

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Darrell Thomas Johnson, Jr., Special Referee

Case No. 2008-CP-27-547

RECEIVED
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SC Court of Appeals

MITCHELL S. LOWTHER
AND CARMON B. LOWTHER,.....Respondents.

v.

E. LEGRAND LOWTHER.....Appellant.

**RESPONDENTS' REPLY TO APPELLANT'S
RETURN TO MOTION TO DISMISS**

The Special Referee was referred both C. E. Lowther, Jr., et al., v. E. Legrand Lowther , 2008-CP-27-151 (Exhibit A) and Mitchell S. Lowther and Carmon B. Lowther v. E. Legrand Lowther, 2008-CP-27-547 (Exhibit B): He issued a joint order covering both cases on March 15, 2010. It was filed March 18, 2010, with copies to the various attorneys. (Exhibit C). Thereafter Motions to Reconsider were filed on both cases. The case of Mitchell S. Lowther and Carmon B. Lowther (2008-CP-27-547) had its final order first and appeal was instigated by E. Legrand Lowther. This was heard by the Court of Appeals in April, 2012, and an order is still pending.

Thereafter, an order denying the request to reconsider on Case Number 2008-CP-27-151 was issued March 14, 2012, recorded March 19, 2012, and thereafter served upon the parties. The Appellants Mitchell S. Lowther and Carmon B. Lowther timely filed a notice of intent to appeal the order dated March 14, 2012 in the matter of Lowther v. Lowther, Case Number 08-

CP-27-151 (emphasis added). No cross appeal was filed by the Respondent E. Legrand Lowther to that appeal. The Respondent, E. Legrand Lowther, did file a notice of appeal of Mitchell and Carmon Lowther, 2008-CP-27-547 (emphasis added) on April 4, 2012 (Exhibit D). As this case had already been heard by the Court of Appeals and an order pending, the Appellant's Mitchell S. Lowther and Carmon B. Lowther filed no cross appeal on that appeal. They further on May 14, 2012, filed a Motion to Dismiss E. Legrand Lowther's appeal on the ground that an appeal in that case had already been heard. (Exhibit E) As more than ten days had passed after the service of that Motion to Dismiss with no return to the Motion (Rule 240(e), SCRAP) having been filed by the Respondent, Mitchell S. Lowther and Carmon B. Lowther thereafter moved to dismiss their appeal and an Order was issued June 11, 2012, dismissing same. (Exhibit F). No timely objection was filed by the Respondent E. Legrand Lowther to the Appellants Motion to Dismiss appeal, and as no objection was made to their Motion to Dismiss, the Appellants assumed that the dismissal of their appeal would end this matter. C. E. Lowther, Sr., whose Estate this is all about, died in 2004. This litigation started in 2008. It is now 2012. All things must end.

No response was filed by E. Legrand Lowther at all until a letter from Claire Allen, Deputy Clerk, to counsel for the Respondents, Mitchell and Carmon Lowther with a copy to counsel for the Appellant, E. Legrand Lowther, giving Mr. Lowther's counsel ten (10) days to file a return to this motion. The motion itself had been lodged with the court and served (Exhibit G) May 17, 2012, some 25 days prior to the letter requesting Mr. Kuhn to file a return.

In response to the letter from the Deputy Clerk, the Respondent Lowther has filed a Memorandum that places the blame for his invalid appeal upon the Special Referee. Mitchell S. Lowther and Carmen B. Lowther v. E. Legrand Lowther, 2008-CP-27-547, involved a suit between a brother and his wife versus a brother for the ownership of 3.84 acres. C. E. Lowther, Jr., Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Turpin Lowther versus E. Legrand Lowther, 2008-CP-27-151, involves the ownership of 240 +/- acres of land, accounting

for several joint ventures, as well as the return of waterfront property located in Beaufort County, South Carolina. The Respondent Lowther may raise some smoke about the civil action numbers, but gives no reason or excuse for having filed an appeal (for the second time) on the case involving 3.84 acres with only two (2) plaintiffs and totaling ignoring the big case which had numerous siblings of the Respondent E. Legrand Lowther suing him over a vast amount of money and property. The Appellants, Mitchell S. Lowther and Carmon S. Lowther, filed an appeal from the correct case C. E. Lowther, Jr., Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Turpin Lowther (2008-CP-27-151) and they dismissed their appeal from the correct case, C. E. Lowther, Jr., Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Turpin Lowther, (2008-CP-27-151). Not only did E. Legrand Lowther not file a timely appeal from 2008-CP-27-151, he did not cross appeal nor respond to the Motion to Dismiss until requested to do so by the this Court. Thus the Respondent, E. Legrand Lowther, has never filed an appeal from C. E. Lowther, Jr., Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Turpin Lowther 2008-CP-27-151.

Appellant's failure to serve notice of appeal within 30 days after receiving written notice of the entry of a final order or judgment divest the appellate court of subject matter jurisdiction and results in the dismissal of the appeal. USAA Proper and Ca. Ins. Co. v. Clegg (S.C. 2008) 377 S.C. 643, 661 S.E.2d 791, rehearing denied.

For the Court to rule otherwise would mean that the Respondent, E. Legrand Lowther, is being rewarded for filing an invalid appeal and of equal importance, the Appellants, Mitchell Lowther and Carmon Lowther, will have lost any right to file a cross-appeal or an independent appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Thayer Rivers, Jr.", written over a horizontal line.

R. THAYER RIVERS, JR.
Post Office Box 668
Ridgeland, SC 29936
843-726-8136

Attorney for the Appellants

Ridgeland, SC,

June 27, 2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Darrell Thomas Johnson, Jr., Special Referee

Case No. 2008-CP-27-547

MITCHELL S. LOWTHER
AND CARMON B. LOWTHER,.....Respondents.

v.

E. LEGRAND LOWTHER.....Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Reply to Respondent's Return to Motion to Dismiss on E. Legrand Lowther by depositing a copy of same in the United States Mail, postage prepaid, on June 27, 2012, addressed to his attorney of record, H. Fred Kuhn, Jr., Post Office Drawer 507, Beaufort, SC, 29901.

LAW OFFICE OF R. THAYER RIVERS, JR.



R. THAYER RIVERS, JR.
Post Office Box 668
Ridgeland, SC 29936
843-726-8136

Attorney for the Appellants

Ridgeland, SC,

June 27, 2012

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTIES OF BEAUFORT AND)
JASPER)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 08-CP-07-
CASE NUMBER: 08-CP-27- 151

C. E. LOWTHER, JR., CLAYTON CLARK)
LOWTHER, MITCHELL S. LOWTHER)
AND EFFIE SANDRA TURPIN,)

Plaintiffs,)

v.)

E. LEGRAND LOWTHER,)

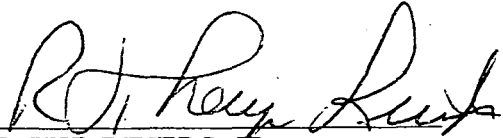
Defendant.)

SUMMONS
Non-Jury

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CLERK OF COURT
RIDGELAND, SOUTH CAROLINA

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint of the Plaintiff in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscriber, Plaintiffs' attorney, R. Thayer Rivers, Jr., Esquire, LAW OFFICE OF R. THAYER RIVERS, JR., Post Office Box 668, Ridgeland, South Carolina, 29936, within thirty (30) days from and after the date of service hereof (exclusive of the date of service); and, if you fail to answer the Complaint within the time aforesaid and to serve a copy of your Answer, judgment by default will be rendered against you for the relief demanded in the Complaint.

Law Office of R. Thayer Rivers, Jr.



R. THAYER RIVERS, JR.
Post Office Box 668
Ridgeland, South Carolina 29936
843-726-8136

Attorney for the Plaintiffs

Ridgeland, South Carolina,
March 7, 2008.

STATE OF SOUTH CAROLINA)
)
COUNTIES OF BEAUFORT AND)
JASPER)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 08-CP-07-
CASE NUMBER: 08-CP-27-

C. E. LOWTHER, JR., CLAYTON CLARK)
LOWTHER, MITCHELL S. LOWTHER)
AND EFFIE SANDRA TURPIN,)

Plaintiffs,)

v.)

E. LEGRAND LOWTHER,)

Defendant.)

COMPLAINT
Non-Jury

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CLERK OF COURT
JASPER COUNTY, SOUTH CAROLINA

The Plaintiffs complaining of the Defendant herein allege and says as follows:

*P.1
T.M.S.*

1. The Plaintiffs are devisees of the Estate of C. E. Lowther and the Plaintiff Mitchell S. Lowther is an individual mortgage holder as well as a devisee.

2. By deeds recorded in Deed Book 2292 at Page 1752 in Beaufort County on or about December 27, 2005, the Plaintiffs, amongst other family members, deeded the premises shown as the Beaufort Property in the Lis Pendens herein, by Quit Claim Deed did deed the premises to the Defendant.

3. By deed recorded in Deed Book 337 at Page 10 in the Office of the Register of Deeds for Jasper County, the Plaintiffs did deed their ownership in the premises described in the Lis Pendens as the Jasper County Parcel to the Defendant on 12-28-05

4. That the Plaintiffs, C. E. Lowther, Clayton Clark Lowther and Effie Sandra Turpin were indebted by the Defendant in the amount of \$252,000.00 each and the Plaintiff Mitchell S. Lowther was indebted by the Defendant in the amount of \$952,000.00.

5. In order to further secure the payment of said monies, the Defendant executed a certain Promissory Note to each Plaintiff which are attached hereto as Exhibits A through D and made a part hereof.

6. That the Promissory Note provides for payment in full to the Plaintiffs on or before December 31, 2006. That the Note waived presentment, notice of dishonor and protest.

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pad
7. That on December 31, 2006, the Note had not been paid and by its own terms and conditions automatically entitled the Plaintiffs to the return of their deeds which were held in escrow by Fred Kuhn, Esquire, and to share the proceeds from sales on lots in the Echo Tango property located in Beaufort County, South Carolina, which is described in the Lis Pendens.

8. The Plaintiffs are informed and believes that the Defendant has sold two parcels of Echo Tango for a total sales price in excess of \$770,000.00. That no accounting has been made to the Plaintiffs for any costs involved therein, nor has any distribution of proceeds been made to the Plaintiffs in violation of the terms and conditions of the note.

WHEREFORE, the Plaintiffs pray as follows:

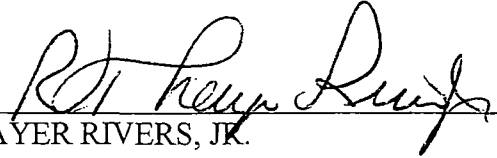
1. That this court issue an Order mandating Fred Kuhn, Esquire, to give the escrowed deeds to the Plaintiffs for the ownership interest in the Jasper County Property known as Wellington Plantation.

2. That the Defendant make an immediate verified accounting of the costs of the Echo Tango development and make an immediate distribution to the Plaintiffs for any sums owed them at that time.

3. For the costs and disbursements of this action, including reasonable attorney fees.

4. For such other and further relief as this Court may deem just and proper.

LAW OFFICE OF R. THAYER RIVERS, JR.



R. THAYER RIVERS, JR.

Post Office Box 668

Ridgeland, South Carolina 29936

843-726-8136

March 7, 2008.

0³

STATE OF SOUTH CAROLINA)
)
COUNTIES OF BEAUFORT AND)
JASPER)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 08-CP-07-
CASE NUMBER: 08-CP-27- 151

C. E. LOWTHER, JR., CLAYTON CLARK)
LOWTHER, MITCHELL S. LOWTHER)
AND EFFIE SANDRA TURPIN,)

Plaintiffs,)

v.)

E. LEGRAND LOWTHER,)

Defendant.)

LIS PENDENS

2008-CP-27

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YOU WILL PLEASE TAKE NOTICE that there is an action pending in the counties of Beaufort and Jasper for the foreclosure of a certain mortgage between the parties recorded in Mortgage Book 402 at Pages 24 through 36 in the office of the Register of Deeds for Jasper County and a certain Note that is recorded therewith and made a part thereof affecting premises owned in Beaufort County. The following described properties are affected:

BEAUFORT COUNTY:

All that certain piece, parcel or lot of land situate, lying and being in Beaufort County, South Carolina, in the Chechessee Community, being one (1) acre, more or less and bounded and described as follows: Beginning at a twenty-five (25') foot dirt road N17d30'00"W for a distance of twelve and twenty hundredths (12.20') feet, more or less, to a point; then turning along said dirt road N17d30'00"W for a distance of one hundred sixty-eight and ninety-six hundredths (168.96') feet, more or less; then turning and running N54d09'00"E for a distance of two hundred forty-five and fifty-two hundredths (245.52') feet, more or less, along lands nor or formerly of Padgett to a point; then turning running S23d05'00"E for distance of one hundred thirty-two and no hundredths (132') feet, more or less, along the marshes of Chechessee River to a point; thence running S13d26'50"E for a distance of forty-six and fifty-seven hundredths (46.57') feet along the marshes of Chechessee River to a point; thence running S54d09'10"W for a distance of two hundred fifty-six and nine hundredths (256.09') feet, more or less, along lands of the Grantee to the point of beginning.

AND, ALSO, all that certain piece, parcel or lot of land, situate, lying and being in Beaufort County, South Carolina, in the Chechessee Community and being particularly described as

follows: Historically known as Parcel B Tract 1A and Parcel 3A; bounded on the East by Chechessee River; on the South by lands now or formerly of Carol Garbade Carter; on the West by a dirt road leading to Highway 170; and on the North by a parcel known as Parcel A Tract 1A.

LESS: Any parcels sold since December 27, 2005.

This being the same property conveyed to E. Legrand Lowther by deed recorded in Deed Book 02292 at Page 1752 in the Office of the Register of Deeds for Beaufort County.

TMP: R600 006 000 0009 0000
R600 006 000 009B 0000
R600 006 000 0046 0000

JASPER COUNTY:

ALL that certain piece, parcel or tract of and, situate, lying and being in Jasper County, South Carolina, containing 226.35 acres, more or less, known as Wellington Plantation and being bounded and described as follows: On the North by Wellington Road, a dedicated Jasper County road; on the East by lands now or formerly of Pittman; on the South by lands now or formerly of Westvaco; and on the West by lands now or formerly of Westvaco and lands now or formerly of South Carolina Electric and Gas. For a more particular description of metes, bounds, courses and distances, reference is made to that certain boundary survey prepared by Richard Kesselring, RLS, for E. Legrand Lowther and C. E. Lowther dated February 20, 1997, and recorded in the Office of the Clerk of Court for Jasper County, South Carolina in Boos 22 at Page 293. The metes, bounds, distances appearing on the aforementioned plat are incorporated herein by reference.

LESS AND EXCEPT 3.84 acres thereof conveyed by C. E. Lowther to Mitchell S. Lowther and Carmon B. Lowther by deed recorded in the Office of the Clerk of Court for Jasper County, South Carolina in Deed Book 156 at Page 157 and more particularly described as Lot No 34 on that certain preliminary subdivision plat prepared by Connor and Associates, Inc., a copy of which is attached to said Deed and made a part of Deed Book 156 at Page 157.

ALSO LESS AND EXCEPT any out conveyances as recorded in the Office of the Register of Deeds for Jasper County, South Carolina since December 27, 2005.

This being the same property conveyed to E. Legrand Lowther by deed recorded in Deed Book 337 at Page 10 in the Office of the Register of Deeds for Jasper County, South Carolina.

LAW OFFICE OF R. THAYER RIVERS, JR.

A handwritten signature in cursive script, appearing to read "R. Thayer Rivers, Jr.", written over a horizontal line.

R. THAYER RIVERS, JR.
Post Office Box 668
Ridgeland, South Carolina 29936
843-726-8136

Attorney for the Plaintiffs

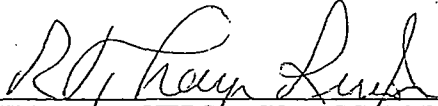
March 7, 2008.

EXHIBIT B

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 COUNTY OF JASPER) FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2008-CP-27-547
 J. H. BOSTICK
 CLERK OF COURT/RMC
 JASPER COUNTY SC

MITCHELL S. LOWTHER and)
 CARMON B. LOWTHER,)
 Plaintiffs,)
 vs.) SUMMONS
 E. LEGRAND LOWTHER,) NON JURY MATTER
 Defendant.)

YOU ARE HEREBY SUMMONED and required to appear and defend the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber R. Thayer Rivers, Jr., P. O. Box 668, 304 Russell Street, Ridgeland, South Carolina 29936, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to Answer the Complaint within the time aforesaid, the Court will render judgment by default against you for the relief demanded in the Complaint.

LAW OFFICE R. THAYER RIVERS, JR.

 R. THAYER RIVERS, JR. - SC BAR 4754
 P O BOX 668, 304 RUSSELL STREET
 RIDGELAND, S.C. 29936
 TEL: 843 726 8136
 FAX: 843 726 4401

Dated: August 28, 2008
 Ridgeland, SC

ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF JASPER) FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2008-CP-27- 541
CLERK OF COURT/RMC
JASPER COUNTY SC

MITCHELL S. LOWTHER and)
CARMON B. LOWTHER,)
) Plaintiffs,)
vs.) COMPLAINT
))
E. LEGRAND LOWTHER,) NON JURY MATTER
))
Defendant.)

The plaintiffs, complaining of the defendant above-named, would respectfully show unto this Honorable Court:

1. That the plaintiffs and the defendant are citizens and residents of Jasper County, South Carolina.

2. That the real property hereinafter described which is the subject of this action, is situated and located in Jasper County, South Carolina:

Pls
made
3. That on or about the 20th day of December 2005, for value received, the said E. Legrand Lowther executed and delivered to Mitchell S. Lowther and Carmon B. Lowther, the plaintiffs herein, a certain promissory note in writing, a copy of which is attached hereto and which is incorporated in and made a part hereof by reference, by which, according to the terms and conditions set out therein, said maker promised to pay to Mitchell S. Lowther and Carmon B. Lowther, the sum of Nine Hundred Fifty

Two Thousand and 00/100ths (\$952,000.00) Dollars.

4. In order to better secure the payment of the said note and debt, in accordance with the terms and conditions thereof, the said defendant, E. Legrand Lowther, did execute and deliver on December the 28th, 2005, recorded February 15, 2006, in the Register of Deeds for Jasper County, in Deed Book 402 at Pages 24-36, unto the plaintiffs, Mitchell S. Lowther and Carmon B. Lowther, their heirs and assigns, a mortgage covering the following described property:

SEE PROPERTY DESCRIPTION ATTACHED AS EXHIBIT "A"

5. As part and parcel of the same transaction the plaintiffs did transfer to the defendant, an additional following described property, being 3.84 acres, which comprises additional collateral for the mortgage.

SEE PROPERTY DESCRIPTION ATTACHED AS EXHIBIT "B"

6. According to the terms and conditions of the note and mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice, at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, shall become an obligation of the defendant, to be secured by the said mortgage as a part of the debt secured thereby.

7. That under the terms and conditions of said mortgage, it is provided that, together with, and in addition to the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the first day of each month until the said note is fully paid, certain additional sums, including but not limited to certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.

8. Further, under the terms and conditions of said mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if he failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

9. The monthly payments due on said note and mortgage are in default since December 31, 2006 (at the present time the plaintiffs are owed the amount of Nine Hundred Fifty Two Thousand (\$952,000.00) Dollars, with interest after date with the legal interest rate in South Carolina).

10. Plaintiffs demand no personal or deficiency judgment and any right to same is specifically waived.

WHEREFORE, having fully set forth its complaint, the plaintiffs pray that this Honorable Court inquire into the matters set forth herein said;

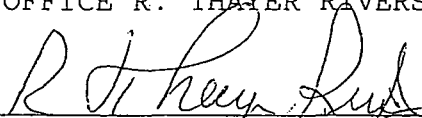
That the amount due upon the said note and mortgage held by the plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.

That the said plaintiffs' mortgage be declared a first lien and that plaintiffs have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, and for the cost of this action.

That the mortgaged premises be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of the sale be applied as follows:

- 84
1. To the costs and expenses of the within action and sale;
 2. To the payment and discharge of the amount due on plaintiffs' note and mortgage, together with attorney's fees as aforesaid, and;
 3. The surplus, if any, be distributed according to law;
 4. And for such other and further relief as may be just and proper.

LAW OFFICE R. THAYER RIVERS, JR.


R. THAYER RIVERS, JR. - SC BAR 4754
P O BOX 668, 304 RUSSELL STREET
RIDGELAND, S.C. 29936
TEL: 843 726 8136
FAX: 843 726 4401

ATTORNEY FOR PLAINTIFFS

Dated: August 28, 2008
Ridgeland, SC

EXHIBIT C

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
)
MITCHELL S. LOWTHER and CARMEN)
B. LOWTHER,)
)
Plaintiffs,)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 08-CP-27- 547

v.)
)
E. LEGRAND LOWTHER,)
)
Defendant.)

REPORT OF SPECIAL REFEREE

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
)
C. E. LOWTHER, JR., CLAYTON CLARK)
LOWTHER, MITCHELL S. LOWTHER)
AND EFFIE SANDRA TURPIN,)
)
Plaintiffs,)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 08-CP-27- 151

v.)
)
E. LEGRAND LOWTHER,)
)
Defendant.)

REPORT OF SPECIAL REFEREE

2010 MAR 18 AM 11:01
MARGARET BERTICK
CLERK OF COURT
JASPER COUNTY SC

FILED

This is the second matter referred to me by the Honorable Carmen T. Mullen to hear as Special Master and issue a final Order. An initial hearing was held on April 29, 2009. We were unable to finish everything at that time and a further hearing was held on May 11, 2009. Present at the hearing were Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Turpin together with their attorney, R. Thayer Rivers, Jr. Also present was E. LeGrand Lowther together with his attorney, H. Fred Kuhn, Jr.

The Complaint of the Plaintiffs allege that they deeded certain properties in both Beaufort and Jasper Counties to the Defendant E. LeGrand Lowther and C. E. Lowther, Jr., Clayton Clark Lowther and Effie Sandra Turpin received Notes and Mortgages in the amount of \$252,000.00 and the Plaintiff Mitchell Lowther received a Note and Mortgage in the amount of \$952,000.00. These were dated December 20, 2005 with a due date of December 31, 2006. As of December 31, 2006, the Notes had not been paid and the Defendant had not turned over the deeds to the Plaintiffs. The lawsuit in question was apparently drafted March 7, 2008, filed on March 10, 2008, and served on E. LeGrand Lowther who by and through his attorney, H. Fred Kuhn, Jr., proffered the deeds along with a mortgage satisfaction on March 17, 2008. The issues in front of me are as follows:

1. The return of deeds to the Wellington premises to the various parties.
2. An accounting of all funds and profits derived from the Echo Tango property located on the Chechessee River in Beaufort County.
3. Determining other properties not listed in the Lis Pendens that are to be returned to the Plaintiffs as part of this action.
4. Determining the sums owed to the parties as part and parcel of Wellington, Echo Tango and business loans and advances (as opposed from personal loans) by and between the parties.
5. A determination of the appropriateness, if at all, of attorney fees in favor of the Plaintiffs.

To the Summons and Complaint the Defendant through his attorney, proffered the deeds. I will take this as a General Denial of the allegations of the Complaint. The issue of the 40 acre transaction by and between the parties and certain specific complaints about the handling of the Estate of E. LeGrand Lowther and Mark Allen Lowther as Personal Representatives of the Estate of Eugene Lowther, Sr. are before the Probate Court for Beaufort County and are not being heard by me.

WELLINGTON PROPERTY. The title to Wellington, as well as the Echo Tango property, apparently has passed back and forth between Mitchell S. Lowther, E. LeGrand Lowther and C. E. Lowther, Sr., on several occasions. As of the date of C. E. Lowther, Sr.'s death, his one-half undivided interest in Echo Tango was held by E. LeGrand Lowther, but the ownership by Mr. Lowther, Sr., was recognized by all. ~~At the time of the death of Mr. Lowther~~ in June of 2004, the title to Wellington was C. E. Lowther, Sr., now the Estate of C. E. Lowther, Sr., (25%), Mitchell S. Lowther (25%), and E. LeGrand Lowther (50%). As far as the Echo Tango properties go, each of the Lowther siblings (four of whom are parties to this action) owned one-seventh of fifty percent of the Echo Tango property or 7.14%. As to the Wellington property, the Plaintiff Mitchell S. Lowther owned twenty-five percent plus one-seventh of twenty-five percent or 3.571 percent bring his total to 28.571 percent. The other siblings (Clark Lowther, C. E. Lowther, Jr., and Sandra Turpin) own 3.571 percent each of the Wellington property. From the Mims accounting and the Tedder spreadsheet (Plaintiff's Exhibit 12 and Plaintiff's Exhibit 2 of the May 11, 2009, hearing) it appears that the total of the net proceeds of the Wellington sales are

Reid Sanders	\$ 31,168.00
Lance Sanders	\$ 30,631.94
Barrientos	\$ 21,185.04
John Henry Lowther	\$ <u>50,000.00</u> 2
	\$ 132,984.98

I realize there is a dispute by the parties as to the value of the John Henry Lowther lot. John Henry Lowther is the son of the Defendant E. LeGrand Lowther and during the time E. LeGrand Lowther owned this property, he deeded it as a gift to his son John Henry Lowther. An appraisal was done by Randy Waite, a local appraiser, with whose work I am familiar, and it appraised at \$67,500.00. LeGrand Lowther testified that in his opinion that it is worth less than

2007
Ell gave John Henry
.15 acre called 3B -
This lot now is 0.90 acre

that because he tried to sell and could not get an offer of anything near that. He further stated that instead of the lot being .9 acres as shown on the appraisal, it was actually only three-fourths of an acre. I note that on Mr. Waite's three comparables, two of them were three-quarter acre lots and all three comparable sales were located in Wellington. In any event, having reviewed both the Waite appraisal and Mr. Lowther's testimony, I note that Mr. Waite as a more neutral professional, who does have substantial evidence to back his valuation of the property. Of this amount, the Plaintiffs would be entitled to 82.1 percent (14.286 x 4 {their share of the Estate of C.E. Lowther} and the 25% of the share of Mitchell S. Lowther). I am puzzled by the lack of a mortgage release, which would have involved an agreed upon figure. I doubt that the Aunts and Uncles would have driven a hard bargain at that time. Out of an abundance of caution, I attribute a value of \$50,000.00 to this lot.

AgSouth payment reimbursements: This matter also comes from a loan to AgSouth (formerly known as the Federal Land Bank) that was in the name of E. LeGrand Lowther but was historically paid by Mitchell S. Lowther, E. LeGrand Lowther and C. E. Lowther, Sr., who at some point during the '90s comprised a business called C. E. Lowther and Sons and the accounting apparently came from rebates from a lender that were generated by sales of land and timber that were owned by the parties and comprising Wellington Plantation. As mentioned above, the parties owned the property in various percentages, i.e., 50% to E. LeGrand Lowther, 25% to C. E. Lowther, Sr., and 25% to Mitchell S. Lowther. It appears that the payments have been made one-third each, and I use that formula as its basis. It appears that based on the Tedder spreadsheet, which has been represented to me as being more or less accurate (save the question of capital costs on Echo Tango and the John Henry lot), that the combination of the Estate of C. E. Lowther and Mitchell S. Lowther are owed \$9,087.12 as their share of the AgSouth rebates which apparently have all been received by E. LeGrand Lowther.

Mims accounting: There is further in the record an agreed upon accounting by David Mims, a CPA from Beaufort, who determined in regard to various matters with the Estate involving lot sales and other transactions with E. LeGrand Lowther as Personal Representative that there is a figure of \$21,157.97 owed by E. LeGrand Lowther to the Estate.

~~There is a further issue of the Sauls funeral bill having been double claimed by E. LeGrand Lowther. While Exhibits 4 and 13 from the second hearing held on May 11, 2009, seem to indicate that E. LeGrand Lowther may have been paid twice, this is a matter for the Probate Court, and I would not presume to rule on it while the Probate is still ongoing.~~

Closings costs and closing on December 28, 2005: The contract by and between the parties over the sale of these various properties, which is Defendant's Exhibit 1, pages 4 - 29, was for each to get \$75,000.00 at closing and that Mitchell S. Lowther was to get a note of \$950,000.00, Effie Sandra Turpin, Clayton Clark Lowther, and C. E. Lowther, Jr., were to get Notes in the amount of \$250,000.00. Mr. Kuhn has again ably and forcefully argued that I should be bound by the terms and conditions of the closing statement which shows E. LeGrand Lowther paying all the closing costs (some \$14,000.00) by himself. I do not consider a closing statement to be a document to which the parol evidence rule applies. Furthermore, there is an ambiguity created by the contract which calls for Notes of \$250,000.00 and \$950,000.00, and the actual Notes which show that the figures were \$252,000.00 and \$952,000.00. It was presented from several witnesses that the difference was that each of the siblings advanced \$2,000.00 to Mr. Lowther to pay the buyer's closing costs. While it has been again ably argued by Mr. Kuhn that they got repaid in the form of getting a Note for \$2,000.00, this does not persuade me. The Note wasn't paid and the only remedy for his default is return of the property. This would have, and did have, the effect of depriving each of them of \$2,000.00 of their down payment. Based

on the foregoing I have determined that each of the four Plaintiffs is entitled to \$2,000.00.
(\$8,000.00)

I have further determined that the Lowther children (Mitchell S. Lowther 28.571%, Effie Sandra Turpin, Clark Clayton Lowther and C. E. Lowther, 3.571% each) are entitled to have a deed from this Court conveying to them their percentage interest in the Haydon repossessed property as well as the remaining unsold lot (Lot 12) that was deeded from Mitchell to LeGrand which has not been sold out. The Haydon lot was sold prior to the contract and foreclosed afterward, in the name of E. LeGrand Lowther. If E. LeGrand Lowther was the property party to regain title, his interest came from the defaulted purchase. If E. LeGrand Lowther was not the proper party to regain title, equity deems done what ought to be done.

Echo Tango: E. LeGrand Lowther and the Estate of C. E. Lowther, Sr. own some six lots on the Chechessee River in Beaufort County known as Echo Tango Plantation. These were held solely in the name of E. LeGrand Lowther but it was always recognized that C. E. Lowther, Sr., owned a one-half undivided interest in the premises. There are in the record several different versions of an accounting of the Echo Tango monies. While I am sure they were done in good faith, there are in fact a few discrepancies in each version. The first one is called Echo-Tango Draft Interim Accounting. It shows total lot sales from all sources of \$889,606.71. The testimony shows this is incorrect. There was a 1997 deposit of \$20,000.00 paid by Mr. Colburg which is not reflected on that. E. LeGrand Lowther testified that he and his father took that money and spent it on other things, but it is in fact a receipt of monies for Echo Tango that it is not in the accounting. I also have some confusion about some of the deductions claimed. As an example, there is a 1998 payment to Richard Kesselring, a local surveyor, in the amount of \$5,270.00 and there is also a payment to Beaufort Jasper Water and Sewer Authority for

\$16,680.00. There was also mention made of some \$4,000.00 paid to an engineer for initial engineering work. These total slightly less than \$25,000.00 and the testimony was by Mitchell Lowther that he had borrowed that money from First National Bank to cover those amounts. E. LeGrand Lowther testified that he at some point had taken over that note. This leads to the second problem with the accounting. The original First National Bank Note which both Mitchell S. Lowther and E. LeGrand Lowther admitted was in existence and was a source of the money to pay the Kesselring bill, the sewer bill and the engineering work, has been subsumed by a note of some \$35,000.00 also to First National Bank. E. LeGrand Lowther could not produce any receipts of what these tax deductible expenses were. He likewise could not remember a single expenditure of the \$35,000.00. I have to infer that the \$35,000.00 First National Bank Note included in it the original \$25,000.00 that was borrowed from First National Bank to pay the above mentioned expenses. For that reason, I deduct \$25,000.00 from the claimed expenses on the accounting.

Cost of Capital: It has also been presented to me, which I accepted into evidence, a calculation by E. LeGrand Lowther of what his cost of capital was for this project. While the Tedder spreadsheet shows this is approximately \$40,000.00, Mr. Lowther has revised it, and asserts some \$95,000.00. I have struggled with the doctrine of merger, and made several false starts. I have, however, resolved that the agreement as to expenses survives the closing and the reconveyance. It seems ludicrous to me to suggest that a defaulting mortgagor is entitled to interest from the mortgagee. I hold that any implied right to capital cost or interest merged with the conveyance, and would be extinguished through the date of the reconveyance. I make no ruling as to any claim which might arise subsequent to the Plaintiffs being fully restored to the status quo ante.

Remedy: I am somewhat troubled as to the remedy on the escrow balance and otherwise. E. LeGrand Lowther has made it very clear from his testimony that he intends to put no further funds into finishing the development of the other four lots at Echo Tango. He further has not listed them for sale, and apparently has not even determined a sales price if a willing buyer sought to buy one of the lots. He has likewise indicated the same in regard to Wellington, i.e., that he is not going to put any further money into developing the other lots for sale until some distant point in the future, and the lots that are there are not listed with any realtor, nor is there any apparent effort to sell those lots. This is of special concern in regard to Echo Tango, as there is apparently ample money sitting in escrow to finish those lots for sale.

This is a classic example of an impasse. I have the general equitable authority to effectuate a remedy, but no one has sought a partition, in kind or by sale, to end this impasse. As Mr. Lowther has indicated no desire to expend any further funds from Echo Tango, I see no reason not to order the escrow agent to disburse the escrow. Four-sevenths of one-half of this balance (the Estate of C. E. Lowther owns 50%, the Plaintiffs are four of the seven children) belongs to the Plaintiffs, Mitchell S. Lowther, Effie Sandra Lowther, Clayton Clark Lowther and C. E. Lowther, Jr. This is \$45,805.57. The balance shall be applied as a credit to any judgment rendered herein.

Attorney fees: As noted in the prior order, the Contract between the parties provides for attorney fees, the Mortgage between the parties provides for attorney fees, the Note which certainly covers Echo Tango even if there is no mortgage on it, also provides for attorney fees. Again, as noted in the prior Order, the Note by its own terms when into default on December 31, 2006. As of December 31, 2007, nothing had been done. Only when the parties sought legal counsel who in turn made a formal demand for the return of the deeds and an accounting, and in turn filed suit and served the Defendant, did the Defendant proffer the deeds, but not an

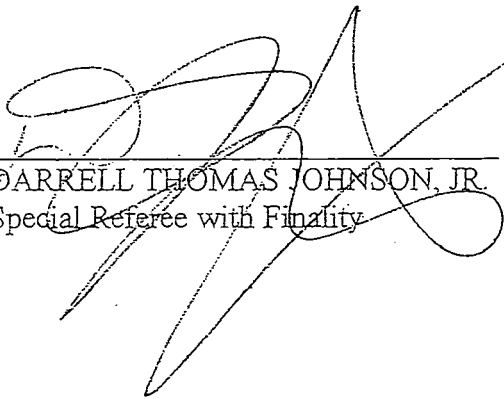
accounting. I think it is both appropriate and the law that they are entitled to recover attorney fees against the Defendant E. LeGrand Lowther, LIMITED TO THE TIME AFTER DEFAULT AND PRIOR TO THE DELIVERY OF THE DEED. I find that the accounting and other matters are governed by the "American Rule" by which each party bears their own attorney fees.

~~Mr. Rivers, attorney for the Plaintiffs, within ten days shall present affidavits as to the amount and value of such services.~~

Based upon the foregoing, it is hereby ordered as follows:

1. That the Plaintiffs are granted judgment against the Defendant E. LeGrand Lowther in the amounts aforesaid.
2. The issue of attorney fees will be held in abeyance pending documents to be furnished by attorney Rivers and supplemental order will be issued.
3. It appears that an appropriate fee for the Special Referee should be \$4,000.00 and should be borne equally by the parties.
4. That should the parties not agree upon the mathematical computations aforesaid, I retain jurisdiction to clarify same.

IT IS SO ORDERED.



DARRELL THOMAS JOHNSON, JR.
Special Referee with Finality

March 15 2010.

EXHIBIT D

State of South Carolina
In the Court of Appeals

APPEAL FROM JASPER COUNTY
COURT OF COMMON PLEAS

DARRELL THOMAS JOHNSON, JR., SPECIAL REFEREE

2008-CP-27-547

MITCHELL S. LOWTHER and
CARMON B. LOWTHER,

Respondent

v.

E. LEGRAND LOWTHER,

Appellant.

NOTICE OF APPEAL

The Appellant, E. Legrand Lowther, hereby appeals the Order of Darrell Thomas Johnson, Jr., Special Referee, dated March 14, 2012, a copy of which is attached hereto. Appellant received written notice of the entry of the Order on March 22, 2012.

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 - facsimile

Beaufort, South Carolina
April 4, 2012

Other Counsel of Record:

R. Thayer Rivers, Jr., Esquire
Attorney at Law
Post Office Box 668
Ridgeland, South Carolina 29936

EXHIBIT E

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Darrell Thomas Johnson, Jr., Special Referee

Case No. 2008-CP-27-547

RECEIVED
MAY 17 2012
SC Court of Appeals

MITCHELL S. LOWTHER
And CARMON B. LOWTHER.....Respondents.

v.

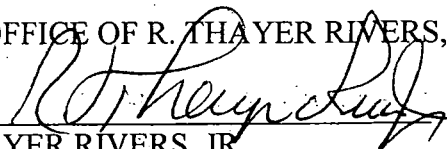
E. LEGRAND LOWTHER.....Appellant.

MOTION TO DISMISS

The Respondents, hereby move to dismiss the Appeal of the Appellant, E. Legrand Lowther in the above matter. This motion is based upon the following:

1. On April 4, 2012, the Appellant, E. Legrand Lowther filed a Notice of Appeal (copy attached), case number 2009-CP-27-547.
2. The above case was previously appealed said appeal being filed on November 2, 2009. This matter was heard by a panel of the Court of Appeals on April 9, 2012. A decision is pending.
3. That the Respondent maintains that the Appellant is not entitled to appeal the same case twice. No appeal of any other matter in the order has been filed ~~and noted~~ and the court would no have jurisdiction to hear anything further on any other issue.

LAW OFFICE OF R. THAYER RIVERS, JR.



R. THAYER RIVERS, JR.

Post Office Box 668

Ridgeland, SC 29936

843-726-8136

Attorney for the Respondents

Ridgeland, SC,
May 14, 2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Darrell Thomas Johnson, Jr., Special Referee

Case No. 2008-CP-27-547

MITCHELL S. LOWTHER
And CARMON B. LOWTHER.....Respondents.

v.

E. LEGRAND LOWTHER.....Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Dismiss on the Appellant E. Legrand Lowther by depositing a copy of same in the United States Mail, postage prepaid, on May 14, 2012, addressed to his attorney of record, H. Fred Kuhn, Jr., Post Office Drawer 507, Beaufort, SC, 29901.

LAW OFFICE OF R. THAYER RIVERS, JR.



R. THAYER RIVERS, JR.
Post Office Box 668
Ridgeland, SC 29936
843-726-8136

Attorney for the Respondents

Ridgeland, SC,

May 14, 2012

EXHIBIT F

The South Carolina Court of Appeals

Mitchell S. Lowther and Carmen B. Lowther, Plaintiffs,

v.

E. Legrand Lowther, Defendant.

C.E. Lowther, Jr., clayton clark Lowther, Mitchell S.
Lowther and Effie Sandra Turpin, Appellants,

v.

E. Legrand Lowther, Respondent.

Appellate Case No. 2012-212168

The Honorable Darrell T. Johnson, Jr.
Jasper County
Trial Court Case No. 2008CP2700151

ORDER

The Appellant filed a Notice of Appeal from Judge Johnson's order dated March 15, 2010. The Notice of Appeal was served April 23, 2012 and received in this office April 25, 2012. It now appears that the Appellant wishes to withdraw the appeal and moves the Court for an Order dismissing the appeal.

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

R. Thayer Rivers, Jr.

H. Fred Kuhn, Jr.

FILED

Warter 6/11/12

EXHIBIT G

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Darrell Thomas Johnson, Jr., Special Referee

Case No. 2008-CP-27-547

RECEIVED
MAY 17 2012
SC Court of Appeals

MITCHELL S. LOWTHER
And CARMON B. LOWTHER.....Respondents.

v.

E. LEGRAND LOWTHER.....Appellant.

MOTION TO DISMISS

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3. That the Respondent maintains that the Appellant is not entitled to appeal the same case twice. No appeal of any other matter in the order has been filed ~~and~~ ~~noted~~ and the court would no have jurisdiction to hear anything further on any other issue.

LAW OFFICE OF R. THAYER RIVERS, JR.


R. THAYER RIVERS, JR.

Post Office Box 668

Ridgeland, SC 29936

843-726-8136

Attorney for the Respondents

Ridgeland, SC,
May 14, 2012

LAW OFFICE
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COURTHOUSE SQUARE
252 RUSSELL STREET
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R. THAYER RIVERS, JR.
ALSO ADMITTED IN GEORGIA

TELEPHONE
(843) 726-8136
TELECOPIER
(843) 726-4401

June 27, 2012

Fred H. Kuhn, Jr., Esquire
Post Office Box 507
Beaufort, SC 29901

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SC COURT OF APPEALS

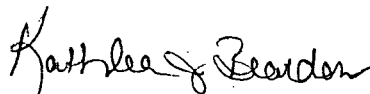
**RE: MITCHELL S. LOWTHER and CARMON B. LOWTHER
v. E. LEGRAND LOWTHER**

Dear Mr. Kuhn:

Enclosed herewith please find a copy of the Respondents' Reply to Appellant's Return to Motion to Dismiss.

Thank you and kindest regards.

Most sincerely,



Kathleen J. Bearden
Paralegal to R. Thayer Rivers, Jr.

:kjb
Enclosure

LAW OFFICE
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June 27, 2012

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

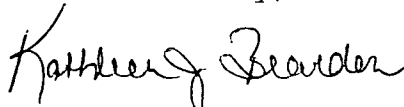
RE: LOWTHER v. LOWTHER
CASE NUMBER: 08-CP-27-547

Dear Ms. Gee:

Please be advised that we received the Appellant's Return to our Motion to Dismiss on June 22, 2012. In this regard, enclosed herewith please find the original and seven (7) copies of the Respondents' Reply to Appellant's Return to Motion to Dismiss. Please return a clocked copy in the envelope provided.

Thank you and kindest regards.

Most sincerely,



Kathleen J. Bearden
Paralegal to R. Thayer Rivers, Jr.

:kjb
Enclosures

cc: H. Fred Kuhn, Jr., Esquire (w/encl.)