a 107-acre, undeveloped
8 piece of land up near Batesville. It has fishing
9 ponds on it. It has aquifers underneath. The whole
10 purpose that Mr. Paddy and Mr. Owens had invested in
11 this property is that they were going to turn it
12 into a water bottling processing plant. That the
13 quality of the water underneath the land is such
14 that it's pristine.

15 And so if the bank is concerned about
16 the value of the land for that purpose, they'd
17 obviously want to conduct a Phase I to determine if
18 it still has the ability to serve in that capacity.
19 But even so, the existence of environmental
20 contaminants affects the value of the property. The
21 Court can take judicial notice of that.

22 THE COURT: All right. What's the
23 difference between a Phase I and a Phase II?

24 MR. WALLACE: A Phase I is a background
25 check of the uses of the property, anybody who may

1 have come onto the property that may have owned it
2 and used it for purposes of storing hazardous
3 materials, as I understand it. A Phase II is a more
4 in depth, physical, on the ground inspection of the
5 property, where I think they drill test wells and
6 they determine if there's actually any -- you know,
7 if it's been used as a dump, whether there was any
8 battery or tire or oil contamination.

9 THE COURT: All right. Thank you.
10 That's -- I've heard enough. I'm going to rule on
11 this point as to the environmental. The documents
12 do allow. Y'all have said they don't allow. The
13 documents, and if you read it, it talks about
14 environmental inspections. That's boilerplate in
15 most mortgages now, commercial mortgages, does allow
16 to go in and do those inspections.

17 And a Phase I is a record search with
18 DHEC. What that is is, when you do a Phase I, you
19 do a -- you send in a request for the property
20 address and they will tell you if there has been
21 reported -- anything reported on that site or within
22 a certain radius of it. That is the least expensive
23 way to check a piece of property environmentally.

24 If something is indicated by either
25 something on site or a Phase I, where a report has

1 been made, then they would have gone in and done a
2 Phase II and actually done soil -- taken soil
3 samples or water borings to check if there's
4 something in the water or the soil. They did not
5 pay for a Phase II. It was a Phase I. And the
6 testimony from here was that is that's what an REO
7 does, standard every time they take a piece of
8 property. And that's a valid cost and a valid
9 reason.

10 MR. HILLIARD: In order to understand
11 your ruling, Your Honor, and I didn't mean to
12 represent to the Court that they weren't allowed to
13 come and look at the property. I think the document
14 clearly says they have the authority to enter the
15 property for that purpose. Is the Court equating
16 their right to enter with our responsibility to pay
17 for what they did when they got there? Is that --

18 THE COURT: It says, such inspection
19 shall be conducted at grantor's cost and expense, so
20 it says that's to be paid.

21 Yes, sir.

22 MR. JOHNSON: Your Honor, the contract
23 states that the lender shall have -- that they may
24 enter upon the real property at all reasonable
25 times. It doesn't -- you're taking judicial notice

1 this is an administrative search. There's no
2 testimony that they actually entered the property to
3 do this inspection. This is what the plaintiff is
4 relying on. This part of the contact says lender
5 and lender's agents or representatives may enter
6 upon real property at all reasonable times which --
7 in the lender's interest and to inspect the real
8 property for purposes of grantor's compliance with
9 terms and conditions of this mortgage. It doesn't
10 say that they have the right to go do a paper check
11 somewhere. It says they have the right to come to
12 your property and look at it.

13 THE COURT: By that same analogy, you
14 would not be able to collect attorney fees for doing
15 a title search then and I just -- I understand your
16 argument, but I don't -- that's not apples to
17 apples. I understand your argument, but I'm not
18 persuaded by it.

19 MR. JOHNSON: Thank you, Your Honor.

20 THE COURT: Okay. So I find they both
21 had legal right and it was reasonable. And I
22 further take note that, in the law, one reason for
23 doing an environmental inspection is it aides a
24 lender in determining if they are in fact going to
25 sell the property and take it back. Because if a

1 property is environmentally contaminated, it is not
2 uncommon for lenders simply to walk away from the
3 loan rather than taking title back and then having
4 to clean up the site or be responsible for it. So
5 it has a business purpose that is contained in the
6 document, so it is a reasonable exercise.

7 All right. Now, I'd like to hear
8 argument on the appraisal.

9 MR. WALLACE: You want that I should go
10 first this time, Your Honor?

11 THE COURT: However y'all want to do it.

12 MR. WALLACE: Okay. Mr. Hilliard was
13 kind enough to go first, so I go first this time.

14 MR. HILLIARD: All right.

15 MR. WALLACE: Your Honor, similarly, we
16 go back to the mortgage document, again cited in our
17 brief, Exhibit 2, which is the mortgage entered into
18 the record on December 3rd. At page 4, it
19 specifically says, if the lender institutes any suit
20 or action to enforce any of the terms of this
21 mortgage, lender is entitled to recover such sums as
22 the Court may adjudge reasonable as attorneys' fees;
23 but it goes on to say all reasonable expenses lender
24 occurs that in lender's opinion are necessary, so it
25 changes the language a little bit, at any time for

1 the protection of its interests or the enforcement
2 of its rights shall become a part of the
3 indebtedness payable on demand and shall bear
4 interest at the note rate from the date of
5 expenditure. And then it goes on to say,
6 specifically expenses covered by this paragraph
7 include without limitations and one of the things
8 they say is appraisal fees.

9 And as the Court heard, we appraised the
10 property to determine the value. Oddly enough,
11 we're fighting over \$2500 worth of appraisal fees;
12 but that appraisal resulted in an internal charge
13 down, which has saved the borrowers from owing
14 thousands and thousands of interest expense over the
15 course of the approximate year or so since that
16 internal charge down took place. So I say that as a
17 side note, Your Honor, that again the mortgage gives
18 us specifically the right for appraisal fees.

19 And then the assignment of rents
20 similarly gives that same right, uses identical
21 language. And that's Exhibit 9 at page 2. So going
22 to the Court's question, authorization is clear.
23 The reasonableness is clear and I think the
24 reasonableness is matched by the fact that, as a
25 result, the interest was reduced from -- the

1 principal upon which interest was charged was
2 reduced from \$640,000 to \$480,000.

3 And so basically that was about \$8,000 a
4 year that the borrowers are not responsible for
5 under this lawsuit or this foreclosure. So to the
6 extent that the Court might find the expenses are
7 unreasonable, it saved the borrowers a lot of money.
8 And not something my client wanted, I'm sure; but it
9 clearly resulted in a windfall to the borrowers.

10 THE COURT: All right. I need to ask
11 you a question though. How does a bank's choice of
12 whether they do an appraisal or not affect their
13 decision to either request a deficiency or waive a
14 deficiency?

15 MR. WALLACE: Well, that's a good --
16 that's a good point, Your Honor. There's no -- I'll
17 concede there's no evidence on this point in record.
18 But if the appraisal indicated that the property was
19 worth, say, \$800,000 and the maximum amount of the
20 debt was \$700,000, exclusive of attorneys' fees and
21 interest, there's a strong argument that the lender
22 would ask for a deficiency on the off chance it
23 sells for less than the amount of debt, but then
24 either waive its deficiency. Some banks will only
25 bid the fair market value at the sale or they may

1 waive deficiency and just take it because they
2 believe they're getting a pretty good deal.

3 THE COURT: Is the bank asking for a
4 deficiency in this case? Did they plead it?

5 MR. WALLACE: Absolutely, they pled it,
6 Your Honor, which I think is the only reason why
7 we're fighting.

8 THE COURT: In our statutory law, a bank
9 has to ask for a deficiency in its pleading.

10 MR. WALLACE: Yes, sir.

11 THE COURT: In its complaint.

12 MR. WALLACE: In order to recover, yes,
13 sir.

14 THE COURT: All right. They can waive a
15 deficiency up to the amount they're saving.

16 MR. WALLACE: Yes, sir.

17 THE COURT: All right. Thank you. All
18 right. Yes, sir.

19 MR. HILLIARD: If they would waive the
20 deficiency, we'd go home, Judge. But he's correct
21 about that and I don't know that we have any
22 argument regarding the appraisal, other than what
23 we've said previously as to the other and it's not
24 really as strong, so. . .

25 THE COURT: Thank you. Mr. Johnson.

1 MR. JOHNSON: Your Honor, just -- just
2 as a matter of a policy, I don't know that it's a
3 good idea to give banks cart blanche to go and do
4 appraisal, to put a party in position of owing more
5 fees when they already owe -- they're already behind
6 on mortgages and adding to that burden by coming in
7 and doing an appraisal that, in many instances, may
8 not provide any benefit to the bank. If they've
9 done their environmental, they know the approximate
10 value of the property. They know there's nothing --
11 most likely nothing wrong with it environmentally
12 that's going to devalue that.

13 In this case, it does seem to have
14 worked some benefit to the borrower. I think as a
15 matter of public policy, I would argue against it,
16 that it's unreasonable because the bank is going to
17 foreclose no matter what. It's just yet another
18 cost of deficiency, Judge, and a cost that the
19 borrower is going to have to bear. So I just would
20 think it unreasonable there. I just don't really
21 see the full use to the bank.

22 Again, in this case, it did work out for
23 this particular set of borrowers; but, overall, I
24 would argue against the banks being allowed to do
25 that and adding more debt to the borrower when

1 they're going to foreclose anyway.

2 THE COURT: I understand. Thank you.
3 Again, I believe, A, our statute allows for a
4 deficiency request. The documents, the various
5 documents allow for the environmental and the
6 appraisal and that is critical to both sides. It
7 does add the fee in; but what it very often does is,
8 just by way of explanation so it makes a little more
9 sense. In normal loan context, an appraisal is done
10 with the loan is done.

11 If the loan is done in 2005 and the
12 mortgage goes into foreclosure in 2010, there's no
13 good evidence of what the real property value is for
14 all the banking regulations and rules other than
15 what the tax assessor says it's worth. That's not
16 very valid stuff. Most lending institutions don't
17 do an appraisal until they're sure they're going
18 into foreclosure. They ask for a deficiency because
19 they have to.

20 And then if an appraisal comes back
21 showing the value is fairly close, they waive it.
22 Which is why in our sales, we start out with a
23 gazillion deficiencies being asked; but by the time
24 we sell it, we end up having 12, 14 or 15 because
25 the deficiency is done -- I mean, the appraisal is

1 done and the deficiency is waived. So in the sense
2 that it costs the borrower, it does only when they
3 continue with the deficiency request. If they waive
4 the deficiency request, it saves the borrower
5 thousands of dollars, thousands of dollars. But the
6 point is you can't know it until you do the
7 appraisal. So I think it's authorized, it does
8 make -- it does have some business sense to it. So
9 that's the explanation there.

10 MR. HILLIARD: Thank you, Your Honor.

11 THE COURT: Yes, sir. All right. Now,
12 attorneys' fees. Y'all want to question him under
13 oath and get into the 15 percent issue? Y'all have
14 got the ability to question him under oath as to his
15 time and all that or do you want to just make legal
16 argument on the 15 percent?

17 MR. JOHNSON: I'm content to make the
18 legal argument on the 15 percent.

19 THE COURT: All right. You guys?

20 MR. HILLIARD: I am as well, Your Honor.

21 THE COURT: All right. Thank you. All
22 right. Mr. Johnson.

23 MR. JOHNSON: Thank you, Your Honor.
24 Your Honor, there have been numerous memorandums,
25 presented numerous cases. I think what it comes

1 down to and I'm basing this on -- excuse me. I'm
2 sorry. I'm basing this on the Bishop Realty case
3 versus Perk, if I have this correct. I do not. I'm
4 sorry. I sorry. I'm under the weather. I've got a
5 little hayfever. Give me just one minute.

6 THE COURT: I've read your memorandum.
7 Don't tell me case, tell me your theory because I --

8 MR. JOHNSON: Your Honor, the theory is
9 that the Court has absolute discretion over the
10 award of attorneys' fees in cases. Parties can
11 contract and put those within the contract, but
12 there's still -- the cases say that the defendants
13 can still make an argument of reasonableness of
14 those fees. In this case, we're going to argue that
15 they're unreasonable based on the large amount of 50
16 percent of a very large note, which makes the fees
17 well over \$100,000.

18 In this case, Mr. Wallace has presented
19 an affidavit of fees that are less than half, if you
20 take his hours worked and what his firm would
21 normally charge. In this case, the plaintiff is
22 asking that you basically double what they would
23 normally pay in the case if that had not been in the
24 contract to make the plaintiff -- to make the
25 defendants pay twice what the attorneys' fee are

1 actually in the case.

2 In this particular case, in this
3 particular note and mortgage, which I brought out in
4 my memorandum, it specifically states lender shall
5 be entitled to recover such sums as the Court may
6 adjudge reasonable as attorneys' fees at trial and
7 upon the appeal. And then it goes to two sentences
8 later to define expenses as covered by this
9 paragraph, without limitation, however subject to
10 any limits under applicable law, lenders reasonable
11 attorneys' fees in an amount not less than 15
12 percent of the amount owing on the indebtedness and
13 the lender's legal expenses, whether or not there's
14 a lawsuit.

15 So my argument is that the bank was
16 content to put in their contract that we're going to
17 allow the Court to determine reasonable attorneys'
18 fees and then, within the same paragraph say, well,
19 we're not content to let the Court do it. We're
20 going to dictate that it has to be at least 15
21 percent. The cases that plaintiff's counsel have
22 argued, I've seen nothing in the memorandums or
23 anything in the cases that contain the same language
24 that this note and mortgage has. Again, priority in
25 the paragraph saying that the Court shall determine

1 the reasonableness of these fees and reasonable
2 shall be this.

3 Those just say -- those cases, based on
4 my reading, just say attorneys' fee shall be set at
5 10 percent, 15 percent, whatever they're set at.
6 There's no discretion given to the Court. Again,
7 the bank can't really give the Court discretion.
8 The Court has the absolute right to determine that,
9 so that's what we're arguing. I do think that we do
10 have to determine -- that we do have to present the
11 evidence of unreasonableness and, based on Mr.
12 Wallace's affidavit, we would think that over twice
13 the amount actually charged by the law firm would be
14 unreasonable in this case.

15 THE COURT: All right. Thank you.

16 MR. HILLIARD: I don't have a great deal
17 to add, Judge. I would just say that certainly Mr.
18 Wallace has proved himself to be an excellent
19 advocate and a good lawyer. And I would say that he
20 is -- while he's not an expensive -- or while he's
21 not an inexpensive lawyer, he's a reasonable lawyer
22 and he has presented the Court with an affidavit
23 regarding what his fees would ordinarily be in the
24 case. And we would submit to the Court that
25 certainly that's good evidence of what a reasonable

1 fee would be in the case. They made that part of
2 the case for us.

3 They've done a good case and they've
4 charged what would be a reasonable fee and anything
5 over what it is that they've indicated would be a
6 reasonable fee, I would submit to the Court would be
7 a windfall for the bank. It's like the bank's
8 getting an extra chunk of money or it makes the
9 case -- if the bank doesn't get the money, then it
10 makes the case a contingent case for the plaintiff.
11 So we would ask -- we would concur in all the things
12 that have previously been said regarding the fees.

13 THE COURT: Thank you. Mr. Wallace.

14 MR. WALLACE: Thank you, Your Honor. I
15 appreciate Mr. Hilliard's kind remarks. That was
16 unexpected and I did not pay him anything for that.

17 THE COURT: Are you willing to waive --
18 just kidding now.

19 MR. WALLACE: Sometimes a compliment is
20 worth more than the money, Judge.

21 First of all, let me clarify. If the
22 bank is awarded the attorneys' fees, they will pay
23 them to Nexsen Pruet in full measure, whatever the
24 Court orders as attorneys' fees will be paid over to
25 Nexsen Pruet.

1 THE COURT: All right. Hold on. I want
2 a representation from you.

3 MR. WALLACE: Yes, sir.

4 THE COURT: Is your agreement with your
5 client that you're on a set fee or are you on an
6 hourly rate reasonable fee?

7 MR. WALLACE: Well, we're on an hourly
8 rate right now, Your Honor.

9 THE COURT: So it is not a set fee?

10 MR. WALLACE: You mean like \$500 per
11 case?

12 THE COURT: Right.

13 MR. WALLACE: No.

14 THE COURT: Or \$5,000?

15 MR. WALLACE: No, sir.

16 THE COURT: Okay. Thank you.

17 MR. WALLACE: As this litigation grows,
18 so will our attorneys' fee bill. It's probably
19 subject to that 15 percent, Your Honor. I think
20 it'd be difficult for us to argue that we're -- that
21 our client is entitled to more, but I would kind of
22 turn this discussion on its heels, Your Honor.
23 Let's say, using the Court's example to Mr. Kaye,
24 let's say this was \$100,000 debt. Okay? And I came
25 in here and I said, Judge, we want \$50,000 in

1 attorneys' fees. I wonder whether Mr. Hilliard and
2 Mr. Johnson would stand up and say, Judge, hold on
3 now. They only get 15 percent. They're not
4 entitled to what it actually costs to bring this
5 case, Mr. Wallace to drive up here, for all of us to
6 drive up here. They're only entitled to 15 percent.
7 That's what the note says, that's what they're
8 entitled to. And I wonder if we would be arguing
9 the same thing.

10 I'll tell you, my position would be
11 consistent. I would say that the Court has
12 discretion above 15 percent to award as attorneys'
13 fees, but not discretion below 15 percent. And I
14 would point out two cases that talk about that. Mr.
15 Johnson said the Court has absolute discretion and I
16 don't believe that's the case. The Scott Farms case
17 specifically talked about what discretion the Court
18 has. It says, where the contract says only
19 reasonable attorneys' fees, that amount is
20 unliquidated and, therefore, requires a finding on
21 the reasonableness of the attorneys' fees. And they
22 go on further and say, however, where the contract
23 provision provides for attorneys' fees at a specific
24 rate, then the amount is covered by the contract
25 and, therefore, the Court has no discretion in

1 awarding attorneys' fees.

2 Another distinction I would have from
3 Mr. Johnson's argument is the case of Dedes versus
4 Strickland. These have both been cited by us in our
5 memorandum. I actually went back, preparing last
6 night at home, and I was reading the excerpts from
7 the Dedes case that we cited and I noticed actually
8 that it has the identical language as this case. It
9 says, that in the Didus case or Dedes case,
10 D-e-d-e-s, Madam Court Reporter, is an interesting
11 one because it dealt with three different notes that
12 had three different attorneys' fees provisions and
13 the Court treated each one of them differently.

14 There was one that said just reasonable
15 attorneys' fees and the Court said, we've got to
16 remand to a trial, but will award reasonable
17 attorneys' fees with regard to that note. And then
18 one had a -- I don't want to misquote, Your Honor,
19 so if I may quickly refer to my brief.

20 THE COURT: All right. I'm familiar
21 with your brief and the three things. What I want
22 to know is -- what I want you to address and I want
23 you to address Mr. Johnson's argument that, when you
24 take the totality of the language, it can be
25 interpreted to create a conflict, where one says

1 reasonable, one says 15 percent and, if that is in
2 fact true, it goes against the drafter of the
3 document and it would have to be reasonable, not 15
4 percent. That's Question 1. I've got a second one
5 for you, but I want you to answer that first.

6 MR. WALLACE: Thank you, Your Honor. I
7 think that under the rules of contract and
8 construction, the Court should neither take away nor
9 add language if they -- if the language at issue can
10 be construed consistently. And I'm positive that
11 the only way it can be construed consistently is
12 that the Court -- that the contract sets the floor
13 at 15 percent and that, if I were going to argue for
14 a higher percentage, Your Honor, this is a very
15 difficult case. It involved extraordinary difficult
16 issues of law. It's been a lot of time. It
17 actually ended up taking us more time that we
18 thought, we should get 20 percent. Then the Court
19 would have the discretion to go above 15 percent.

20 THE COURT: Can a Court go down?

21 MR. WALLACE: I don't believe, Your
22 Honor, that that would be consistent with the
23 language of the mortgage. The Court can't go
24 because it says the amount of the fees is no less
25 than 15 percent. So the only way to consistently

1 resolve those two and interpret those two clauses,
2 the Court may award reasonable attorneys' fees,
3 reasonable attorneys' fees of at least or not less
4 than 15 percent, is to say that the Court can go up,
5 but can't go down.

6 THE COURT: All right. Well, then hold
7 that because we're going to get into my second
8 question then.

9 MR. WALLACE: Okay.

10 THE COURT: The contract is the issue;
11 right?

12 MR. WALLACE: Yes, sir.

13 THE COURT: We agree the contract is the
14 issue?

15 MR. WALLACE: Yes, sir.

16 THE COURT: I believe, a year or two
17 ago, there was a case decided by our Supreme Court
18 in which it was the -- class action suit. The
19 attorneys were down on the coast. They won all the
20 money against the State for retirement benefits or
21 something.

22 MR. WALLACE: Yes, sir.

23 THE COURT: And they had a contract that
24 had a contingency fee amount that said we get 30
25 percent.

1 MR. WALLACE: Yes, sir.

2 THE COURT: Right?

3 MR. WALLACE: Yes, sir.

4 THE COURT: What did the Supreme Court
5 do? They didn't let them have 30 percent, did they?

6 MR. WALLACE: Not as an additional fee,
7 no, Your Honor.

8 THE COURT: So how -- when you're saying
9 the Court's restricted on it, doesn't that case in
10 effect stand for the provision that reasonableness
11 is always there?

12 MR. WALLACE: Your Honor, that --

13 THE COURT: For example, if it was a 60
14 million dollar loan and there was one defendant who
15 is in default and it said 15 percent, do you think
16 it would be proper at that point for a Court to
17 award 50 percent of 60 million dollars as attorneys'
18 fees if the attorney did 15 hours worth of work?

19 MR. WALLACE: Well, Your Honor, the --
20 you're referring to the contract between the lawyer
21 and his client?

22 THE COURT: Right.

23 MR. WALLACE: Okay. And I presume that
24 was the case you were referencing --

25 THE COURT: Yes.

1 MR. WALLACE: -- with the class action?
2 I think that's probably a harder question, Judge,
3 because you have to talk -- that goes into the
4 engagement agreement and the equities between client
5 and attorney. And I'm hearing --

6 THE COURT: Well, wait a minute. You
7 have the same argument between bank and -- I mean,
8 you have the same argument about relative equities
9 and bargaining situations between lender and
10 borrower, too.

11 MR. WALLACE: Absolutely.

12 THE COURT: But as a baseline, we've got
13 a contract.

14 MR. WALLACE: Absolutely.

15 THE COURT: And we have a contract
16 between these guys and your guys that said what it
17 did. We have a contract between the attorneys and
18 their clients who said what it did. And didn't the
19 Supreme Court say reasonableness is always something
20 we have to look at?

21 MR. WALLACE: I think in the context of
22 the attorney/client relationship, yes, Your Honor.
23 And that's a unique relationship that this Court has
24 for years and decades protected and looked at with
25 particular earnestness and not something in a

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1 commercial context where there's equal bargaining
2 power and equal issues and there's not that
3 fiduciary duty that rises between attorney and
4 client. And I think that's the distinguishing
5 point, because I point out that, in our brief, we
6 cited two statutes in the Consumer Protection Code
7 of all places that said that the lender can get
8 attorneys' fees up to 15 percent. So the percentage
9 is not in and of itself against public policy and
10 that's 15 percent on top of the debt owed by the
11 consumer.

12 THE COURT: Right.

13 MR. WALLACE: So the payment of that is
14 not so much the issue and the statute doesn't talk
15 about, if it's a relative equity, suggest a lower
16 amount. Here the borrowers could have walked away
17 and said, that's too rich for our blood or, you
18 know, they could have not defaulted. They could
19 have said, we'll pay you 10 percent or we'll pay you
20 5 percent or we'll just leave it the straight
21 reasonable fee. And if Regions wouldn't have done
22 it, they could have gone to another lender. There's
23 no -- there's no lack of bargaining power there. So
24 to suggest that the Court should rewrite the
25 contract and say, no, we're going to go below 15

1 percent.

2 THE COURT: No. The Court is not
3 rewriting it. What I'm saying is, is there not an
4 inherent equitable power in every Court, in every
5 Court, whether it's Master-in-Equity, Civil Court,
6 Family Court, to do a reasonableness examination of
7 attorney fees?

8 MR. WALLACE: Your Honor, I don't
9 believe so when the contract controls. And the
10 three cases we've cited, Dedes, Scott Farm and Gladys
11 versus West say that. Other cases note that, but
12 they don't -- they're not dealing with a contractual
13 provision. So in each of those three cases, they
14 upheld the contractual provision as written. And
15 they said that, if it's a percentage, it's governed
16 by the contract. We as the Court are not allowed to
17 rewrite the contract.

18 THE COURT: Except for attorneys and
19 their clients because of this non-relationship.

20 MR. WALLACE: I think that's exactly --

21 THE COURT: And so --

22 MR. WALLACE: I'm sorry, Your Honor.

23 THE COURT: So that's your
24 distinguishing point is the Court said we can look
25 at reasonableness; but in this situation, because

1 it's attorneys and clients and it's not commerce?

2 MR. WALLACE: Well, I think there's
3 probably also the fact there's a class action and
4 the Court has that explicit power to approve class
5 action settlements. And so if the Court is looking
6 out for what the class gets as a net settlement,
7 then they could -- they have the power to sort of
8 break into that. And so I'm not entirely familiar
9 with that class action case, Your Honor. I
10 apologize.

11 THE COURT: I don't remember a lot of it
12 and there may be. I'm going ask y'all to look at
13 that case. I remember a lot of talk about the
14 amount of billable hours in relation to the fee and
15 them reducing it from X to Y because it was a kind
16 of shock to consciousness thing. So anyway, I
17 didn't mean to interrupt you.

18 MR. WALLACE: Your Honor, that's the sum
19 total of my argument. I don't have -- nothing new
20 occurred to me outside my memorandum, but I did want
21 to hit the highlights and note that the Dedes case
22 did have language identical to the language at issue
23 here. And in those cases -- - in that case --

24 THE COURT: Have both clauses?

25 MR. WALLACE: It had --

1 THE COURT: Have both clauses, the one
2 that said reasonable and 15 percent?

3 MR. WALLACE: Yes, sir. If you'll give
4 me a second, Your Honor, I'll quote it to you. I'm
5 not exactly sure why I didn't point that out before,
6 but -- or in my memorandum. But the language was
7 the first note, and this is directly from the Dedes
8 case, 307 South Carolina 155. Note dated August 10,
9 1987 for the principal amount of \$175,000. All
10 costs and reasonable attorneys' fees not less than
11 10 percent of the amount involved in the event of
12 foreclosure.

13 Then the next paragraph was the same
14 language, but it said reasonable attorneys' fees of
15 not less than 15 percent of the outstanding
16 principal and interest on an amount of \$205,000.
17 And then the third one, it just said reasonable
18 attorney fees and --

19 THE COURT: All right. Is that the same
20 language he read or did it have the same words?

21 MR. WALLACE: That's the same language
22 as I understand it because it said it defined
23 reasonable attorneys' fees as not -- include not
24 less than 15 percent.

25 THE COURT: All right. Mr. Johnson, can

1 you read what you read again?

2 MR. JOHNSON: Yes, sir. I'm reading
3 directly from the mortgage. Lender shall be
4 entitled to recover such sums as the court may
5 adjudge reasonable as attorneys' fee at trial and
6 upon any appeal.

7 THE COURT: All right.

8 MR. JOHNSON: And then we have a
9 sentence, a very long sentence. Then the third
10 sentence after, expenses covered by this paragraph
11 include without limitation, however subject to any
12 limits under applicable law, lender's reasonable
13 attorneys' fees in an amount not less than 15
14 percent of the amount owing on the indebtedness and
15 lender's legal expenses, whether or not there's a
16 lawsuit.

17 I would state that the applicable law is
18 that the Court is to determine the amount and
19 reasonableness of attorneys' fees. I would also, if
20 I could be allowed to argue just for a second, that
21 a client is much more likely be able to change the
22 contract with an attorney eager to take the case
23 than a lender -- than a borrower is able to change a
24 contract with a bank, so I don't think they're
25 equal.

1 I think that the bargaining power of the
2 bank is much higher than an attorney/client. I
3 think the bank holds much more power in that
4 relationship than the attorney holds over a client
5 because there are a lot of attorneys out there who
6 will take cases on a lot of fees, whereas there's a
7 limited number of banks that will loan a certain
8 amount of money on these type of transactions.

9 And as for the consumer statutes that
10 were stated, I think Mr. Wallace stated that
11 these -- those are actually attorneys' fees
12 limitations, that they can be charged up to 15
13 percent, not in excess of -- not a floor of 15
14 percent. So I think that can be construed almost as
15 consumer protection rather than -- and forgive me if
16 I misunderstand what Mr. Wallace said there.

17 THE COURT: All right. Thank you. This
18 is what I want y'all to do. I'd like a memo on the
19 attorney fee issue and this is what I want. There
20 are a couple of issues I want y'all to address. One
21 is is I want you to address the language in the
22 contract. The argument that it's created an
23 ambiguity and it's construed against the lender.
24 And you can cite the language. You can set it out
25 side by side with the Dedes case and see if it says

1 exactly the same thing. All right? So that's the
2 first thing that I would like to see.

3 Second of all, I want you to look at
4 that class action suit and argue how it supports
5 your side or hurts the other side, the applicability
6 of that case, because I believe that case took a
7 stated rate and said you're not getting that because
8 of what your hourly rates were.

9 Third thing is is in the event I were to
10 find that it is a reasonableness factor, given the
11 six elements that you -- five or six elements you
12 have to look at in the attorney fee thing, why is
13 the amount he asked for unreasonable? And the
14 sub-question in that is, are you always limited in a
15 reasonable attorney fee analysis to just your hours
16 clocked in? Does that make sense?

17 MR. JOHNSON: Yes, sir.

18 MR. HILLIARD: Yes, sir.

19 THE COURT: All right. Mr. Wallace?

20 MR. WALLACE: Makes clear --

21 THE COURT: Okay.

22 MR. WALLACE: Makes perfect sense, Your
23 Honor.

24 THE COURT: All right. Tell me how long
25 you need, so I don't bother y'all too early on this.

1 MR. JOHNSON: Whatever they say, double
2 it.

3 THE COURT: Today is March the 4th.

4 MR. WALLACE: Your Honor, I'd like --
5 I'm prepared to do it in five business days, so by
6 March 11th. And I'll say it this way, Your Honor.
7 This obviously affects me more than it affects my
8 client and to the extent that this may drag -- this
9 issue drags this litigation out longer than
10 necessary, given the results of the rest of the
11 hearing, I'm inclined to tell my client to just drop
12 this issue and proceed on just the attorneys' fees.
13 affidavit completely. I don't know what they'll do
14 about that because they've got more than just this
15 one loan out there. But if it's going to be drawn
16 out that much longer over attorneys' fees, then that
17 creates an issue between me and my client that I
18 can't really ethically tolerate.

19 THE COURT: Well, I'm going to let y'all
20 go back and talk and decide; but how about the memo
21 is due on -- by the 15th?

22 MR. HILLIARD: Thank you very much.

23 MR. WALLACE: That's fine, Your Honor.

24 THE COURT: The 15th.

25 MR. HILLIARD: Thank you, Your Honor.

1 THE COURT: Now, y'all are the last
2 hearing I have --

3 MR. HILLIARD: There's one other thing,
4 Judge, and --

5 MR. GARDNER: Your Honor, I have a trial
6 in New York, it requires extensive travel. I would
7 ask the Court for more time, if it possible.

8 THE COURT: Tell me what you mean by
9 more extensive travel.

10 MR. GARDNER: I have to go to New York
11 and have a trial.

12 THE COURT: When?

13 MR. GARDNER: It will occur on Tuesday,
14 next Tuesday.

15 THE COURT: All right. And when would
16 you be back?

17 MR. GARDNER: I'll be back like
18 Wednesday night.

19 THE COURT: All right. Why can't you do
20 the memo? And I'm not trying to be flippant.

21 MR. HILLIARD: I understand.

22 THE COURT: But he has raised a very
23 valid issue with his client about ethical
24 obligations and the longer this goes on and I
25 don't -- there are two of y'all and I want to be

1 as -- I want to be as helpful as I can, but. . .

2 MR. HILLIARD: The way that we have
3 divided it -- and I'll do whatever you say, Judge;
4 but the way that we've divided it up, other than
5 just looking like I'm being lazy, is that Lex has
6 been doing the briefs and whatnot with some help
7 from an associate in my office and I will -- again,
8 Judge, I'll do whatever it is that you say to do.

9 THE COURT: When you going to be back?

10 MR. GARDNER: I will be back Wednesday
11 night.

12 THE COURT: Wednesday? What day?

13 MR. GARDNER: Let's see. The 9th. If
14 you could just give me the weekend, to the 13th,
15 maybe that Monday.

16 MR. HILLIARD: He said the 15th.

17 MR. GARDNER: Oh, I'm sorry. All right.
18 Well, that should be fine.

19 THE COURT: Okay.

20 MR. HILLIARD: Maybe he misunderstood
21 what --

22 MR. GARDNER: I did.

23 THE COURT: All right.

24 MR. JOHNSON: He went by the 11th date
25 that Mr. Wallace said.

1 THE COURT: Okay.

2 MR. WALLACE: The 15th is fine with us.

3 THE COURT: All right. We're good.

4 Okay. Thank you.

5 MR. HILLIARD: Very good. Thank you,

6 Your Honor.

7 THE COURT: All right. Now, I don't
8 have anything else in here. If y'all need to chat
9 about anything, y'all can use the courtroom.

10 MR. HILLIARD: Thank you, Judge.

11 MR. GARDNER: Thank you.

12 THE COURT: All right.

13 MR. WALLACE: Your Honor, are we
14 adjourned then?

15 THE COURT: That's right. I'm sorry.
16 We're adjourned.

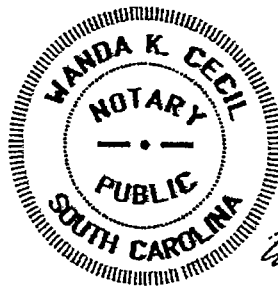
17 (The above was adjourned at 12:29 p.m.)
18
19
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23
24
25

1 CERTIFICATE OF REPORTER
2
3

4 I, Wanda K. Cecil, Certified Court
5 Reporter and Notary Public for the State of South
6 Carolina at Large, do hereby certify that the
7 foregoing transcript, pages 1 through 90, is a true,
8 accurate, and complete record.

9 I further certify that I am neither
10 related to nor counsel for any party to the cause
11 pending or interested in the events thereof.

12 Witness my hand, I have hereunto affixed
13 my official seal this 27th day of June, 2011, at
14 Columbia, Richland County, South Carolina.



20 Wanda K. Cecil
21 Certified Court Reporter
22 Notary Public
23 My Commission expires
24 December 28, 2016
25

I N D E X

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Attorney		

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that I, William H. Owens, a legal resident of Horry County in the State of South Carolina, desiring to execute a LIMITED POWER OF ATTORNEY, have made, constituted and appointed, and by these presents do make, constitute and appoint Roland G. Paddy, of Horry County, South Carolina, my Attorney-in-Fact to act as follows, GIVING AND GRANTING unto my said attorney full power to:

Execute in my name the HUD-1 Settlement Statement, Deed, Disbursement Authorizations, and any and all other closing documents in connection with the sale of that certain real estate known as:

LEGAL DESC:- All that certain piece, parcel or tract of land, together with the improvements thereon, containing ninety-nine and thirty-seven hundredths (99.37) acres, more or less; situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as "Tract G" on a Plat prepared by C.L. Hardley, RLS, dated 29 March 1911 and recorded in the office of the Lexington County Register of Deeds in Plat Book 49-G at page 189, and having the following metes and bounds: One the North by property now or formerly of Felix Burgess and measuring thereon a distance of fifty-seven (57) chains, more or less; One the East by property now or formerly of Johnson and Johnson and measuring thereon a distance of thirteen and forty-four hundredths (13.44) chains, more or less; One the South by property now or formerly of E. Hall and measuring thereon a distance of sixty and forty-six hundredths (60.46) chains, more or less; and One the West by the run of Chiquapi Creek. Further reference is made to that certain boundary survey prepared by James F. Drafts, RLS, dated 21 July 1993 and filed with the Lexington County Register of Deeds on 13 August 2003 in Record Book 8522 at page 73.

TAX MAP NO:- DE9380-04-005

FURTHER, I do authorize my aforesaid Attorney-in-Fact to perform all necessary acts in the execution of the aforesaid transaction with the same validity as I could effect if personally present. Any act or thing lawfully done hereunder by my said attorney shall be binding on me and my heirs, legal and personal representatives, and assigns.

PROVIDED, however, that all business transacted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by my said attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "Attorney-in-Fact."

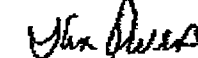
FURTHER, the rights, powers and authority of said attorney-in-fact granted in this instrument shall commence and be in full force and effect at the execution of hereof, and such rights, powers and authority shall terminate by the grantor giving notice of revocation to the attorney-in-fact, provided that any party relying in good faith upon the Power of Attorney shall be protected unless and until said party has either (a) actual or constructive notice of revocation, or (b) upon recording of said revocation in the public records where the Limited Power of Attorney is recorded.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 24th day of May, 2007.


William H. Owens, Grantor

The foregoing Limited Power of Attorney, consisting of one (1) typewritten page, was this 24th day of May, 2007, signed, sealed, published and declared by the said William H. Owens as and for his Limited Power of Attorney in the presence of us, who at his request and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses hereto.


Witness (1)


Witness (2)

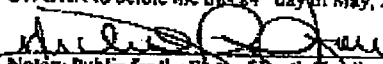
STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ACKNOWLEDGMENT

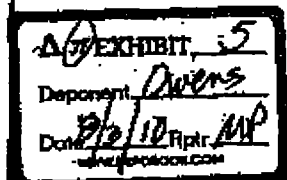
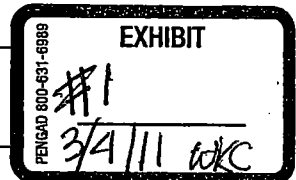
The foregoing instrument was acknowledged before me this 24th day of May, 2007, by the Grantor, William H. Owens.

SWORN to before me this 24th day of May, 2007.


Notary Public for the State of South Carolina

My Commission Expires:

MICHELE PADDY REFOSCO
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 5 September 2011



000356

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF LEXINGTON

3
4 REGIONS BANK,

Plaintiff(s),

5
6 vs.

CIVIL ACTION NO.
09-CP-32-5373

7 WILLIAM S. OWENS, DAVID S.
8 HOSTETLER, ROLAND G. PADDY,
AND GREER STATE BANK,

Defendant(s).

COPY

9
10 **DEPOSITION OF: WILLIAM H. OWENS**

11 **DATE:** Tuesday, August 3, 2010

12 **TIME:** 11:08 a.m. through 12:04 p.m.

13 **LOCATION:** Nexsen, Pruet
14 1101 Johnson Avenue, Suite 300
15 Myrtle Beach, South Carolina

16 **TAKEN BY:** Attorneys for the Plaintiff(s)

17 **COURT REPORTER:** MADONNA M. PERKINS
18 Registered Professional Reporter
19 Certified Livenote Reporter



STENOTYPE REPORTING SERVICE, LLC

Madonna Perkins, RPR *** (843) 685-0075
392 Oak Moss Court, Murrells Inlet, SC 29576

000357

APPEARANCES OF COUNSEL

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-AND-

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000359

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1 STIPULATION: It is stipulated by and
2 among Counsel that this deposition is being
3 taken in accordance with the South Carolina
4 Rules of Civil Procedure; and that the
5 deponent waives reading and signing of this
6 deposition.

7 * * * * *

8 WILLIAM H. OWENS, being first duly
9 sworn, testified as follows:

10 (PLF. EXH. 1, Title to Real Estate, was
11 marked for identification.)

12 (PLF. EXH. 2, Promissory Note from
13 Regions Bank, was marked for
14 identification.)

15 (PLF. EXH. 3, Mortgage dated June 24,
16 2005, was marked for identification.)

17 (PLF. EXH. 4, Mortgage with Greer State
18 Bank, was marked for identification.)

19 (PLF. EXH. 5, Limited Power of
20 Attorney, was marked for identification.)

21 (PLF. EXH. 6, Power of Attorney
22 Revocation, was marked for identification.)

23 (PLF. EXH. 7, Promissory Note from
24 Regions Bank, was marked for
25 identification.)

1 (PLF. EXH. 8, Assignment of Rents, was
2 marked for identification.)

3 EXAMINATION

4 BY MR. SLOUGH:

5 Q. Mr. Owens, my name is David Slough, and I'm
6 here representing Regions Bank in this foreclosure
7 action that's been filed against you and some other
8 individuals.

11:08AM

9 I'm here to ask you today some questions
10 about the case and what you know about the case and
11 the purchase of the property.

11:08AM

12 A. Yeah.

13 Q. I'm not here to trick you or anything; I'm
14 just here to find out more information about the
15 case.

11:08AM

16 If I could, if I could get you to answer
17 questions verbally, instead of doing a shake of the
18 head or "uh-huh" or "unh-unh," this nice lady
19 sitting right here is a court reporter and she is
20 going to take down every word that we say today,
21 and she's going to go back and type it up into a
22 booklet so that we have an accurate representation
23 of what you said today.

11:09AM

24 A. Okay.

25 Q. If you don't understand any of the questions

11:09AM

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392 Oak Moss Court, Murrells Inlet, SC 29576

000362

1 that I ask, just ask me to repeat those questions
2 and I'll be glad to do so. If I ask you a question
3 and you give me an answer, I'm going to assume that
4 you have understood my question, okay?

5 A. (Moves head up and down.)

11:09AM

6 Q. This is not a marathon, we can take our time
7 here, we are not under any time constraints. If
8 you need to take a break for any reason, you just
9 let me know and we'll be glad to do that.

10 Are you on any medications today that may
11 affect your ability to give truthful answers?

11:09AM

12 A. The only medication that I'm on is I take
13 blood pressure medicine.

14 Q. Okay. And that doesn't impair your ability
15 to understand questions or respond to questions or
16 anything like that?

11:09AM

17 A. No, sir.

18 Q. Okay. Have you ever had your deposition
19 taken before?

20 A. Probably about 20 years ago.

11:09AM

21 Q. Okay. What was the nature of that case?

22 A. Crane -- malfunction of a crane that we was
23 operating.

24 Q. Okay. What did you do to prepare for
25 today's deposition? Did you review any documents

11:10AM

1 or anything?

2 A. No, sir.

3 Q. Okay. Mr. Owens, what's your educational
4 background?

5 A. Graduated 12th grade.

11:10AM

6 Q. Where was that?

7 A. Socastee.

8 Q. Are you a native of here? Have you lived
9 here all your life?

10 A. Yes, sir.

11:10AM

11 Q. You're one of the few people who has lived
12 here all your life. You're certainly something
13 rare.

14 What did you do for a living?

15 A. When I was a young boy, we lived on a farm.
16 We had a 90-some acres of farmland, and we farmed
17 until my daddy died when I was 14. And, of course,
18 then I went out and worked with the A&P Tea Company
19 for ten years and then went in the service, come
20 out and went in business.

11:10AM

21 Q. What sort of business?

22 A. Steel and machine works.

23 Q. And when did you first get into steel and
24 machine works?

25 A. 1965.

11:11AM

11:11AM

1 Q. And how long did you do that kind of work?

2 A. I'm still doing it.

3 Q. Still doing it?

4 A. Yes.

5 Q. And when you say "steel work," what type of
6 work do you mean?

11:11AM

7 A. Well, in general, that's fabrication,
8 stairs, rails, repair heavy equipment. In other
9 words, it's a job shop. It's not just a -- one,
10 you know, like a fab shop or something. We're a
11 job shop.

11:11AM

12 Q. And is this a business you own or do you
13 work for somebody else?

14 A. A business I own.

15 Q. And what's the name of that company?

11:11AM

16 A. Owens Steel & Machine Works, Incorporated.

17 Q. And that's here in Myrtle Beach?

18 A. Yes, sir.

19 Q. Okay. And have you been -- has that been
20 your business since the '70s?

11:12AM

21 A. Yes, sir.

22 Q. Now, this foreclosure action was filed over
23 in Lexington County. And your attorneys have asked
24 for a jury trial on that, so I need to get a little
25 bit of background information for that.

11:12AM

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000365

1 Do you have any relatives in Lexington
2 County?

3 A. No, sir.

4 Q. Okay. Are you a member of any clubs or
5 organizations over in Lexington County?

11:12AM

6 A. No, sir.

7 Q. How about clubs or organizations here in
8 Horry County; what would you be a member of?

9 A. Nothing, no, sir.

10 Q. Now, I want to talk a little bit about the
11 property that's over in Lexington County. And when
12 I say "the property," I'm talking about the 99
13 acres that's over there, and I believe it has an
14 address of 153 Love Lane in Batesburg-Leesville,
15 South Carolina. Is that your understanding of the
16 address of the property?

11:12AM

17 A. No, sir. I don't even know the address.

18 Q. You don't know the address?

19 A. No, sir.

20 Q. Do you know anything about the 99 acres over
21 there?

11:13AM

22 A. No, sir, never seen it.

23 Q. Okay. How did you come to get involved with
24 Mr. Hostetler and Mr. Paddy?

25 A. I got involved with Paddy. I don't even

11:13AM

11:13AM

1 know Mr. Hostetler.

2 Q. Okay. Tell me how you got involved with
3 Mr. Paddy.

4 A. On Saturdays, we'd go up to Victoria
5 Restaurant in Myrtle Beach and usually eat lunch 11:13AM
6 about 1:00, 1:30 after we knocked off work. And
7 Paddy -- Mr. Paddy said that he might have
8 something coming up, and if I had a little extra
9 money, I might want invest in it. And that was all
10 that was said at the time. And then probably a 11:13AM
11 month, approximately that, or a month and a half
12 later, he come to me and wanted to know if I had
13 \$100,000 I could invest in it. And I told him,
14 yeah, I would invest \$100,000.

15 Q. And when you say "in it," "invest \$100,000
16 in it," what are you talking about? 11:14AM

17 A. To him, loan -- or not loan him, but let him
18 invest it.

19 Q. And what was he -- did he tell you what he
20 was going to invest that money in? 11:14AM

21 A. Not really.

22 Q. And when you say "not really," did he give
23 you some indication of what it was?

24 A. Well, he was talking about the property in
25 Columbia; in other words, that's what he had talked 11:14AM

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1 about.

2 Q. When you say "Columbia," you're talking
3 about the property that's over in Lexington County?

4 A. Right. Yes, sir.

5 Q. And just so we're clear, when we say "the
6 property," we're going to be talking about the
7 property that's over in Lexington County. Is that
8 fair?

9 A. Yes.

10 Q. So he told you that he had -- or you said
11 that you would give him 100,000 to invest in that
12 property; is that right?

13 A. No, sir.

14 Q. Okay. Tell me what --

15 A. I told him he would -- I'd invest -- give
16 him \$100,000 and invest it. And he said, in
17 return, that I could get anything from one to
18 \$400,000 back on that \$100,000. And I told him
19 that I would let him take it and invest it or
20 whatever.

21 Q. And what was he supposed to be doing with
22 that property?

23 A. All that I know about it is it's got water
24 cavities under it, and he was going to turn around
25 and sell it to the bottle company, water bottle

11:14AM

11:15AM

11:15AM

11:15AM

11:16AM

1 company.

2 Q. And you said you had this conversation with
3 him -- or you first met him up at Victoria
4 Restaurant. Do you recall when you first met him?

5 A. No, sir.

11:16AM

6 Q. Do you recall when this conversation took
7 place, when he said he may have --

8 A. No, sir.

9 Q. And did he provide you any sort of agreement
10 or partnership agreement?

11:16AM

11 A. No, sir.

12 Q. And what did you do? Did you just simply
13 give him a \$100,000 check?

14 A. Yes, sir.

15 Q. Was that check made payable to him
16 personally?

11:16AM

17 A. Right.

18 Q. You don't, by chance, have a copy of that
19 check, do you?

20 MR. HILLIARD: There are several checks
21 that we have copies of.

11:17AM

22 MR. GARDNER: We'll supply them to you.

23 MR. SLOUGH: I know the deadline for
24 discovery has not, you know, come to pass
25 yet. So it's technically not due yet, but I

11:17AM

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1 just thought I would ask if he got them.

2 MR. HILLIARD: We're not going to hold
3 you to a deadline. We'll be glad to show
4 you the checks if you want.

5 MR. GARDNER: We can show it to you
6 right now.

7 MR. SLOUGH: Yes, that's fine.

8 MR. HILLIARD: It's an odd set of
9 circumstances that you find yourself in; I
10 understand that.

11 MR. SLOUGH: Exactly.

12 MR. HILLIARD: As do we.

13 (Tendered document.)

14 (Off-the-record conference.)

15 BY MR. SLOUGH:

16 Q. Mr. Owens, I'm going to show you these.
17 This looks like these are copies of checks.

18 A. Uh-huh.

19 Q. Can you tell me what these are specifically?

20 A. That was a \$100,000 investment with Paddy.

21 Q. And just to clarify, there are three checks.

22 A. Right.

23 Q. It looks like there's one check dated
24 February 3, 2005 --

25 A. Right.

11:17AM

11:19AM

11:19AM

11:19AM

1 Q. -- from Owens Steel to the Michele Paddy
2 Trust Fund.

3 A. Yes.

4 Q. And do you know what the Michele Paddy Trust
5 Fund is?

11:19AM

6 A. No, sir.

7 Q. Then there's another check dated February 3,
8 2005. And it looks like it's from you,
9 individually, to the Michele Paddy Trust Fund for
10 \$55,000.

11:19AM

11 A. Right, yes.

12 Q. And then finally, there's a -- it looks like
13 a February 3, 2005 check from Paddy-Son Development
14 Company to the Michele Paddy Trust Account. Do you
15 know who Paddy-Son Development is?

11:20AM

16 A. Mr. Paddy.

17 Q. So it looks like I see on these, unless
18 there's some more checks that we may not see, but
19 it looks like checks from you or your company total
20 85,000?

11:20AM

21 A. Right. The balance was probably out of my
22 account. It was \$100,000.

23 Q. So it was a total of 100,000 paid?

24 MR. GARDNER: Was this a duplicate? I
25 don't know if I brought everything.

11:20AM

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1 (Off-the-record conference.)

2 BY MR. SLOUGH:

3 Q. Well, let me show you this other one. This
4 looks like a fourth check from Carolina First, or
5 drawn on a Carolina First account, and it looks to
6 be a total of \$20,000 from sometime in 2004.

11:21AM

7 Is that any of the money that you paid over
8 to Mr. Paddy?

9 A. I can't tell you that for sure; I don't
10 know.

11:21AM

11 Q. Okay. So you don't know on this one?

12 A. No, sir.

13 MR. SLOUGH: Let me go ahead and mark
14 these two as exhibits.

15 (PLF. EXH. 9, Photocopy of four checks,
16 was marked for identification.)

17 BY MR. SLOUGH

18 BY MR. SLOUGH:

19 Q. Mr. Owens, it's your testimony today that
20 you paid \$100,000 to Mr. Paddy --

11:22AM

21 A. Yes.

22 Q. -- as an investment.

23 A. Yes.

24 Q. And was the investment for the purchase of
25 the property?

11:22AM

1 A. No, sir. There wasn't nothing understood
2 about purchasing nothing. In other words, I was
3 supposed to get a -- he said he found a deal and
4 that if I would invest 100, that I should get
5 anything from 200 or 100 to 400 back. In other
6 words, that's all I know about it, that part of it.

11:22AM

7 Q. How long did you have these discussions?
8 Was this just one day and then all of a sudden he
9 shows up and asks for an investment or --

10 A. No, sir. We talked about it probably a
11 couple of months, two or three months, a couple of
12 months, maybe.

11:22AM

13 Q. And the reason I ask that, it looks like one
14 of the checks in here was from December '04, and
15 then there's some subsequent checks in, I guess,
16 February of 2005.

11:23AM

17 A. Uh-huh.

18 Q. So is your testimony you discussed this for
19 several months?

20 A. Right, yes, sir.

11:23AM

21 Q. Have you ever seen the property?

22 A. No, sir.

23 Q. Let me show you what has been marked as
24 Plaintiff's Exhibit 1. Mr. Owens, I'll tell you
25 that this is a copy of the deed for the property.

11:23AM

1 And the deed is actually -- it was recorded July
2 the 1st of 2005, and it lists you as being the
3 grantee.

4 A. No, sir. I've never seen it. And I've
5 never seen one of these.

11:24AM

6 Q. Did you have any knowledge that you,
7 Mr. Paddy, Mr. Hostetler had purchased the property
8 from D&E of Myrtle Beach?

9 A. No, sir. I didn't have nothing to do with
10 it.

11:24AM

11 Q. Do you know who D&E of Myrtle Beach is?

12 A. No, sir.

13 Q. Let me show you what has been marked as
14 Plaintiff's Exhibit Number 2. Mr. Owens, this is a
15 copy of a Promissory Note from Regions Bank. And
16 you'll see listed at the top left where it has
17 Borrower, it has your name, William H. Owens.

11:25AM

18 A. No, sir.

19 Q. The date of this note is June 24, 2005.
20 Have you ever seen a copy of this note?

11:25AM

21 A. No, sir.

22 Q. Mr. Owens, can you turn over to Page 2.
23 Down at the bottom of that note, there's a
24 signature block; it says William H. Owens. Is that
25 your signature?

11:25AM

1 A. No, sir, not that I can be sure of, no, sir.

2 Q. Mr. Owens, were you aware of Mr. Paddy or
3 Mr. Hostetler taking out a loan to buy the property
4 in Lexington County?

5 A. No, sir.

11:26AM

6 Q. Did you ever have any conversations with
7 anyone from Regions Bank regarding this loan?

8 A. No, sir.

9 Q. Did you ever go to an attorney's office
10 around about June the 24th, 2005 to sign any
11 documents?

11:26AM

12 A. No, sir.

13 Q. Have you ever been to an attorney's office
14 by the name of Michele Paddy Refusco (sic), I
15 believe is her name?

11:26AM

16 A. No, sir.

17 MR. JOHNSON: Refosco.

18 MR. SLOUGH: Refosco.

19 BY MR. SLOUGH:

20 Q. Did Mr. Paddy or Mr. Hostetler ever have any
21 conversation with you about how that property in
22 Lexington County was going to be purchased?

11:26AM

23 A. No, sir.

24 Q. Let's take a look at what has been marked as
25 Exhibit 3. And I'll tell you, Mr. Owens, this is a

11:27AM

1 copy of a mortgage dated June 24, 2005 with Regions
2 Bank. And you'll see under Paragraph 2, it has
3 your name, William H. Owens.

4 Have you ever seen this document before
5 today?

11:27AM

6 A. No, sir.

7 Q. And if you could, turn over to the second to
8 last page, Page 6 of this exhibit, and you'll see a
9 signature block for William H. Owens.

10 Is that your signature?

11:27AM

11 A. I don't -- can't -- it's hard to say. Not
12 that I know of, no, sir.

13 Q. So not that you know of --

14 A. Right.

15 Q. -- or it's not your signature?

11:28AM

16 A. I don't know, but I would say it's not.

17 Q. You're not 100 percent certain it's not your
18 signature, but you don't believe it's your
19 signature?

20 A. No, I'm certain it's not.

11:28AM

21 Q. Okay. Let's take a look at this next
22 exhibit. Mr. Owens, this is a mortgage with Greer
23 State Bank. And you'll see where it says
24 Mortgagor, it has your name listed.

25 Have you ever seen this document before?

11:29AM

1 A. No.

2 Q. If you could, turn over to the second to the
3 last page, and you'll see that there is a signature
4 block. It has William H. Owens, and it also has
5 David S. Hostetler, and it looks like there's a
6 signature for a William H. Owens here.

11:29AM

7 Is that your signature?

8 A. No, sir.

9 Q. Did you have any knowledge whatsoever that
10 there was a loan or mortgage with Greer State Bank?

11:29AM

11 A. No, sir.

12 Q. Mr. Owens, I'm going to show you a document
13 that we've marked as Exhibit 5, and it is a Limited
14 Power of Attorney.

15 Have you ever seen this document before
16 today?

11:30AM

17 A. Yes.

18 Q. Do you know what this document is about or
19 what it concerns?

20 A. Yes.

11:30AM

21 Q. Okay. Tell me what your understanding of
22 this is.

23 A. Paddy approached me and said that the money
24 was ready to be disbursed in Lexington, and if I'd
25 sign him Power of Attorney, that he'd pick the

11:30AM

1 money up and I wouldn't have to go to Lexington to
2 pick the money up. That's what...

3 Q. And did you read this agreement before you
4 signed it?

5 A. No, sir.

11:31AM

6 Q. So when he asked you to sign it, you just
7 went ahead and signed?

8 A. Right.

9 Q. And it says that there's a -- someone
10 acknowledges this signature down below. Did you go
11 to an attorney's office to have this witnessed or
12 anything?

11:31AM

13 A. No, sir.

14 Q. At this time, did you know that there was
15 any loans or loan with Regions Bank for the
16 property?

11:32AM

17 A. No, sir.

18 Q. If you could, you say this is your signature
19 on Exhibit 5?

20 A. Right. Yes, sir.

11:32AM

21 Q. If you could, take a look at Exhibit 2 and
22 see if those signatures match your signature on
23 Exhibit 5 and then the note which is the other
24 exhibit, which is I believe is Exhibit 2.

25 A. I don't think it's the same, but I just

11:32AM

1 don't know.

2 Q. So you don't know if they are the same?

3 A. I don't believe they are, no, sir.

4 Q. And let me do the same on the Exhibit 3. I
5 show you Exhibit 3, which is the mortgage, and
6 Exhibit 5, which is the Limited Power of Attorney.

11:33AM

7 If you could, take a look at the signatures
8 on each of those and tell me if they are idea
9 identical.

10 A. They're not identical, no, sir.

11:33AM

11 Q. And your testimony today is the signature on
12 Exhibit 3 is not your signature?

13 A. Yes, sir.

14 Q. Now, let me show you what we've marked as
15 Plaintiff's Exhibit 6 which is a Power of Attorney
16 Revocation.

11:33AM

17 Did you sign this document?

18 A. What is a Power of Attorney Revocation?

19 Q. Well, you can take your time and read the
20 document if you want to, but we found this recorded
21 in Lexington County.

11:34AM

22 What is your understanding of this document?

23 A. Never seen it.

24 Q. Okay. Is that your understand signature at
25 the bottom of the document?

11:34AM

1 A. I don't believe so. I don't know, though.

2 Q. So you don't believe this is your signature
3 on the Power of Attorney Revocation?

4 A. Now, it is on that other one, but not on
5 that one (indicating).

11:35AM

6 Q. Let me just make sure we are clear so we
7 have a clear record. On the Limited Power of
8 Attorney, which we have marked as Exhibit 5 --

9 A. Right.

10 Q. -- that's your signature?

11:35AM

11 A. Yes.

12 Q. But on Exhibit 6, you don't believe that's
13 your signature?

14 A. No, sir.

15 Q. Let me show you what is marked on -- let me
16 show you the document we have marked as Exhibit 7.
17 This is a Promissory Note from Regions Bank. And
18 you'll see at the top it has Borrower and it has
19 your name listed. And the date of the note is
20 March 21, 2009.

11:35AM

21 Have you ever seen this document before?

22 A. No, sir.

23 Q. And you'll see on Page 2 that there's a
24 signature block for William H. Owens by Roland G.
25 Paddy, his attorney-in-fact.

11:36AM

1 Do you know if you ever gave Mr. Paddy
2 authority to sign any documents on your behalf?

3 A. No, sir.

4 Q. And once again, you have no knowledge or
5 information that there were outstanding loans or a
6 loan to Regions Bank with your name on it --

11:36AM

7 A. No, sir.

8 Q. -- where you were listed as the borrower?

9 A. No, sir.

10 Q. Let me show you what's been marked as
11 Plaintiff's Exhibit 8. Mr. Owens, this is an
12 Assignment of Rents dated March 31, 2009. And
13 you'll see it has your name listed at the top,
14 William H. Owens.

11:36AM

15 Have you ever seen this document before
16 today?

11:37AM

17 A. No, sir.

18 Q. If you could, turn to Page 5, and you'll see
19 it has a signature block for William H. Owens by
20 Roland G. Paddy, his attorney-in-fact.

11:37AM

21 Do you ever recall ever giving Mr. Paddy
22 authority to sign any documents on your behalf?

23 A. No, sir.

24 Q. And specifically, do you recall giving
25 Mr. Paddy authority to sign this Assignment of

11:37AM

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000381

1 Rents?

2 A. No, sir.

3 Q. And you'll see on Exhibit B, which is the
4 last page, you'll see another signature block.

5 A. Right.

11:38AM

6 Q. And it's William H. Owens by Roland G.
7 Paddy, his attorney-in-fact. And just to ask you
8 again, do you recall giving Mr. Paddy authority to
9 sign this document on your behalf?

10 A. No, sir.

11:38AM

11 Q. Or any documents on your behalf?

12 A. No.

13 Q. And once again, you don't recall having any
14 -- there were any loans to Regions Bank --

15 A. No.

11:38AM

16 Q. -- in which you were listed as borrower?

17 A. No, sir.

18 Q. Now, have you invested any other money with
19 Mr. Paddy or Mr. Hostetler?

20 A. No, sir.

11:38AM

21 Q. Have you ever purchased any property with
22 Mr. Hostetler or Mr. Paddy?

23 A. No, sir.

24 Q. Now, is your position, as we sit here today,
25 that you are not an owner of the property in

11:39AM

1 Lexington County?

2 A. Yes, sir.

3 Q. That is your -- you're not an owner?

4 A. No, sir.

5 Q. So if there's a deed out there that has your
6 name on it, that's incorrect?

11:39AM

7 A. Yes, sir.

8 Q. And that you never agreed with anyone,
9 Mr. Paddy or Mr. Hostetler or anyone else to buy
10 the property in Lexington County?

11:39AM

11 A. No, sir.

12 Q. And you never agreed to participate in any
13 financing --

14 A. No, sir.

15 Q. -- or any loans --

11:39AM

16 A. No, sir.

17 Q. -- for the purchase of that property?

18 A. No, sir.

19 Q. And do you recall ever going to an
20 attorney's office or a lawyer's office to sign any
21 documents associated with the property or your
22 investment?

11:39AM

23 A. No, sir.

24 Q. Are you familiar with a company called
25 Miracle Wells, LLC?

11:40AM

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000383

1 A. No, sir.

2 Q. Have you had any conversations with anyone
3 from Regions Bank?

4 A. No, sir.

5 Q. Now, when you invested the 100,000 with
6 Mr. Paddy, what did he tell you about the terms of
7 the expected return? How quickly would you get,
8 you know, money back on this project?

9 A. When I invested with him, he was -- we were
10 talking probably within a year. But the economy
11 started going downhill. And like I say, Paddy was
12 a good friend of mine, and I just kept letting it
13 lag on, lag on and hoped that he'd come through or
14 either I'd lose it. I mean, you know, either make
15 money or lose it, just like you do. And that's
16 just the way it was.

17 Q. Did he ever give you any updates on how
18 things were going?

19 A. Every week, every month, he'd come by the
20 shop and the tell me they expect to get money
21 anytime and that he'd be getting with me and give
22 me mine. Then he started coming by the shop and
23 telling me -- at first, it started out about
24 300,000, then it dropped to, like, 200, then he'd
25 could go on and get the money, and I agreed to

11:40AM

11:41AM

11:41AM

11:41AM

11:42AM

1 that.

2 Q. Get how much money?

3 A. 100,000 -- I mean, 160,000.

4 Q. And when was that?

5 A. That hadn't been -- probably over six months
6 or so ago.

11:42AM

7 Q. Now, when you signed that one document that
8 you said was for disbursement of funds that you
9 said that you would sign the document and then that
10 way you wouldn't have to go to Columbia to pick up
11 a check --

11:42AM

12 A. I signed a Power of Attorney so when he went
13 to Columbia -- in other words, I was told that he
14 could -- if I'd sign that document, that he could
15 pick up the money and I wouldn't have to take time
16 off and go pick up the check.

11:43AM

17 Q. Now, when you signed that Power of Attorney,
18 had he already given you a promise that you were
19 getting ready to get that money?

20 A. Yes, sir.

11:43AM

21 Q. And it looked like the date of that was, I
22 want to say May 24th of 2007.

23 A. That's probably about right. I couldn't say
24 definitely on the date, but that's probably pretty
25 close.

11:43AM

1 Q. Well, you didn't get a -- any check from
2 that, did you?

3 A. No, sir.

4 Q. And did he tell you why you didn't get a
5 check?

11:43AM

6 A. Said the people in Brazil, or the ones that
7 was buying it, come back and made an offer and
8 wanted to know if I would take less for my part of
9 it.

10 Q. And how much less?

11:44AM

11 A. Well, it got down to 160,000, in other
12 words, but it was at 300,000 and it started
13 dropping. There was two or three different
14 occasions when he come and wanted to cut it.

15 Q. Well, let's go through those occasions just
16 so I make sure I'm clear.

11:44AM

17 A. Right.

18 Q. Walk me through each of those occasions when
19 it started to drop, when you had the conversation
20 and how much it dropped to.

11:44AM

21 A. Well, to start with, I was supposed to get
22 300,000. Then he come to me and wanted to know if
23 I would -- if they could go on and get the money,
24 would I take, say, \$200,000.

25 Q. When was that conversation?

11:45AM

1 A. I don't know. But it was -- it's been
2 probably a year or -- over a year or two ago.
3 Probably about a year ago.

4 Q. Okay.

5 A. Then like I say, the last conversation, he
6 come to the shop and wanted to know if I would take
7 \$160,000, they done had the money to pay the bank,
8 and if I would take that, to get my money. So I
9 told them I agreed to it.

11:45AM

10 Q. And when you say "pay the bank," was it your
11 understanding that there was a loan on the
12 property?

11:45AM

13 A. No, sir. They just said that they had the
14 money to pay a bank and that they done that first
15 and then I was supposed to get mine.

11:45AM

16 Q. But did you ask any questions about what the
17 loan to the bank was for?

18 A. No, sir.

19 MR. SLOUGH: Can we go off the record
20 just a second?

11:46AM

21 (Off-the-record conference.)

22 MR. SLOUGH: Let's go ahead and mark
23 this as 10.

24 (PLF. EXH. 10, Document entitled "Sell
25 @ 2,200,000.00 - 6/29/09," was marked for

1 identification.)

2 BY MR. SLOUGH:

3 Q. Mr. Owens, let me show you this document
4 right here that we have marked right here as
5 Plaintiff's Exhibit 10.

11:46AM

6 Have you ever seen that document?

7 A. No, sir.

8 Q. You see down there that there is a notation
9 of, it looks like, a note dated January 3, 2005 for
10 100,000?

11:47AM

11 A. Uh-huh.

12 Q. Above that, it has your name, Herman Owens.
13 Is that you, Mr. Owens?

14 A. Yes.

15 Q. And then down below, it has interest on the
16 note, 100,000, for a total of 200,000?

11:47AM

17 A. Right.

18 Q. Do you know anything about this document or
19 these notations --

20 A. No, sir.

11:47AM

21 Q. -- or any payment to you of 200,000?

22 A. No, sir.

23 Q. Okay. How did you come to find out about
24 this foreclosure lawsuit?

25 A. I got -- papers were sent to the shop from

11:48AM

1 Regions Bank. And the day that I got them, I
2 called Mr. Paddy. Mr. Paddy come to the shop and
3 told me that they went to Columbia -- he went to
4 Columbia -- and he'd -- you know, got a lawyer and
5 they were taking care of it. But I wanted to know
6 how they had me on a loan, but I never could get an
7 answer.

11:48AM

8 Q. He wouldn't give you an answer?

9 A. No, sir.

10 Q. Now, in reviewing your Counterclaim, it
11 looks like you alleged that Mr. Paddy used your
12 name to secure the loan; is that correct?

11:48AM

13 A. Yes.

14 Q. And it's your testimony today that you have
15 never signed any documents for Regions Bank for a
16 loan?

11:49AM

17 A. Not to my knowledge, no, sir.

18 Q. And are you claiming any interest in the
19 property whatsoever?

20 A. No, sir.

11:49AM

21 Q. Or any ownership in the property whatsoever?

22 A. No, sir.

23 Q. Now, when did you have the conversation with
24 Mr. Paddy that his attorney would file an Answer on
25 your behalf. Do you recall when that was?

11:49AM

1 A. Whenever Regions Bank sent that out, when
2 they served -- brought the paper and served them,
3 that's when I talked with him. I don't know what
4 date it was, but that's the same time right there.

5 Q. And when you say "serve papers," are you
6 talking about the letter you got or are you talking
7 about the lawsuit that you got?

8 A. No, the letter.

9 Q. Do you recall how many letters or documents
10 you've gotten from Regions Bank by mail or served
11 on you?

12 A. None, other than at the end, you know, the
13 last three or four months, I'd say, yes.

14 Q. Now, you have filed a Counterclaim against
15 Regions Bank. What is it you feel that Regions
16 Bank has done wrong?

17 A. I don't know that they've done wrong. In
18 other words, I do feel like I should have been
19 notified. When somebody signs something for you, I
20 feel like I should have been notified and been told
21 that I was putting -- getting in on a loan, which I
22 wasn't. I've not heard a word. In other words,
23 that's -- in other words, I think that I should
24 have been notified and should have been told what's
25 going on.

1 Q. And would you agree with me that if Regions
2 Bank gets a document that has a signature on it
3 that says William H. Owens, they should be able to
4 rely on that signature as being that of William H.
5 Owens?

11:51AM

6 A. Yes, sir, they do. But, now, I signed a
7 bunch of papers, but some of that stuff ain't my
8 signature. In other words, the papers that I
9 signed was signed at the shop, and they brought in
10 there while I was working, and being friends with
11 him, in other words, I didn't read them.

11:52AM

12 Q. And what type of documents do you recall
13 signing?

14 A. I couldn't tell you.

15 Q. But you do know you signed documents?

11:52AM

16 A. Yes, sir.

17 Q. Do you know if you signed those documents
18 with Regions Bank?

19 A. No, sir, not that I know of, no, sir.

20 Q. And those documents would have been signed
21 at your shop?

11:52AM

22 A. Yes, sir.

23 Q. And who brought those documents to you?

24 A. Mr. Paddy.

25 Q. When is the last conversation you had with

11:52AM

1 Mr. Paddy?

2 A. When I received the papers from Regions
3 Bank.

4 Q. Now, is it possible that some of the
5 documents that Mr. Paddy brought to you to sign
6 were documents with Regions Bank?

11:53AM

7 A. It's possible, yeah.

8 MR. SLOUGH: I believe those are all
9 the questions I've got.

10 MR. JOHNSON: I don't have any.

11:54AM

11 MR. GARDNER: Could I take a few
12 minutes' break?

13 MR. SLOUGH: Yes.

14 (A recess transpired from 11:54 a.m.
15 through 11:59 a.m.)

11:59AM

16 EXAMINATION

17 BY MR. GARDNER:

18 Q. Mr. Owens, as you know, my name is Lex
19 Gardner. I'm your attorney. And if I ask you any
20 questions that you don't understand, please just
21 tell me.

11:59AM

22 A. Yes.

23 Q. I know this is a stressful situation, and
24 it's difficult for you, but can you recall you
25 coming to me specifically for Power of Attorney

11:59AM

1 Revocation --

2 A. Yes, sir.

3 Q. -- that you were afraid now that you haven't
4 got your money back from Mr. Paddy and that we
5 found out that you have a Power of Attorney?

12:00PM

6 A. Yes.

7 Q. And I advised to you that it's important for
8 us to revoke this Power of Attorney?

9 A. Yes, sir.

10 Q. And let me show it to you. This is my name,
11 preparing the document of revocation. And this is
12 my paralegal who witnessed it. And it is my belief
13 that you signed that in front of me.

12:00PM

14 Can you recall now that it is your
15 signature, sir?

12:00PM

16 A. Yes, sir.

17 Q. Okay. And I just have one more question.
18 I'm sorry, Mr. Slew?

19 MR. SLOUGH: Slough.

20 BY MR. GARDNER:

12:00PM

21 Q. Mr. Slough said that you received a letter
22 from the bank. But it is not true that you did not
23 actually receive a letter from the bank that you
24 actually received a Complaint?

25 A. Yes, sir.

12:01PM

1 Q. And let me show you, is this not the
2 Complaint that you received?

3 A. Yes.

4 Q. And it was not a Letter For Demand or Notice
5 or anything like that?

6 A. No, sir.

7 MR. GARDNER: That's all I have, unless
8 you can think of...

9 MR. HILLIARD: Just give me one second.

10 MR. GARDNER: Okay.

11 *(Off-the-record conference.)*

12 MR. GARDNER: Just one more question.

13 Mr. Hilliard just reminded me.

14 BY MR. GARDNER:

15 Q. When you come to me, sir, you were seeking
16 the \$100,000 back from Mr. Paddy?

17 A. Yes.

18 Q. And it was only after I -- you know, that I
19 found out that you had been sued. And did you not
20 tell me that Mr. Paddy assured you that he would
21 answer for both of you?

22 A. Yes, sir. Mr. Paddy said he hired a lawyer
23 in Columbia right close to Regions --

24 Q. And did he not --

25 A. -- and that I didn't have to worry, that

12:01PM

12:01PM

12:01PM

12:02PM

12:02PM

1 they would take care of it.

2 Q. And did that come as a complete surprise to
3 you that you would not be answered --

4 A. Yes.

5 Q. -- and your interests were not being
6 protected?

7 A. Right.

8 MR. GARDNER: Thank you. I believe
9 that's all I have.

10 EXAMINATION

11 BY MR. JOHNSON:

12 Q. Mr. Owens, my name is Wes Johnson. I
13 represent Mr. Paddy in this matter.

14 Do you think that you owe any money to
15 Regions Bank?

16 A. No, sir.

17 Q. Now, you were served with a lawsuit that
18 says that they're seeking to get money from you,
19 Mr. Paddy and Mr. Hostetler, correct?

20 A. I got that. That there's the first I got,
21 right there (indicating).

22 Q. Were you served with a lawsuit from Regions
23 Bank?

24 A. Whatever that is, if that's the lawsuit.

25 Q. I'm sorry, Mr. Owens, I can't see what

12:02PM

12:02PM

12:03PM

12:03PM

1 you're pointing at.

2 MR. GARDNER: This (indicating).

3 BY MR. JOHNSON:

4 Q. All right. This is the lawsuit. This is a
5 Foreclosure Complaint. It says William Owens,
6 David Hostetler, Roland Paddy and Greer State Bank.

12:03PM

7 Did you receive this document?

8 A. Yes.

9 Q. And by "this document," the Complaint.

10 And in this Complaint, the bank says they're
11 owed \$683,154.75.

12:03PM

12 It's your position that you don't owe any of
13 that money?

14 A. No, sir.

15 Q. It's your position that you don't have any
16 interest in this property?

12:04PM

17 A. No, sir.

18 Q. It's your interest (sic) that you shouldn't
19 be involved in this at all?

20 A. Yes, sir.

12:04PM

21 MR. JOHNSON: Thank you, sir.

22 MR. SLOUGH: I don't have anything
23 else.

24 MR. GARDNER: I'm done.

25 MR. HILLIARD: Okay.

12:04PM

1 (The deposition concluded at 12:04 p.m.)
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STENOGRAPHIC REPORTING SERVICE, LLC

Madonna Perkins, RPR *** (843) 685-0075
392 Oak Moss Court, Murrells Inlet, SC 29576

000397

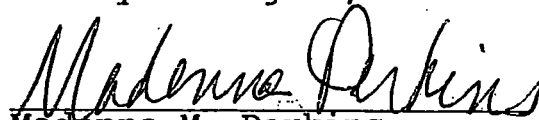
1 CERTIFICATE OF REPORTER

2 I, Madonna M. Perkins, Registered
3 Professional Reporter and Notary Public in and for
4 the State of South Carolina, do hereby certify that
5 the deponent, WILLIAM H. OWENS, was duly sworn by
6 me to testify to the truth, and that the above
7 deposition, Pages 1 through 39, inclusive, was
8 recorded stenographically by me and transcribed
9 through computer-aided transcription by me to the
10 best of my ability.

11 I FURTHER CERTIFY that the foregoing
12 transcript is a true and correct transcript of the
13 testimony given by the said witness at the time and
14 place specified.

15 I FURTHER CERTIFY that I am neither attorney
16 or counsel for, nor related to or employed by any
17 of the parties to the action in which this
18 deposition is taken, or financially interested in
19 this action.

20 IN WITNESS WHEREOF, I have set my hand and
21 seal this 11th day of August, 2010.

22 

23 Madonna M. Perkins
24 Registered Professional Reporter
25 Notary Public
My commission expires
September 19, 2015

STENOTYPE REPORTING SERVICE, LLC

Madonna Perkins, RPR *** (843) 685-0075
392 Oak Moss Court, Murrells Inlet, SC 29576

000398

10261/184

Instrument: 2005034698

Book/Page: R 10261 : 184

Date/Time: 07/01/2005 16:22:43:763

Document: 01

2005034698 FILED, RECORDED, INDEXED
 07/01/2005 16:22:43:763
 Rec Fee:\$10.00 St Fee:\$0.00 EMT
 Co Fee:\$0.00 Pages:2
 Lexington County RCD Debra M. Gunter
 DEED Bk:Pg 10261:184

State of South Carolina)

TITLE TO REAL ESTATE

County of Lexington)

KNOW ALL MEN BY THESE PRESENTS, that D&E of Myrtle Beach, LLC, (hereinafter called "Grantor"), in consideration of **Ten Dollars and 00/100 Dollars (\$10.00)**, to the Grantor in hand paid at and before the sealing of these presents, by Roland G. Paddy and David S. Hostetler and William H. Owens (hereinafter called Grantees) in the State aforesaid, the receipt of which is hereby acknowledged; has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release unto

Roland G. Paddy and David S. Hostetler and William H. Owens,

All that certain piece, parcel or tract of land, together with the improvements thereon, containing ninety-nine and thirty-seven hundredths (99.37) acres, more or less; situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as "Tract G" on a Plat prepared by C.L. Hartley, RLS, dated 29 March 1912 and recorded in the office of the Lexington County Register of Deeds in Plat Book 49-G at page 109, and having the following metes and bounds: One the North by property now or formerly of Felix Burgess and measuring thereon a distance of fifty-seven (57) chains, more or less; One the East by property now or formerly of Johnson and Johnson and measuring thereon a distance of thirteen and forty-four hundredths (13.44) chains, more or less; One the South by property now or formerly of E. Hall and measuring thereon a distance of sixty and forty-six hundredths (60.46) chains, more or less; and One the West by the run of Chinquapin Creek. Further reference is made to that certain boundary survey prepared by James F. Drafts, RLS, dated 21 July 2003 and filed with the Lexington County Register of Deeds on 13 August 2003 in Record Book 8522 at page 73.

Derivation: This being the identical property conveyed to D&E of Myrtle Beach, LLC, by Deed of Miracle Wells, LLC, dated 02/01/2005 and recorded 02/09/2005 in the Lexington County Register of Deeds office in Deed Book 9899 at page 84.

This conveyance is made subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises.

Grantee's Address: 728 8th Avenue North, Myrtle Beach, SC 29577

TMS No.: 009300-04-005

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining;



TO HAVE AND TO HOLD all and singular the premises before mentioned unto the Grantees, and the Grantees' heirs, successors and assigns forever. And the Grantor does hereby bind the Grantor and the Grantor's heirs, successors or assigns, to warrant and forever defend all and singular said premises unto the Grantees and the Grantees' heirs, successors or assigns, and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Any reference to this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

WITNESS the Grantor's hand and seal this the 24th day of June, 2005.

SIGNED, SEALED AND DELIVERED
in the presence of:

D&E of Myrtle Beach, LLC

David S. Hostetler

BY David S. Hostetler
ITS Managing Member

Gill M. Sowers

Witness (1)

Michael Paddy Refosco

Witness (2)

State of South Carolina)

)

PROBATE

County of Lexington)

)

PERSONALLY APPEARED BEFORE ME the undersigned witness and made oath that (s)he saw the within-named Grantor, David S. Hostetler, Managing member of D&E of Myrtle Beach, LLC, sign, seal, and, as his act and deed, deliver the within-written Title to Real Estate, and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this
24th day of June, 2005.

Michael Paddy Refosco

Notary Public for South Carolina
My Commission Expires:

Gill M. Sowers

Witness (1)

MICHELE PADDY REFOSCO
NOTARY PUBLIC for SOUTH CAROLINA
My Commission Expires: 5 September 2011



ROLAND G PADDY
20314792889001SF1

92889001000000



PROMISSORY NOTE

3

PRINCIPLE	LOAN DATE	MAINTENANCE	LOAN NO.	CITY	ACCOUNT	OFFICE	INITIALS
\$700,000.00	06/24/2005	07/08/2007	20314792889001	010		043WB	

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "****" has been omitted due to text length limitations.

Borrower: ROLAND G PADDY (SSN: [REDACTED]-0866), DAVID S
HOSTETLER (SSN: [REDACTED]-7346), and WILLIAM H
OWENS (SSN: [REDACTED]-1047)
[REDACTED] NORTH
MYRTLE BEACH, SC 29577-0000

Lender: REGIONS BANK
GREENVILLE
290 SOUTH PLEASANTBURG DRIVE
GREENVILLE, SC 29607

Principal Amount: \$700,000.00

Interest Rate: 7.000%

Date of Note: June 24, 2005

PROMISE TO PAY. ROLAND G PADDY, DAVID S HOSTETLER and WILLIAM H OWENS ("Borrower") jointly and severally promise to pay to REGIONS BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of Seven Hundred Thousand & 00/100 Dollars (\$700,000.00), together with interest at the rate of 7.000% per annum on the unpaid principal balance from June 24, 2005, until paid in full.

PAYMENT. Borrower will pay this loan in 23 regular payments of \$6,349.61 each and one irregular last payment estimated at \$651,756.31. Borrower's first payment is due August 8, 2005, and all subsequent payments are due on the same day of each month after that. Borrower's final payment will be due on July 8, 2007, and will be for all principal and all accrued interest not yet paid. Payments include principal and interest. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

PREPAYMENT. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: REGIONS BANK, GREENVILLE, 290 SOUTH PLEASANTBURG DRIVE, GREENVILLE, SC 29607.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the total sum due under this Note will bear interest from the date of acceleration or maturity at the interest rate on this Note. The interest rate will not exceed the maximum rate permitted by applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The death of Borrower or the dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insolvency. Lender in good faith believes itself insolvent.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on this Note and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender



000401

PROMISSORY NOTE
(Continued)

Loan No: 20314782889001

Page 2

or Borrower against the other.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of South Carolina.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

COLLATERAL. Borrower acknowledges this Note is secured by MORTGAGE DATED JUNE 24, 2005 FROM BORROWER (S) COVERING REAL ESTATE LOCATED AT 107.11 ACRES, 153 LOVE LANE BATESBURG SC 29006 LEXINGTON COUNTY.

ARBITRATION. Borrower and Lender agree that all disputes, claims and controversies between them in nature, arising from this Note or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any collateral securing this Note shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any collateral securing this Note, including any claim to rescind, reform, or otherwise modify any agreement relating to the collateral securing this Note, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Note shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

REQUESTS FOR SPECIAL SERVICES. In general, there are no borrower-paid fees associated with the routine servicing of a loan or line of credit. Borrower, however, may occasionally find it necessary to request services for which there is a charge. The services that fall outside of routine servicing include, without limitation, providing the following documents upon request: amortization schedules, duplicate year-end statements, copies of loan documents or periodic statements, payment histories, and replacement coupon books. Borrower agrees to pay the fees imposed by Lender in connection with providing the requested services, as in effect from time to time. Borrower also agrees to pay facsimile or other fees imposed by Lender if these services are requested on an expedited basis. All such fees shall be fully earned and non-refundable, and shall be paid upon Lender's demand (provided, that Lender, in its discretion, may add the fees to the principal indebtedness due, and accrue interest thereon, and the same shall be due, if not sooner demanded by Lender, upon the maturity of the indebtedness without further demand). The fees shall not be deemed to be interest or charges for the use of money. If Borrower requests services or documents as part of Lender's procedures for resolving a billing error on a line of credit, Lender will not impose, or will reverse, the fee.

NOTICE CONCERNING APPRAISAL WAIVER. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgement is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

GENERAL PROVISIONS. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Each Borrower understands and agrees that, with or without notice to Borrower, Lender may with respect to any other Borrower (a) make one or more additional secured or unsecured loans or otherwise extend additional credit; (b) alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of any indebtedness, including increases and decreases of the rate of interest on the indebtedness; (c) exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any security, with or without the substitution of new collateral; (d) apply such security and direct the order or manner of sale thereof, including without limitation, any non-judicial sale permitted by the terms of the controlling security agreements, as Lender in its discretion may determine; (e) release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; and (f) determine how, when and what application of payments and credits shall be made on any other indebtedness owing by such other Borrower. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, EACH BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE AND THE ATTACHED NOTICE TO COSIGNER. EACH BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:


ROLAND G PADDY


DAVID S HOSTETLER


WILLIAM H OWENS

000402

2005034699 FILED, RECORDED, INDEXED
 07/01/2005 16:22:44:038
 Rec Fee: \$13.00 St Fee: \$0.00
 Co Fee: \$0.00 Pages: 7
 Lexington County ROD Debra M. Gunter
 MORTGAGE Bk: Pg 10261:188

WHEN RECORDED MAIL TO:
 REGIONS BANK
 GREENVILLE
 290 SOUTH PLEASANTBURG DRIVE
 GREENVILLE, SC 29607



SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY



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MORTGAGE

MAXIMUM LIEN. The amount of indebtedness secured by this Mortgage, including the outstanding amount of the Note and all future advances shall at no time exceed the principal amount of \$1,050,000.00, plus interest, reasonable attorneys' fees, court costs and the expenses to preserve and protect the Property. Interest under the Note will be deferred, accrued or capitalized, but Lender shall not be required to defer, accrue or capitalize any interest except as provided in the Note.

THIS MORTGAGE dated June 24, 2005, is made and executed between ROLAND G PADDY, DAVID S HOSTETLER and WILLIAM H OWENS (referred to below as "Grantor") and REGIONS BANK, whose address is 290 SOUTH PLEASANTBURG DRIVE, GREENVILLE, SC 29607 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, grants, and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in LEXINGTON County, State of South Carolina:

See EXHIBIT "A", which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.

The Real Property or its address is commonly known as 107.11 ACRES, 153 LOVE LANE, BATESBURG, SC 29006.

CROSS-COLLATERALIZATION. In addition to the Note, this Mortgage secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable. If the Lender is required to give notice of the right to cancel under Truth in Lending in connection with any additional loans, extensions of credit and other liabilities or obligations of Grantor to Lender, then this Mortgage shall not secure additional loans or obligations unless and until such notice is given.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

FUTURE ADVANCES. In addition to the Note, this Mortgage secures all future advances made by Lender to Grantor whether or not the advances are made pursuant to a commitment. Specifically, without limitation, this Mortgage secures, in addition to the amounts specified in the Note, all future amounts Lender in its discretion may loan to Grantor, together with all interest thereon; however, in no event shall such future advances (excluding interest) exceed in the aggregate \$350,000.00. This Mortgage shall remain an open mortgage of record to secure future advances in accordance with Section 29-3-50, as amended, Code of Laws of South Carolina (1976) even in the event all sums secured by this Mortgage may be fully paid at any one time; however, upon request of Grantor, Lender will cause this Mortgage to be released and cancelled of record upon full payment of all indebtedness then owing, and upon such cancellation of this Mortgage of record, this Mortgage shall become null and void. Such release shall be without charge to Grantor; however, Grantor shall pay all costs of recordation, if any, and all documentary stamps due on the Note evidencing future advances secured by this Mortgage.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due and shall strictly perform all of Grantor's obligations under this Mortgage.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for

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Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stopping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property, whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by South Carolina law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Mortgage:

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagees clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of ten (10) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens of the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Mortgage or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Mortgage or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Mortgage also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

**MORTGAGE
(Continued)**

Loan No: 20314792889001

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WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Mortgage:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Mortgage:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the indebtedness secured by this Mortgage; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Real and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refilled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Mortgage, and the Related Documents, and (2) the liens and security interests created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Grantor pays all the indebtedness, including without limitation all future advances, when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Real and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:

Payment Default. Grantor fails to make any payment when due under the indebtedness.

Default on Other Payments. Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Mortgage or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Default in Favor of Third Parties. Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the indebtedness or Grantor's ability to perform Grantor's obligations under this Mortgage or any related document.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this

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Mortgage or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Mortgage or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The death of Grantor, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occur with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disavows the validity of, or liability under, any Guaranty of the indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Mortgage within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of the Property and, as mortgagee-in-possession, collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Judicial Foreclosure. Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

Nonjudicial Sale. If permitted by applicable law, Lender may foreclose Grantor's interest in all or in any part of the Personal Property or the Real Property by non-judicial sale.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

Appraisal. Grantor hereby waives the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained by Lender against Grantor in the event of foreclosure under this Mortgage.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default, or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the indebtedness.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on the indebtedness and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

NOTICES. Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be

**MORTGAGE
(Continued)**

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given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

NOTICE CONCERNING APPRAISAL WAIVER. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgement is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Mortgage:

Amendments. This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Arbitration. Grantor and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Mortgage or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Property shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Property, including any claim to rescind, reform, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Mortgage shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

Caption Headings. Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

Governing Law. This Mortgage will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Mortgage has been accepted by Lender in the State of South Carolina.

Joint and Several Liability. All obligations of Grantor under this Mortgage shall be joint and several, and all references to Grantor shall mean each and every Grantor. This means that each Grantor signing below is responsible for all obligations in this Mortgage.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any person or circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other person or circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Mortgage shall not effect the legality, validity or enforceability of any other provision of this Mortgage.

Merger. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Successors and Assigns. Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Mortgage.

Waive Jury. All parties to this Mortgage hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of South Carolina as to all indebtedness secured by this Mortgage.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Mortgage. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means ROLAND G PADDY, DAVID S HOSTETLER and WILLIAM H OWENS and includes all co-signers and co-makers signing the Note.

Default. The word "Default" means the Default set forth in this Mortgage in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

Grantor. The word "Grantor" means ROLAND G PADDY, DAVID S HOSTETLER and WILLIAM H OWENS.

Guaranty. The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

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Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, earned interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as provided in this Mortgage. Specifically, without limitation, Indebtedness includes the future advances set forth in the Future Advances provision, together with all interest thereon and all amounts that may be indirectly secured by the Cross-Collateralization provision of this Mortgage.

Lender. The word "Lender" means REGIONS BANK, its successors and assigns.

Mortgage. The word "Mortgage" means this Mortgage between Grantor and Lender.

Note. The word "Note" means the promissory note dated June 24, 2005, in the original principal amount of \$700,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of this Mortgage is July 8, 2007.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

EACH GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND EACH GRANTOR AGREES TO ITS TERMS.

GRANTOR:

X *Roland G Paddy*
ROLAND G PADDY

X *David S Hostetler*
DAVID S HOSTETLER

X *William H Owens*
WILLIAM H OWENS

Signed, acknowledged and delivered in the presence of:

X *Michelle Paddy Refosco*
Witness
X *Quil M. Sowers*
Witness

INDIVIDUAL ACKNOWLEDGMENT

STATE OF South Carolina)
COUNTY OF Horry) SS)

PERSONALLY appeared before me and made oath that he or she saw the within-named Grantor(s) sign, seal, and, as his or her act and deed, deliver the within-written Mortgage for the uses and purposes therein mentioned, and that he or she with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 24th
day of June A.D. 2005
Michelle Paddy Refosco (Seal)
Notary Public
My Commission expires: _____

Quil M. Sowers
(Witness)

MICHELE PADDY REFOSCO

NOTARY PUBLIC for SOUTH CAROLINA

My Commission Expires: 5 September 2011

EXHIBIT "A"

All that certain piece, parcel or tract of land, together with the improvements thereon, containing ninety-nine and thirty-seven hundredths (99.37) acres, more or less; situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as "Tract G" on a Plat prepared by C.L. Hartley, RLS, dated 29 March 1912 and recorded in the office of the Lexington County Register of Deeds in Plat Book 49-G at page 109, and having the following metes and bounds: One the North by property now or formerly of Felix Burgess and measuring thereon a distance of fifty-seven (57) chains, more or less; One the East by property now or formerly of Johnson and Johnson and measuring thereon a distance of thirteen and forty-four hundredths (13.44) chains, more or less; One the South by property now or formerly of E. Hall and measuring thereon a distance of sixty and forty-six hundredths (60.46) chains, more or less; and One the West by the run of Chinquapin Creek. Further reference is made to that certain boundary survey prepared by James F. Drafts, RLS, dated 21 July 2003 and filed with the Lexington County Register of Deeds on 13 August 2003 in Record Book 8522 at page 73.

Derivation: This being the identical property conveyed to the Mortgagors by Deed of D&E of Myrtle Beach, LLC, dated 06/24/2005 and recorded 07/ 1 /2005 in the Lexington County Register of Deeds office in Deed Book ~~10861~~ at page 104.

TMS No.: 009300-04-005