

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

SCBT, N.A., Respondent,

v.

Sand Dollar 31, LLC, and Rhonda Meisner, Defendants,

Of Whom Rhonda Meisner is the Appellant.

Appellate Case No. 2012-213558

---

Appeal From Richland County  
Joseph M. Strickland, Master-in-Equity

---

Unpublished Opinion No. 2014-UP-435  
Submitted September 1, 2014 – Filed December 3, 2014

---

**AFFIRMED IN PART AND REMANDED IN PART**

---

Rhonda Meisner, of Blythewood, pro se.

Jason David Wyman and Teri Kimball-Callen Stomski,  
both of Rogers Townsend & Thomas, PC, of Columbia,  
for Respondent.

---

**PER CURIAM:** Rhonda Meisner appeals the master-in-equity's two judgments of foreclosure and denial of her motion to alter or amend the judgment. On appeal, Meisner argues (1) the master erred in awarding attorney's fees; (2) South Carolina

Bank and Trust, N.A. (the Bank) was estopped from valuing the properties less than the amount stated in the Bank's motion to vacate the judicial sale; (3) the master erred in allowing the judgments of foreclosure to be entered before the judicial sale; and (4) the master erred in denying her motion to alter or amend.

At the foreclosure hearing, an employee of the Bank testified to the amount of attorney's fees Meisner, through her personal guaranties, owed on the defaulted loans. According to the employee, Meisner owed \$6,263 in attorney's fees on one note; however, the employee did not testify to the amount of attorney's fees Meisner owed on the other note. Significantly, the Bank did not introduce into evidence affidavits of attorney's fees.

Subsequently, the master issued orders of foreclosure on both properties and personal judgments against Meisner based on the guaranty agreements. The orders required Meisner to pay \$8,000 in attorney's fees on one note and \$6,000 in attorney's fees on the other. In the orders, the master found the attorney's fees were reasonable; however, there is no evidence in the record that the Bank ever filed affidavits of attorney's fees or that the master ever reviewed affidavits of attorney's fees in reaching its conclusions.

We find the master abused its discretion in determining the Bank's attorney's fees were reasonable without first reviewing affidavits of attorney's fees. *See U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 379-80, 684 S.E.2d 199, 207 (Ct. App. 2009) ("Where there is a contract, the award of attorney's fees is left to the discretion of the trial [court] and will not be disturbed unless an abuse of discretion is shown." (internal quotation marks and citation omitted)); *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997) (providing six factors the master should consider when determining a reasonable attorney's fee). Accordingly, we remand this case so the master can award reasonable attorney's fees.

As to Meisner's remaining issues on appeal, we affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the Bank is estopped from valuing the properties less than the amount stated in its motion to vacate: *Cowburn v. Leventis*, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005) ("In order for an issue to be preserved for appellate review, . . . it must be raised and ruled upon by the trial [court].").

2. As to whether the master erred in allowing the judgment of foreclosure to be entered prior to the judicial sale: S.C. Code Ann. § 29-3-650 (2007) ("The court

may . . . render judgment against the parties liable for the payment of the debt secured by the mortgage and direct at the same time the sale of the mortgaged premises."); *id.* ("Upon the sale of the mortgaged premises the officer making the sale under the order of the court shall credit upon the judgment so rendered for the debt the amount paid to the plaintiff from the proceeds of the sale."); *Fed. Land Bank of Columbia v. Davant*, 292 S.C. 172, 178, 355 S.E.2d 293, 296 (Ct. App. 1987) (explaining section 29-3-650 "authorizes the court to render judgment against the parties liable for payment of the debts secured by a mortgage and direct at the same time the sale of the mortgaged premises" (internal citations omitted)).

3. Except as to attorney's fees, the master did not err in denying the Rule 59(e), SCRPC, motion to alter or amend: *Bank of N.Y. v. Sumter Cnty.*, 387 S.C. 147, 159, 691 S.E.2d 473, 479 (2010) ("It is axiomatic that an issue cannot be raised for the first time in a post-trial motion."); *MailSource, LLC v. M.A. Bailey & Assocs.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003) ("A party cannot raise an issue for the first time in a Rule 59(e), SCRPC[,] motion which could have been raised at trial.").

**AFFIRMED IN PART AND REMANDED IN PART.<sup>1</sup>**

**HUFF and SHORT, JJ., and CURETON, A.J., concur.**

---

<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

# The South Carolina Court of Appeals

SCBT, N.A., Respondent,

v.

Sand Dollar 31, LLC, and Rhonda Meisner, Defendants,

Of Whom Rhonda Meisner is Appellant.

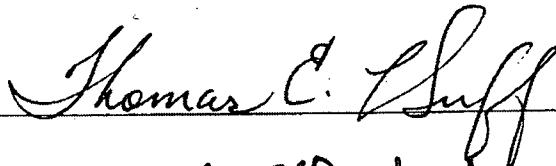
Appellate Case No. 2012-213558

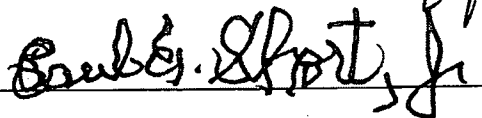
---

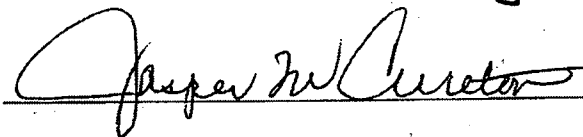
## ORDER

---

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 A. J.

Columbia, South Carolina

cc: Teri Kimball-Callen Stomski, Esquire  
Jason David Wyman, Esquire  
Glenn E. Bowens, Esquire

**FILED**

January 23, 2015

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Joseph E. Strickland, Master in Equity

Appellate Case No. 2012-213558

RECEIVED

DEC 18 2014

SC Court of Appeals

74522

SCBT, N.A.

Respondent,

v.

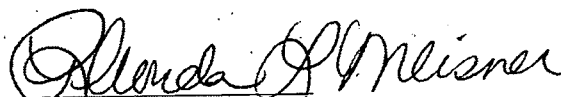
Sand Dollar 31, LLC; Rhonda  
Meisner, of Whom Rhonda  
Meisner is

Appellant.

PETITION FOR REHEARING PURSUANT TO SCACR RULE 220(b)

Rhonda Meisner respectfully requests a rehearing of the Order entered by the Court of Appeals on December 3, 2014 for all of the reasons attached to this motion via memorandum.

December 18, 2014



Rhonda L. Meisner  
Post Office Box 689  
Blythewood, South Carolina 29016  
(803) 960-3696  
Appellant

Other Counsel of Record:  
Jason David Wyman and Teri Kimball-Callen Stomski both of  
Rogers Townsend and Thomas, PC of Columbia  
220 Executive Center Drive  
Columbia, South Carolina 29210  
(803)771-7900

The Appellant, Rhonda Meisner (hereinafter " Meisner" ) respectfully submits this petition for rehearing. The Appellant requests clarification of part of the Order by the Court as well as requests the Court to review certain facts the Appellant may not have presented effectively for the Courts' review. The foreclosure actions against Sand Dollar 31, LLC by the Plaintiff bank SCBT, N.A. (hereinafter "Bank" ) demanded a deficiency judgment pursuant to S.C. Code Ann. §29-3-660. **(R.p. 14) (R.p.51)** Meisner and Sand Dollar 31, LLC pled a counter claim of requesting a declaratory judgment regarding the parties respective rights and liabilities under a note, mortgage and guaranty agreement. **(R.p.53)**. Sand Dollar and Meisner also asserted their rights to obtain an appraisal via the appraisal statutes and the Bank did not object. **(R.p.24 lines 1-2)**. Meisner timely filed an application for appraisal pursuant to S. C. Code Ann.§ 29-3-680.

The Bank's foreclosure suit based on S.C. Code Ann. §29-3-660 by statute requires multiple steps that include 1) the judgment of foreclosure against the mortgagor (Sand Dollar 31, LLC) 2) sale of the mortgaged properties 3) application for appraisal 30 days after the sales of the property (Sand Dollar 31, LLC and Meisner) 4) final valuation of the property by substituting the higher of the appraisal or the sales price of the property in the case to determine the deficiency, if any.

In this particular case, the standard process was interrupted by the Bank's filing of the motion to vacate both deficiency sales prior to the return of the appraisers; which, if granted, would moot the valuation of the property via the appraisal statutes and require the entire judicial sales process to begin again. The

case was further complicated by the fact the Master in Equity did not have a Court reporter available at the November 6, 2014 hearing regarding the motion to vacate and the valuation of the properties. The Master in Equity stated he would hold another hearing when a Court reporter was available to put the hearing on the record. (*Final brief of Appellant* at p. 6 lines 16-22) see also EXHIBIT A (affidavit of Rick Gleissner, Esquire). At the conclusion of the November 6, 2014 hearing, the Master in Equity, in front of all of the participants, signed an Order denying the Motion to Alter and Amend the Judgment amounts against Rhonda Meisner which were previously entered for the full amount of the foreclosure judgments against Sand Dollar 31, LLC by the Bank; therefore, requiring appeal within 30 days of the Order.

### ARGUMENT

#### July 18, 2012 Motion to Alter and Amend Hearing

While the Motion to Alter and Amend was entitled as a S.C. Rules of Civ. P. Rule 59-e motion; the body of the motion *also referenced* as did the memorandum in support a S.C. Rules of Civ. P. Rule 60 motion for relief from judgment. (**R.p. 30¶ 2**) In a Rule 60, motion in a judge alone trial a judge can re-open testimony and take new evidence based on mistake of the parties or inadvertence which the Judge did when he stated at the July 18, 2012 motion hearing "[M]aybe with regard to the limitations and the guaranty agreement, I might benefit from a more fleshed out brief on that issue." (**R.p.107 at 22**). Mr. Bowens also reiterated to the Court that the guaranty was first pled as part of the answer and counterclaim to the mortgage foreclosure action; requesting a

declaratory judgment on the guaranty agreement. (R.p.94 at 11-21) Additionally, a court of equity having assumed jurisdiction of the cause will retain and dispose of all issues pled. *Holly Hill Lumber Co. v. McCoy*, 203 S.C. 59, 26 S.E. 2d 175, 148 A.L.R. 285 (1943). Additionally, the Judge ruled the appraisal process should begin. (R.p. 108 at 1-23). The Court additionally ruled that the deficiency had not been determined. (R.p.109 at 22-25)

The Statutes for foreclosure are different for Mortgagors and for Guarantors. The amounts of the judgments entered in the public roles should be done in accordance with the form 4 instructions which reflect the intent of the statute the foreclosure suit relied on or more specifically S.C. Code Ann. §29-3-660 ( Deficiency Judgment). This process protects the rights of the parties so as not to prejudice the parties during the pendency of the entire multi-step procedure. While S.C. Code Ann §29-3-650 states the Court may render judgment against the parties liable for the payment of the debt *secured by the mortgage* and order sale of the premises at the same time that was referenced in the Court of Appeals Order of December 3, 2014. The S.C. Code Ann. §29-3-650 is silent as to non-mortgagors. Here, the bank initiated a foreclosure action under S.C. Code Ann §29-3-660 which states:

In actions to foreclose mortgages the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage *and if the debt be secured by the covenant or obligation of any person other than the mortgagor* the plaintiff may make such person a party to the action and the court may adjudge payment of the *residue of such debt* remaining unsatisfied *after a sale of the mortgaged premises* against such

other persons and may enforce such judgment as in other cases.(emphasis added by Appellant)

Here the only mortgagor was Sand Dollar 31, LLC as Meisner signed the Mortgage loan in her capacity as member of Sand Dollar 31, LLC which was noted above the signature line on the mortgage **(R.p.44)** The difference between the two statutes (S.C. Code Ann. §29-3-650 and §29-3-660) reflects the legislative intent in mortgage foreclosure proceedings that require a deficiency and *have persons or entities other than* the mortgagor potentially responsible for the debt .(emphasis added by Appellant). In non-deficiency cases there would be no judgment enrolled other than the judgment of foreclosure because the amount is satisfied with the foreclosure of the property. The best evidence of legislative intent is the text of the statute. *Wade v. State* 348 S.C. 255, 259, 559 S.E. 2d 843, 844 (2002) (internal quotations and citations omitted.)

The Master in Equity, the Honorable Joseph Strickland, contrary to the statute sued upon (better known as the deficiency statute)(S.C. Code Ann. 29-3-660)**(R.p.17 at ¶18)**, contrary to his instructions to the Bank in his Order of Foreclosure **(R.p.19 at ¶ 33)**, and contrary to the Form 4 instructions **(R.p. 203)** allowed the Bank to enter judgments against Meisner prior to the judicial deficiency sale and prior to the determination of the value of the property via the appraisal statutes. The Form 4 plainly states that when an order of foreclosure is filed, neither the parties nor debt owed should be listed in the information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-

650 of the SC Code. **(R.p.204 at 10)** Since the foreclosure was initiated under S.C. Code Ann. §29-3-660 the entry of the full judgment amounts against the guarantor Rhonda Meisner was in error.

Therefore, the form 4 instructions reflect the language in the deficiency statute and protect the rights of the Defendants throughout the process of being "saddled" with excess debt for which they are not responsible. This is an important point for the citizens of South Carolina because if they have had a temporary set-back; premature entry of a judgment exacerbates their injury by attaching to other properties and inflating the amount (which will eventually be reduced by the judicial sale credits and further reduced if not eliminated by the appraisal of the property.) This is critical if equity from other properties is needed to refinance and prevent other owned properties to be damaged other than those contemplated in the agreement of the parties. In this appeal, the evidence reflects Meisner signed the guaranty agreement for the loan but was never the mortgagor of the loan.

Importantly, neither the evidence before the Court via the testimony of the witnesses (Ms. Wolfman for the bank or Ms. Meisner) nor the guaranty agreement itself gave evidence as to the capacity under which Ms. Meisner was operating when she signed the guaranty agreement that is, as the member of Sand Dollar 31, LLC or in her individual capacity. Ms. Wolfson's testimony regarding the note, mortgage and guaranty agreement is found in the record. **(R.p.68 lines 4-25;69 lines 1-13)** Ms. Wolfson or the documents do not reflect that Ms. Meisner was acting on her own behalf instead of Sand Dollar 31, LLC in her

testimony. Ms. Meisner's only reference to her relationship with Sand Dollar 31, LLC is in the following interchange:

Q: And explain your relationship to Sand Dollar 31, LLC.  
A: I'm the member of Sand Dollar 31, LLC<sup>1</sup>.

If the Court denied the motion to alter and amend and the motion to reopen the case to review the terms and intent of the guaranty agreement, then the Plaintiff Bank, during the foreclosure hearing, did not show how Ms. Meisner in her individual capacity under the guaranty agreement owes the amounts Sand Dollar 31, LLC borrowed as the language in the guaranty does not implicate Meisner in her individual capacity; she is the signatory on the Guaranty agreement for the account of Sand Dollar 31, LLC (**R.p.48**) *Dutch Fork Development Group II, LLC and Dutch Fork Realty, LLC v. SEL Properties, LLC and Stephen E. Libscomb of whom Stephen E. Libscomb is the Appellant*. Opinion number 27139 Heard May 2, 2012- refiled August 22, 2012.

Also S.C. Code Section 33-44-303(a) provides:

Except as otherwise provided in subsection (c), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.

If the Court of Appeals rules that the foreclosure hearing was not properly re-opened via the S.C. Rules of Civ. P. Rule 60 motion by the Master in Equity, then the record during the foreclosure hearing and properly before the Court does not implicate Ms. Meisner's personal responsibility for the debts of Sand Dollar

---

<sup>1</sup> R. p.73 at lines 18-23

31, LLC to any degree via the guaranty agreement. The judgment amounts entered as a result of the foreclosure hearing are inaccurate based on the deficiency statute as well as the fact the Bank during the foreclosure hearing did not prove or show how Ms. Meisner owes individually for Sand Dollar 31, LLC's debts via the guaranty agreement as it does not indicate the capacity of Ms. Meisner and only indicates she signed the agreement "for the account" of Sand Dollar 31, LLC. Additionally, the guaranty agreements that were part of the foreclosure hearing were in the amounts of \$31, 140 and \$36, 000. (R. p. 31;p. 48-49) The fact the guaranty agreements themselves did not reflect the capacity of Ms. Meisner was argued in the initial appellate brief. **Final Brief of Appellant,(R.p. 22 at12-20)**

#### **THE BANK'S MOTION TO VACATE THE SALE OF THE PROPERTIES**

The Bank initiated a motion to vacate the sale on September 6, 2012 during the Appraisal process. (R.p.260) This action had the effect of interrupting the appraisal process as a grant of the Bank's motion to vacate the sale would moot the appraisal.

#### **NOVEMBER 6, 2012 HEARING WITHOUT A COURT REPORTER**

The Master in Equity approximately 4 weeks prior to the hearing scheduled on November 6, 2012 sent out a notice of hearing to rule on the Motion to Vacate the sale. Unfortunately due to the presidential elections a Court reporter was not available so the motion to vacate the sale while discussed was not ruled on. This ruling was required prior at the same time as the hearing to the value the properties; otherwise a favorable ruling for the Defendants on the Motion to

Vacate the sale would moot the need for valuation of the properties as the process would need to begin again at the auction phase. The Master in Equity stated a new hearing would be held if necessary on the record. At the end of the hearing the Master in Equity denied motion to alter and amend the judgments submitted on June 7, 2012 and entered prior to the sale of the mortgaged properties; thereby allowing the judgments to stand.

The denial of the motion to alter and amend the judgments required appeal of the denial within 30 days or risk losing the ability to appeal the inaccurate amounts. The motion to vacate the sale was dismissed by the Plaintiffs in July of this year (2014). As a result of the circumstances and timing of this case, the Appellant Rhonda Meisner respectfully requests the Court of Appeals Reverse and Remand the Judgment against her considering the above arguments or in the alternative clarify that the Court of Appeals Order did not include a determination of the issues still under review by the Master in Equity such as the motion to vacate the sale and the valuation of the properties under the appraisal statute. The simultaneous deferral of ruling on key issues until the Court reporter was available and the Master in Equity's denial of the motion to alter and amend the judgment entered against Meisner (which was effectively a ruling on the outstanding issues) was erroneous based on the evidence of the foreclosure hearing. The irregularity of proceedings based on the lack of a Court Reporter at a noticed hearing for Bank's Motion to Vacate the Sale further provides evidence that the Court should remand the judgment to prevent a violation of Due Process in the Courts. The Appellant respectfully requests the Court of Appeals to

review the difference between the Statutes S.C. Code Ann. §29-3-650 and S.C. Code Ann. §29-3-660 and the reporting process as well as the record before the Court at the Foreclosure hearing with regard to Meisner's purported liability. Alternatively, the Appellant requests you review the remand for the case for a final determination of the entire liability of the parties based on the award of attorney fees, the guaranty agreement, the appraisal statutes and the motion to vacate the sale arguments. The Appellant Rhonda Meisner respectfully requests oral argument if the Court finds it appropriate.

Respectfully submitted



Rhonda Meisner, Plaintiff  
Post Office Box 689  
Blythewood, SC 29016  
(803)960-3696  
pegasus333@icloud.com

December 18, 2014

EXHIBIT A

Affidavit of Attorney

Rick Gleissner

re:

November 6, 2012

Hearing without a Court  
Reporter

**APPELLATE CASE #2012-213558**

**AFFIDAVIT OF ATTORNEY RICHARD R. GLEISSNER**

1. My name is Richard R. Gleissner and I am a practicing attorney and officer of the Court with South Carolina bar #15139.
2. I represented South Carolina Operating Room Equipment, LLC (hereinafter "SCORE") at the motion to vacate the foreclosure sale. This motion was filed by the Plaintiff's foreclosure action, captioned SCBT, N.A. against Defendants Sand Dollar 31, LLC and Rhonda Meisner with civil action number 2011-CP-40-06317. The hearing was held on November 6, 2012.
3. I received notice of the motion hearing from Rhonda Meisner who engaged me on behalf of SCORE to represent it at the hearing on the motion to vacate the sale even though SCORE had not been named by the bank.
4. Presiding at the hearing was the Honorable Joseph Strickland, Master in Equity for Richland County, and present at the hearing was Terri Stomski, attorney for SCBT, N.A., Glenn Bowens, attorney for Sand Dollar 31, LLC, Rhonda Meisner and myself.
5. The Master in Equity opened the hearing with the statement that he did not realize he would be without a court reporter due to the presidential election. He indicated that another hearing would be scheduled where the issues could be put on the record.
6. As part of the motion to vacate the sale, SCBT, N.A. argued the value of the property should be the amount of the mortgage, ~~that~~ the amount of the



AT

final bid was significantly less than the value as determined by the amount of the mortgage and that the sale should be set aside because of (a) this difference between the value and amount of the bid and (b) Rhonda Meisner was the sole member of SCORE.

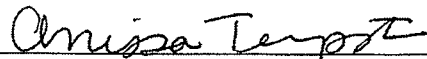
7. The determination of the final value of the property was not decided at this hearing nor was the motion to vacate the sale decided; both issues were deferred until a hearing with a Court reporter could be reconvened.
8. My understanding is that the issue of the valuation of the property was not presented to the Master in Equity for his ruling during the hearing because we did not have a court reporter.
9. On or about July 9, 2014, SCBT, N.A. withdrew its motion to vacate the sale and removed the lis pendens from the property.

Further Affiant Sayeth Not



Richard R. Gleissner, Esquire  
S.C. Bar Number 15139  
Gleissner Law Firm, L.L.C.  
1237 Gadsden Street, Suite 200A  
Columbia, South Carolina 29204  
(803) 787-0505  
Attorneys for the Purchaser  
South Carolina Operating Room Equipment, LLC

SWORN TO AND SUBSCRIBED before me on  
this 15<sup>th</sup> day December, 2014



Notary Public for South Carolina

My commission expires: 03-19-2021

RECEIVED

DEC 18 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Joseph E. Strickland, Master in Equity

Appellate Case No. 2012-213558

SCBT, N.A.

Respondent,

v.

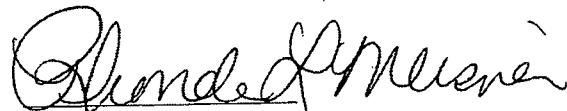
Sand Dollar 31, LLC; Rhonda  
Meisner, of Whom Rhonda  
Meisner is

Appellant.

PROOF OF SERVICE PETITION FOR REHEARING JUDGEMENT OF  
DECEMBER 3, 2014

Rhonda Meisner, Appellant has effected service on the following parties by placing a copy of the motion and memorandum in the mail to the following parties at the following addresses US mail postage pre -paid this day. Jason David Wyman and Teri Kimball-Callen Stomski both of Rogers Townsend and Thomas, PC of Columbia 220 Executive Center Drive Columbia, South Carolina 29210 (803)771-7900

December 18, 2014



Rhonda L. Meisner  
Post Office Box 689  
Blythewood, South Carolina 29016  
(803) 960-3696  
pegasus333@icloud.com  
Appellant