

APPENDIX

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas, Master-in-Equity

S.C. Supreme Court

Joseph E. Strickland, Master-in-Equity

APPELLATE CASE NO.2012-213558 (CONSOLIDATED)

SCBT, N.A,

Respondent,

v.

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

PETITIONER

SOUTH CAROLINA SUPREME COURT APPENDIX VOLUME II

Rhonda Meisner, Petitioner
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Pro-Se Petitioner

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS
DOCKET NO. 11-CP-40-6317
DOCKET NO. 11-CP-40-6318

MEMORANDUM OF LAW
GUARANTY AGREEMENT

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During a hearing held on July 18, 2012, the Court requested the parties brief the issue of the application of the Guaranty Agreements with regard to the liability of Rhonda Meisner ("Meisner") on any deficiency judgment. Meisner presents this Memorandum of Law regarding the interpretation and application of the Guaranty Agreements in the above captioned cases.

The Defendants' Answer & Counter Claim asked for a declaratory judgment to determine the parties' rights and liabilities under the Note, Mortgage and Guaranty Agreement and to determine the rights and obligations of the parties with respect to the amount of the deficiency judgment requested by the Plaintiff. The Guaranty Agreements placed monetary limitations on Meisner's personal liability. Meisner sought this declaratory judgment because she wanted to make certain that, should there be a deficiency judgment, her liability did not exceed those limitations.

During the trial of Civil Action 11-CP-40-6317 and 11-CP-40-6318, held on April 25, 2012, the Plaintiff presented two Guaranty Agreements executed by Meisner guaranteeing payment of the two promissory notes between the Plaintiff and Sand Dollar 31, LLC. Meisner claims her maximum liability for a deficiency judgment based on these Guaranty Agreements is \$31,140.00 for the loan in 11-CP-40-6317 (Exhibit 1) and \$36,000.00 for the loan in 11-CP-40-6318 (Exhibit 2), as provided in the two respective Guaranty Agreements; Meisner requests the Court issue a declaratory judgment to that effect and order that the indexing of any judgment against Meisner in the public record reflect these monetary limits.

Meisner claims that the purpose of the Guaranty Agreements and the intent of the parties was to guarantee the Plaintiff received a minimum of \$31,140.00 for the loan in 11-CP-40-6317 and a minimum of \$36,000.00 for the loan in 11-CP-40-6318. These amounts represent the money actually loaned by the Plaintiff to Sand Dollar 31, LLC. Meisner also claims that if the high bid at the foreclosure sale or the appraised value equal or exceed those amounts, then her liability under the Guaranty Agreements will be satisfied as the Plaintiff will have received the minimum amounts provided in those agreements.

Meisner bases her claim that the Guaranty Agreements limit her liability to \$36,000.00 and \$31,140.00 on three basic grounds. First, the Guaranty Agreements specifically state the maximum dollar amount in paragraph A. Second, paragraph 4 provides that the guarantor is liable for "all indebtedness, without limitation as to amount" if "no amount is stated." However, since an amount is stated, i.e. \$31,140.00 and \$36,000.00, then the guaranty is limited to those amounts. Third, this was the understanding of the parties at the time the Guaranty Agreements were made, based on representations made by the Plaintiff to the effect that the amount guaranteed was the dollar amount stated in the agreement.

The Plaintiff disagrees with Meisner's interpretation of the Guaranty Agreements and claims she owes \$63,734.92 in 11-CP-40-6317¹ and \$43,220.45 in 11-CP-40-6318; these amounts represent the money actually loaned to Sand Dollar **plus** other debts allegedly incurred by Sand Dollar in the form of attorney fees, interest, corporate charges, late charges, taxes, escrow advances, costs of litigation and other charges.² The Plaintiff bases these claims on its interpretation of paragraph 4 of the guaranty; however, paragraph 4 is in conflict with paragraph A. The Plaintiff's interpretation of Paragraph 4 reveals an inherent ambiguity between paragraph 4 and paragraph A.

¹ This amount represents more than double the amount identified in the Guarantee Agreement.

² Meisner not only claims that she is not liable for these debts, but that no evidence was introduced for many of these debts at the hearing on April 25, 2012.

Guaranty agreements are contracts³ and their interpretation is governed by the same contract law principles as any other contract. The South Carolina Court of Appeals has held:

A contract is ambiguous when the terms of the contract are reasonably susceptible to more than one interpretation.

The uncertainty in interpretation can arise from the words of the instrument, or in the application of the words to the object they describe.

Whether a contract is ambiguous must be determined from the entire contract and not from any isolated clause of the agreement. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 672 S.E.2d 799 (Ct.App.2009) (internal citations omitted)

When a contract is susceptible of more than one interpretation, the non-drafting party is given the benefit of the ambiguity. The South Carolina Supreme Court has held:

It is generally held that an ambiguity in a written contract should be construed most strongly against the drafters. We quote, with approval, the following from 17A C.J.S. Contracts § 324:

"(A)mbiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage.

The reason for the rule of strict construction against the party preparing the contract is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes in meaning more than one, with whom he is dealing, and that he who has brought the agreement into existence and is thus primarily responsible for its inadequacy should justly suffer for its shortcomings."

Myrtle Beach Lumber Company, Inc. v. Willoughby, 276 S.C. 3, 274 S.E.2d 423 (S.C. 1981).

There is no dispute that the Guaranty Agreements at issue were drafted and prepared by the Plaintiff. Based on the Supreme Court's holding, the ambiguity must be resolved in favor of Meisner. The parties' conflicting interpretations requires the Court to interpret the agreement and issue a declaratory judgment. When a written contract is ambiguous extrinsic evidence may be admitted to determine the parties' intent. Duncan v. Little, 384 S.C. 420, 682, S.E.2d 788 (2009).

³ Transouth Financial Corp. v. Cochran, 324 S.C. 290, 478 S.E.2d 63 (Ct. App. 1996)

The Guaranty Agreements in the two cases are pre-printed forms and are identical with the exception of the dates and dollar amounts. Both Guaranty Agreements contain two options, Paragraph A and B, with a box beside each paragraph, one of which is to be marked with an "X". Paragraph A was marked in both 11-CP-40-6317 and 11-CP-40-6318. Importantly, Paragraph A limited the amount guaranteed to \$31,140.00 (11-CP-40-6317) and \$36,000.00 (11-CP-40-6318) respectively. On the other hand, Paragraph B, which was **not checked**, required payment by the guarantor of:

...each and every debt, liability and obligation of **every type and description** which Borrower may now or at any time hereafter owe to lender (**whether such debt, liability or obligation now exists or is hereafter created or incurred**, and whether it is or may be direct or indirect, due or to become due, **absolute or contingent**, primary or secondary, liquidated or unliquidated, or joint, several or joint and several; all such debts, liabilities and obligations being hereinafter collective referred to as the "indebtedness"). (emphasis added)

The Plaintiff's claim that Meisner is liable for payment of Sand Dollar's debts beyond the \$31,140.00 and \$36,000.00 stated in the guaranty are exactly the type of debts contemplated by Paragraph B; at the time the Guaranty Agreement was executed these other debts:

- (1) did not exist;
- (2) they were neither created nor incurred;
- (3) were indirect and secondary to the amount borrowed;
- (4) were contingent and had not yet become due.

The Plaintiff wants to focus just on paragraph 4; however, when interpreting a contract the contract must be read as a whole, without focusing on any single provision to determine the contract's meaning. Pee Dee Stores, at 242. Paragraph 4 must be interpreted in light of paragraphs A and B. The Plaintiff's argument that paragraph 4 makes Meisner liable for these additional debts would make more sense if Paragraph B had been checked; however, the parties did not check Paragraph B. Even under the Plaintiff's interpretation that the specific dollar amount stated in the Guaranty

Agreement referred to the amount of "principal" guaranteed, the Plaintiff still claims \$48,698.20 is due in principal in 11-CP-40-6317, when the Guaranty Agreement only provided for \$31,140.00, which is over \$17,000.00 more in principal than the Plaintiff is allowed under its own interpretation of the agreement.

The question before the Court is whether the Guaranty Agreements place a monetary limitation on Meisner's personal liability (as claimed by Meisner) or whether Meisner's liability is unlimited (as claimed by the Plaintiff). The South Carolina Court of Appeals has held:

Although not yet decided in South Carolina, in the absence of an express limitation of an amount of a guaranty as a general rule the amount of the liability, or, in other words, the measure of damages, on a default by the principal obligor is that amount of loss which the guarantee has sustained by reason of such default ... PPG Industries, Inc. v. Orangeburg Paint Center, Inc., 297 S.C. 176, 375 S.E.2d 331 (Cl. App. 1988)

The Guaranty Agreements in these cases do place "an express limitation of an amount" i.e. \$36,000.00 and \$31,140.00. If the parties intended for her liability to extend beyond the stated dollar amounts then paragraph B would have been marked. Based on the holding in PPG Industries, and Myrtle Beach Lumber Company, the ambiguity created by paragraph 4 and paragraph A must be resolved in Meisner's favor.

Amount of Personal Liability for a Deficiency Judgment

The Court must also enter a deficiency judgment if the appraisal values the property less than the amount of the Guaranty Agreements. Meisner requests the Court take the following factors into consideration when deciding the amount of any deficiency judgment.

In 11-CP-40-6317, the Plaintiff claims attorney fees in the following amounts: (1) \$3,321.00; (2) \$2,679.00; and (3) an undisclosed amount for attorney fees under the category of "Allowable Advances." The Plaintiff claims over \$6,000.00 in attorney fees related to the Linden Street property. This same property was previously foreclosed upon and this Court awarded \$2,900.00 in attorney fees, less than one half the amount being claimed in the present case.

Moreover, the Plaintiff has not filed an affidavit of attorney fees with an itemized statement so that the Court can evaluate the reasonableness of the fees as required by Supreme Court's holding in Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997).

The Plaintiff also claims \$4,303.80 under the category of "Allowable Advances." The Plaintiff lists as "Allowable Advances": "escrow advances," "corporate charges," "paid costs and expenses from the foreclosure action," and an ambiguous charge for "other charges." The Plaintiff did not separately identify the amounts allocated from the \$4,303.80 for each of these charges. There was no evidence at the hearing that supports the claims for "corporate charges" or "other charges." The Plaintiff also claims reimbursement for taxes in the amount of \$1,681.42. This claim appears to be duplicative with the claim for "escrow advances" in that the "escrow" is typically for taxes and insurance. Moreover, there is evidence that the taxes were not paid.

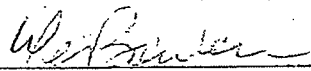
Second, in Civil Action # 11-CP-40-6318 the Plaintiff claims attorney fees in the following amounts: (1) \$4,924.00; (2) \$3,0760.00; and (3) an undisclosed amount for attorney fees under the category of "Allowable Advances." The Plaintiff lists as "Allowable Advances": "escrow advances," "corporate charges," "expenses from the foreclosure action" and an ambiguous charge for "other charges." The Plaintiff did not separately identify the amounts allocated from the \$6,263.60 for each of these charges. Moreover, there was no evidence at the hearing that supports the claims for "corporate charges" or "other charges." Without an affidavit of attorney fees and an itemized statement it is impossible for the Court to evaluate the propriety and reasonableness of these claimed charges as required by the Supreme Court's holding in Jackson, Id.

Conclusion

The differing interpretations of the parties shows there is an ambiguity in the Guaranty Agreement between paragraph 4 and paragraphs A and B. Under South Carolina law, when a contract is ambiguous, as is the case with these Guaranty Agreements, the ambiguity is construed most strongly against the party that drafted the agreement. Since there is no dispute that the Plaintiff drafted the Guaranty Agreement the ambiguity must be resolved in Meisner's favor. The Court should issue a declaratory judgment that the Guaranty Agreements and Meisner's personal liability are limited to \$31,140.00 and \$36,000.00 respectively and that if the appraisal values the property at an amount equal to or greater than these amounts that Meisner's personal liability under the Guaranty Agreement is satisfied.

The Plaintiff has not filed an affidavit of attorney fees or an itemized statement of the attorney fees and costs with the Court. Under these circumstances, the Court cannot evaluate the reasonableness of those fees and costs. The Court should require the Plaintiff to file an affidavit of attorney fees and costs and give the Defendant an opportunity to object as to the reasonableness of the Plaintiff's claim before awarding any attorney fees and costs as part of the deficiency judgment.

Respectfully submitted,



Glenn Bowens, Esq.
PO Box 424
Winnsboro, S.C. 29180
Attorneys for Defendant

August 10, 2012

GUARANTY

DRANKERBURG

SOUTH CAROLINA

JULY 24, 2006

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce SOUTH CAROLINA BANK AND TRUST NA therein, with its participants, successors and assigns, called "Lender", at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of SAND DOLLAR 31, LLC

herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: NOTE DATED 07-24-2006 IN THE AMOUNT OF \$31,140.00 IN THE NAME OF SAND DOLLAR 31, LLC and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debts:

The Undersigned further acknowledges and agrees with Lender that:
1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured, if the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$31,140.00. If unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount, plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, offset or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____.

☐ secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

RHONDA MESSNER

"Undersigned" substituted to agree to the terms of this guaranty, severally and jointly.

DEFENDANT'S EXHIBIT

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all indebtedness; (ii) any one or more extensions or renewals of indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower; any delay or lack of diligence in the enforcement of indebtedness; or any failure to institute proceedings, file a claim, give any required notice or otherwise protect any indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any indebtedness; (v) any discharge of any evidence of indebtedness or the acceptance of any instrument in renewal thereof or substitution thereof; (vi) any failure to obtain collateral security (including rights of setoff) for indebtedness, or to sue to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon indebtedness; (x) any election by the Lender under § 111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay indebtedness even though any other person obligated to pay indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such indebtedness as fully as if such application had never been made.

10. Until the obligations of the Borrower to Lender have been paid in full, the Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing indebtedness. Lender shall not be required first to resort for payment of the indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this provision or application of this guaranty or declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

GUARANTY

DRAGONER LLC Cola SOUTH CAROLINA
(City) (State)

JULY 24, 2008

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce SOUTH CAROLINA BANK AND TRUST, NA (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of SAND DOLLAR 31, LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: NOTE DATED 07-24-2006 IN THE AMOUNT OF \$35,000.00 IN THE NAME OF SAND DOLLAR 31, LLC and any extensions, renewals or replacements thereof hereinafter referred to as the "indebtedness".

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "indebtedness"). Without limitation, this guaranty includes the following described debt(s): _____

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetency of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 35,000.00 (unlimited or if no amount is stated, the Undersigned shall be liable for all indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the indebtedness and securing the payment of the indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, effect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

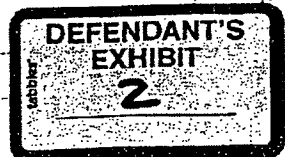
This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____
☐ secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

Rhonda Meisner
RHONDA MEISNER

"Undersigned" shall refer to all persons who sign this guaranty, jointly or jointly.



ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantee, accommodation parties or sureties for any or all indebtedness; (ii) any one or more extensions or renewals of indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any indebtedness; (v) any discharge of any evidence of indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon indebtedness; (x) any election by the Lender under §111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay indebtedness even though any other person obligated to pay indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy portion interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such indebtedness as fully as if such application had never been made.

10. Until the obligations of the Borrower to Lender have been paid in full, the Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing indebtedness. Lender shall not be required first to resort for payment of the indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor, or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, and shall bind upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

Page 2 of 23

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS
DOCKET NO. 11-CP-40-6317
DOCKET NO. 11-CP-40-6318

CERTIFICATE OF SERVICE

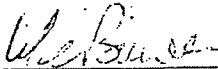
2012 AUG 10 PM 4:04
JEANETTE W. McBRIDE
C.C.P. & G.S.

FILED

I, Glenn Bowens, attorney for the Defendant, do hereby certify that I have this day served a copy of the foregoing **Memorandum of Law** in connection with the above referenced case by hand delivery to:

Terri Stomski
Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

This the 10th Day of August 2012 A.D.


Glenn Bowens

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
DOCKET NO. 2005-CP-40-4750

CitiBank, N.A., as Trustee Under the Pooling
and Servicing Agreement dated as of November
30, 2001, Series 2001-I,

Plaintiff,

vs.

Johnny C. Rumsey, also known as Curtis Rumsey,
individually and as heir at law of Edye Pauline
Rumsey, Deceased, and any heirs-at-law or
Distributees or Personal Representatives and
their spouses, if any they have, and all other
persons with any right, title or interest in and to
the real estate commonly known as 4824 Linden
Street, Columbia, South Carolina; also any
unknown adults and those persons who may be
in the military service of the United States of
America, all of them being a class designated as
John Doe; and any unknown minors or persons
under a disability being a class designated as
Richard Roe; and CitiFinancial, Inc., formerly
known as Commercial Credit Corporation; and
Paragon Way, Inc., formerly known as TX Collect,
Inc.,

Defendants.

MASTER's REPORT

AND
JUDGMENT

OF
FORECLOSURE

AND
SALE

(Deficiency Waived)

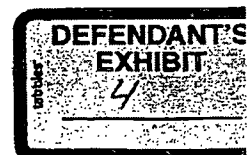
Notice: The original of this document was
filed in the Office of the Clerk of Court for
Richland County, and copies forwarded
to the following on the same date to:

Mr. Kevin T. Brown of the firm of McDonald,
McKenzie, Rubin, Miller and Lybrand, L.L.P.,
as Attorney for the Plaintiff.

Mr. Pearce W. Fleming of the firm Pearce
W. Fleming, PA., as Guardian ad Litem for
the unknown Defendants who are minors
or under a legal disability and as Attorney
for unknown Defendants who are in the
military service of the United States of
America.

Pursuant to Rule 53 SCRCP, the above-entitled matter was referred to the undersigned to
make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the
cause. Any appeal from this Order is to the South Carolina Supreme Court or the South Carolina Court of
Appeals as appropriate.

Pursuant to the said Order of Reference, a hearing was held, attended by the attorneys of
record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find,
conclude, and order as follows:



10. On June 27, 2000, First Union Home Equity Bank, N.A., merged into First Union Bank of Delaware, with First Union Bank of Delaware being the surviving corporation, as shown by records on file with the Federal Reserve System.

11. On June 27, 2000, First Union Bank of Delaware, changed its name to First Union National Bank of Delaware.

12. On April 1, 2002, First Union National Bank of Delaware changed its name to Wachovia Bank of Delaware, N.A.

13. Upon information and belief Edye Pauline Rumsey died intestate on January 10, 2005, and leaving surviving her as her sole heir at law the Defendant Johnny C. Rumsey, also known as Curtis Rumsey.

14. Plaintiff has acknowledged that it has no knowledge of all of the actual heirs-at-law, next of kin, or devisees of Edye Pauline Rumsey, deceased, and therefore this action is directed to her administrators, executors, representatives, heirs-at-law, next of kin, and devisees, and all persons known and unknown who may claim an interest in or lien upon the subject property, and including those person who may be minors, under disability, or in the Military Service of the United States of America, for the purpose of litigating the title thereof. One or more of said Defendants may be deceased and any interest in or lien upon the subject property that they may have had or claimed to have had may have passed to administrators, executors, representatives, heirs-at-law, next of kin, and devisees, none of whom are known to the Plaintiff. There may be other persons unknown to the Plaintiff claiming rights, titles, estates, interest in or liens upon the subject property. All such unknown persons have been made parties defendant herein and all minors, and persons otherwise under disability, among them have been as a class designated as Richard Roe and persons in the Military Service of the United States of America among them are a class designated herein as Defendant John Doe, so that they can present and prove any such adverse claim or be forever barred from doing so. No one had come forward to present and prove an adverse claim.

15. By Assignment dated September 26, 2005, recorded October 4, 2005, in Record Book 1105 at page 1533, in the Office of the Register of Deeds for Richland County, Wachovia Bank of Delaware, N.A., assigned and transferred the subject Note and Mortgage to CitiBank, N.A., as Trustee

herein, and interest after the date of judgment at the rate of 9.96% per annum (pursuant to the terms of the note and mortgage), on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

20. The Plaintiff is seeking foreclosure of the mortgage and has in writing expressly waived the right to a personal or deficiency judgment pursuant to Rule 71(b) SCRPC.

21. The Defendant CitiFinancial, Inc., formerly known as Commercial Credit Corporation, has or may claim to have some interest in or lien upon the subject property by virtue of that certain Mortgage in the amount of \$15,395.84 given to Commercial Credit by J. Curtis Rumsey and Edye P. Rumsey, dated May 18, 1994, recorded May 18, 1994, in the Office of the Register of Deeds for Richland County in Mortgage Book M1738 at page 155; in the Complaint, the Plaintiff alleged that the debt secured by said mortgage has been paid in full and that said mortgage no longer constitutes a lien on the subject property; the Defendant CitiFinancial, Inc., formerly known as Commercial Credit Corporation, has not appeared in this action to contest said allegations which are deemed to be correct.

22. The Defendant Paragon Way, Inc., formerly known as TX Collect, Inc., has or may claim to have some interest in or lien upon the subject property by virtue of that certain judgment in the amount of \$1,614.24, obtained by TX Collect, Inc., against Edye Rumsey, filed August 17, 2004, in Judgment Roll Number 255663, in the Office of the Clerk of Court for Richland County; the interest or lien of the Defendant Paragon Way, Inc., formerly known as TX Collect, Inc., if any, is junior and subordinate to the lien of the Plaintiff's mortgage.

23. Pearce W. Fleming, Esquire, a member of South Carolina Bar, has been appointed attorney for each unknown Defendant who is in the military service within the meaning of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and he has filed an Answer, appeared, and actively participated herein for such unknown Defendants. The sum of \$150.00 is a reasonable fee to allow for such attorney's services rendered herein until final adjudication of the within action.

24. Pearce W. Fleming, Esquire, a member of the South Carolina Bar, has been appointed Guardian ad Litem for each unknown Defendant who is a minor or otherwise under disability, and has filed an Answer, appeared and actively participated herein. The sum of \$150.00 is a

A. FOR CASH: The undersigned Master in Equity, will require a deposit of 5% on the amount of the bid (in cash or 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. Purchaser to pay interest on his bid from the date of sale to the date of compliance at the rate of 9.96% per annum.

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

D. Purchaser to pay for all costs of recording the deed.

E. Should the Plaintiff or the Plaintiff's attorney or agent fail to appear on sales day, the property shall not be sold, and in that event any such sale shall be null and void and of no force and effect; the property shall be readvertised and sold at some convenient sales day thereafter when the Plaintiff or the Plaintiff's attorney or agent is present.

5. If Plaintiff is the successful bidder at said sale for a sum not exceeding the amount of costs, disbursements, expenses and the indebtedness of the Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs, disbursements and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

6. Personal or deficiency judgment being waived, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

7. That the undersigned Master in Equity, will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and the Master in Equity will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that 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 the sale, then the undersigned Master in Equity may advertise the said premises for sale on the next or some other subsequent salesday, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured.

14. The following is a description of the premises herein ordered to be sold:

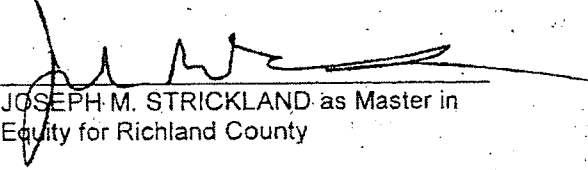
All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being on the eastern side of Linden Street, in or near the Town of Eau Claire in the County of Richland, State of South Carolina; said lot being composed of and embracing Lot No. 12, 13, and 14 in Block 6 upon a plat of College View Subdivision, prepared by surveyors Clodfelder and Schisler, dated August-September, 1927, and recorded in Plat Book F at page 24. TMS# 09313-03-21. *

This being the same property conveyed to Edye P. Rumsey by deed of Peggy H. Ferguson, Byrl M. Warren, Robert G. McLeod, Jr., and Michael H. McLeod dated September 29, 1992, recorded January 27, 1993, in the Office of the Register of Deeds for Richland County in Deed Book D1126 at page 726. Thereafter, Edye P. Rumsey conveyed a one-half interest in said property to Johnny C. Rumsey by deed dated October 30, 1996, recorded November 20, 1996, in Deed Book D1349 at page 756, in the Office of the Register of Deeds for Richland County, South Carolina. Edye Pauline Rumsey died intestate on January 10, 2005, and leaving her as her sole heir at law Johnny C. Rumsey, also known as Curtis Rumsey.

CURRENT ADDRESS OF PROPERTY IS: 4824 Linden Street
Columbia, South Carolina 29203

Columbia, South Carolina

May 31, 2006


JOSEPH M. STRICKLAND as Master in
Equity for Richland County



RICHLAND COUNTY
POST OFFICE BOX 11947
COLUMBIA, SC 29211

Treasurer
803-576-2250
treasurer@rcgov.us

PRINTED: 7/17/2012 ***** REAL ESTATE TAXES *****
CLERK: LEVY YEAR 2011
TY YEAR RECEIPT MAP BLOCK PARCEL 473.30 CNTY TAX 279.25
R-2011-140375-D 10100-01-12 CNTY SALES 12.64
LOC 8391 WINNSBORO RD RESID CR 00
RMKS PEN/COST 157.34
DIGEST 590 CNTY TOT 423.95
CHANGE 0 CITY TAX 00
NET ASSM 590 CITY PEN 00
R-2011-140375-D GARB 249.00
SANDDOLLAR 31 LLC PYMTS TO DATE 00
DIST NO ADD TO DATE 00
2DP BALANCE DUE 672.95
PO BOX 689
BLYTHEWOOD SC 29016



RICHLAND COUNTY
POST OFFICE BOX 11947
COLUMBIA, SC 29211

David A. Adams
Treasurer
803-576-2250
treasurer@rcgov.us

PRINTED: 7/17/2012 ***** REAL ESTATE TAXES *****
CLERK: LEVY YEAR 2011
TY YEAR RECEIPT MAP BLOCK PARCEL 473.30 CNTY TAX 279.25
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PO BOX 689
BLYTHEWOOD SC 29016

DEFENDANT'S
EXHIBIT

5

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N. A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner;

Defendant(s).

(016555-00040)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

PLAINTIFF'S MOTION TO VACATE
FORECLOSURE SALE

2012 SEP -6 PM 4:18
JEANETTE W. McBRIDE
S.P. & G.S.

RICHLAND COUNTY
FILED

PLEASE TAKE NOTICE that ten (10) days after the service hereof, or as soon thereafter as counsel may be heard, the Plaintiff, SCBT, N.A., n/k/a SCBT (SCBT), will move before this Honorable Court for an order setting aside the judicial sale held on July 5, 2012, pursuant to the equitable principles propounded by the courts of South Carolina. Specifically, the foreclosure sale should be set aside because the Defendant engaged in a deceptive scheme to extinguish the Plaintiff's lien on the property by purchasing the property at the foreclosure sale through an undisclosed agent for an amount Defendant averred is significantly below appraised value.

FACTS

Defendant/Borrower Sand Dollar 31, LLC (Sand Dollar) purchased 4824 Linden Street, the property which is the subject of this action, at a foreclosure sale with a bid of \$34,500 by Master's Deed dated July 20, 2006. Thereafter, on or about July 24, 2006, Sand Dollar executed a Note and granted a Mortgage in favor of SCBT with a maximum obligation of \$62,280 and Defendant/Guarantor Rhonda Meisner executed a guaranty, guaranteeing the indebtedness evidenced by the Note, dated July 24, 2006 in the amount of \$31,140. Defendants failed to make the November 30, 2010 and subsequent payments and the Note matured on July 25, 2011, thereby creating events of default under the Note and Mortgage.

On or about September 27, 2011, SCBT instituted the above-captioned foreclosure action, demanding a deficiency judgment against Sand Dollar and Meisner and this Court issued a Judgment of Foreclosure and Sale on May 14, 2012. After due notice, this Court held a sale on June 4, 2012, which became final on July 5, 2012, at which time SCBT's bid was bested by an upset bid.

On July 31, 2012, Meisner filed a verified Petition for Appraisal, stating therein that the winning bid was "a figure significantly beneath its appraised value." The Master's Report on Sale and

Disbursements and Order of Confirmation, filed August 8, 2012, stated that Meisner through her agent Kevin Nowell was the winning bidder at \$25,001.00. Thereafter, the bid was assigned to South Carolina Operating Room Equipment, LLC, a S.C. limited liability company controlled by Meisner, and on August 16, 2012, a Master's Deed to this entity was recorded. However, it was not until SCBT's counsel received the Master's Order Confirming Sale on August 10, 2012, that SCBT learned Meisner was the winning bidder.

After becoming the winning bidder, Meisner initiated a campaign of directly contacting SCBT's officers and employees, requesting that the deficiency judgments be waived. Meisner's direct communication about matters in the ongoing litigation was acknowledged by Defendants' counsel via written and verbal communications. After Meisner's repeated contacts, Plaintiff's counsel directed Defendants' counsel that Meisner was to have no further contact with anyone at SCBT other than Will Aiken, SVP/Special Assets Manager. Despite this admonishment, Meisner again contacted SCBT's CEO. On August 28, 2012, Plaintiff's counsel emailed Defendants' counsel about his client's repeated improper contact and also to request access to the subject property in order to have it appraised per Meisner's Petition. As of the date of this Motion, Defendant has not provided access to the subject property, despite repeated requests.

ARGUMENT

"A judicial sale will be set aside when either: (1) the sale price is so gross as to shock the conscience; or (2) the sale is accompanied by other circumstances warranting the interference of the court." *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008). In cases where the surrounding circumstances tend to show that the foreclosure sale should, in good conscience, be set aside, the court may consider the discrepancy between the accepted bid and the fair market value of the property as evidence to aid the court in arriving at the correct decision. *Spillers v. Clay*, 233 S.C. 99, 104, 103 S.E.2d 759, 761 (1958). Thus, the critical question in this case is whether circumstances surrounding the foreclosure sale warrant the interference of the court.

Although there are few cases that provide guidance on what types of circumstances necessitate the intervention of the court in a foreclosure case, this case presents facts that warrant such intervention. Here, Ms. Meisner has engaged in a deliberate scheme to avoid her obligations under her Mortgage agreement with SCBT. Although courts in this state have not addressed this fact pattern in the context of a foreclosure sale, the South Carolina Supreme Court has clearly stated that equitable intervention is necessary in similar circumstances in the context of a tax sale. *See Interstate Building & Loan Ass'n v. Waters*, 50 S.C. 459, 27 S.E. 948 (1897).

In *Interstate Building*, the court examined whether a mortgagor (and delinquent taxpayer) could successfully defeat a mortgagee's lien on his property by developing a plan to avoid the mortgage by sending his wife to purchase his home at a tax sale. *Id.* at 27 S.E. at 950. At that time, state law allowed a purchaser at a tax sale to take the property free and clear of all liens when certain requirements were met. *Id.* at 27 S.E. at 951. Thus, the mortgagor refused to pay his taxes and then had his wife purchase his home at the tax sale free and clear of the mortgage. *Id.* at 27 S.E. at 949.

One of the issues in the case was whether the court could allow the sale to stand as a matter of equity. *Id.* at 27 S.E. at 951. The Court held that a court of equity could not tolerate such a transaction. *Id.* "What cannot be done directly will not be permitted to be done indirectly." *Id.* (emphasis added). A court of equity may not permit "the wife of the mortgagor or any other person to acquire such title, to the detriment of the mortgagee, as the result of a *deliberate scheme* between the purchaser and the mortgagor to defeat the lien of the mortgage." *Id.* (emphasis added). Participation in such a deliberate scheme will estop the purchaser from asserting title to the detriment of the mortgagee. *Id.*

By the same analogy, Meisner cannot indirectly defeat SCBT's statutory right to a deficiency judgment by deliberately bidding on the subject property through an undisclosed agent in an amount less than the original purchase price and the loan amount she borrowed, while at the same time scheming to use her appraisal rights to eliminate/reduce the deficiency judgment based on the very bid price she herself claims is "significantly beneath its appraised value."

Essentially, Ms. Meisner is pursuing double recovery by way of this foreclosure sale. The purpose of the judicial sale in a mortgage foreclosure is to "remove the mortgage encumbrance from the property, and therefore, the amount of the mortgage is a fair gauge of the property's value in the hands of the buyer." *Arrow Bonding Company v. Warren*, Opinion #27166 (S.C. Sup. Ct. - Filed August 29, 2012), citing *Investors Savings Bank v. Phelps*, 303 S.C. 15, 397 S.E.2d 780 (Ct. App. 1990); See also *Wells Fargo, supra* (mortgage value is evidence of property's value). The purpose of the judicial sale is not to provide the borrower an opportunity to "buy low" and then use that low price to "cry foul" to get out of the deficiency judgment.

Just as in *Interstate Building*, such a transaction as this cannot be tolerated. In the most general sense, equity "is founded in natural justice in honesty and in right." 12 S.C. Jur. Equity § 2 (quoting J. Story, commentaries on Equity Jurisprudence 1 (2d ed. 1839)). Here, Meisner has not been honest or forthright. The current case involves circumstances in which the Defendant was intentionally deceptive and thus warrants the intervention of the court.

Meisner has orchestrated a deliberate scheme to avoid her obligations under the mortgage agreement by (1) having her agent bid on the subject property for her at the foreclosure sale; (2) having her agent submit a bid she avers is grossly under appraised value, (3) using her appraisal rights in an

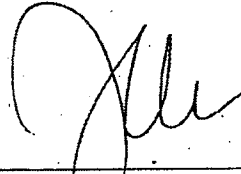
attempt to lower the deficiency judgment while receiving the equity in the property, (4) titling the property in a limited liability company (LLC) she controls in an attempt to hide her ultimate gain, (5) having direct communications with a represented party about matters in litigation in an attempt to have the deficiency judgment waived and (6) failing to cooperate by giving access to the property she won at the sale so that SCBT can get an appraisal completed as required by statute.

It is inequitable to allow Meisner to take the position that the house is worth one price when she is borrowing money and to then to take a contrary position that the price is insufficient in order to avoid a deficiency judgment, and Meisner's participation in such a deliberate scheme estops her from doing so to the Plaintiff's detriment. Ms. Meisner owes a legitimate debt to SCBT and she should not be allowed to avoid that debt by exploiting the court system for her own personal gain.

CONCLUSION

This court should hold that the Defendant's deliberate manipulation of the court system is impermissible based on case law and clear equitable principles and should set aside the foreclosure sale that is the subject of this motion.

Respectfully submitted,



Teri K. Stonski (SC# 65250)
Rogers Townsend & Thomas
220 Executive Center Drive
Columbia, SC 29210
(803) 771-7900

August 24, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N. A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner;

Defendant(s).

(016555-00039/40)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2012 SEP - 6 PM 4:18
JEANETTE W. McBRIDE
C.C.P. & G.S.

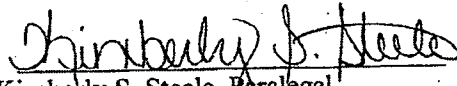
I, Kimberly S. Steele, an employee with the Law Firm of Rogers Townsend & Thomas, PC, attorneys for the Plaintiff, SCBT, N.A. hereby certify that I have served or caused to be served a copy of the foregoing documents upon the below named individuals and/or counsel this the 1st day of September, 2012 via U.S. Mail:

DOCUMENT SERVED

Motion to Vacate The Sale

PARTIES SERVED

Glenn Bowens, Esq.
Post Office Box 424
Winnsboro, South Carolina 29180
Attorney for the Defendants


Kimberly S. Steele, Paralegal

Columbia, South Carolina

IN THE STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

South Carolina Bank and Trust, N.A.

Plaintiff,

vs.

Rhonda Meisner and Sand Dollar 31, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-063

NOTICE OF APPEARANCE

RICHLAND COUNTY
FILED
2012 OCT -1 AM 11:10
JANETTE W. MCBRIDE
Clerk of Court

The undersigned attorney, being duly licensed to practice law in the State of South Carolina, does hereby provide notice of his appearance in the above-captioned matter representing the purchaser of the real property at the foreclosure sale that occurred as part of this matter, South Carolina Operating Room Equipment, LLC ("SCORE"). SCORE has not previously made an appearance in this litigation and has not been served with any pleading or motion. However, SCORE is informed and believes that after placing a bid on the property, for more than a nominal amount, and finding out that SCORE was the successful bidder at the foreclosure sale, that South Carolina Bank and Trust, N.A. ("SCBT") has moved to vacate the deed to SCORE. Thus, SCORE is an interested party to the motion and the undersigned attorney has been retained to represent the purchaser in this matter.



Richard R. Gleissner, Esquire
S.C. Bar Number 15139
Gleissner Law Firm, L.L.C.
3610 Landmark Drive, Suite G
Columbia, South Carolina 29204
(803) 787-0505
Attorneys for the Purchaser
South Carolina Operating Room Equipment, LLC

SCANNED

IN THE STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

South Carolina Bank and Trust, N.A.

Plaintiff,

vs.

Rhonda Meisner and Sand Dollar 31, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-063

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2012 OCT -1 AM 11:10
JEANETTE W. HOOBRIDGE
C.C.P. & O.D.

I, the undersigned employee of the Gleissner Law Firm, LLC, attorneys for the interested party, South Carolina Operating Room Equipment, LLC, do hereby certify that I have served a copy of the documents listed below in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Documents served

Notice of Appearance on behalf of South Carolina Operating Room Equipment, LLC

Counsel served

Glenn E. Bowens, Esquire
Post Office Box 424
Winnsboro, SC 29180

Teri Lee Kimball-Callen, Esquire
Rogers Townsend & Thomas, PC
Post Office Box 100200
Columbia, SC 29202



Anissa Terpstra, Paralegal to
Richard R. Gleissner, Esquire

September 28, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,
v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-40-6317

DOCKET NO. 11-CP-40-6318

DEFENDANTS'
MEMORANDUM ON JUDICIAL
ESTOPPEL AND APPRAISAL STATE

RICHLAND COUNTY
FILED
2012 NOV -2 PM 2:09
JANETTE W. MORRIS
C.C.P. & G.S.

The Defendants submit this Memorandum on Judicial Estoppel and Appraisal State.

The Bank filed a Motion to Vacate the Foreclosure Sale in the above captioned cases. The Bank asserts, "the amount of the mortgage is a fair gauge of the property's value" and asks the Court to value the properties at the mortgage value (i.e. \$62,280.00 for # 6317 and \$36,000.00 for # 6318). The Defendants agree with the Bank and join in the Bank's request that the Court find the value of the properties to be same as the values asserted in the Bank's Motion to Vacate the Foreclosure Sale.

The Bank was not prejudiced by the foreclosure sale or Meisner's Petition for Appraisal under S.C. Code §29-3-680 *et. seq.* - both are designed to protect the borrower and the Guarantor by making sure the amount of the deficiency judgment is appropriate. The borrower and the Guarantor are not required to elect between a foreclosure sale or their appraisal rights - they get the benefit of both. It is significant to note that it was the Bank's initiation of the foreclosure proceedings that triggered the requirement for a foreclosure sale and the Bank's insistence on a deficiency judgment following the foreclosure sale that triggered the application of S.C. Code §29-3-680 *et. seq.* The bank has no legal or equitable basis to complain. The sale of the property under the threat of a deficiency judgment gives both the borrower and the Guarantor the protection of S.C. Code §29-3-680 *et. seq.* and the right to petition for an appraisal. The purchase

by a third- party at the foreclosure sale does not affect Meisner's rights as the Guarantor under S.C. Code §29-3-680.

Judicial Estoppel

The amount of the deficiency judgment is still under consideration by the Court. In order to increase the amount of the deficiency judgment against Sand Dollar and Meisner, the Bank intends to submit a lower value for the properties under the Appraisal Statute. The Bank is asking the Court to determine the amount owed in the deficiency judgment based on these **lower** property values when it previously asked the Court to set aside the foreclosure sale by valuing the properties at the market property values represented by their respective mortgages (i.e. \$62,280.00 for # 6317 and \$36,000.00 for # 6318).

The Bank is judicially estopped from changing its position on the facts regarding the value of the property between the Motion to Vacate the Foreclosure Sale and the Motion for a Deficiency Judgment. The Bank asserted the value of the properties was the value of the mortgage in order to attempt to set aside the foreclosure sale, it cannot now claim a different property value for same properties in order to increase the amount of the deficiency judgment. The South Carolina Court of Appeals has held:

"[j]udicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation."

When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him

Cothran v. Brown, 350 S.C. 352, 566 S.E.2d 548 (S.C.App. 2002).

The Bank bid low at the judicial sale in order to get the properties so that it could turn around and sell them at a higher price and make a profit while at the same time pursuing a deficiency judgment against Sand Dollar and Meisner. The Bank is seeking to increase the amount of the

deficiency judgment by changing its position on the value of the property and is asking the Court to aid it in its scheme to both make a profit on the property and increase the amount of the deficiency judgment; the Bank's scheme is not equitable.

The Appraisal Statute was enacted for the protection of the borrower and guarantor—not for the protection of the bank. The legislature wanted to make sure the property was not sacrificed at a foreclosure sale leaving the borrower and guarantor with an unreasonably high deficiency judgment. In other words, the legislature did not want the Bank to be able to purchase the property below fair market value at a foreclosure sale and thereby cause the amount of the deficiency judgment to be greater than it would be had the bank made a bid consistent with the actual value of the property. The bank is attempting to do the very thing the legislature was trying to prevent and is seeking this Court's assistance in circumventing the will of the legislature. The Bank received more than its own bid and has no basis to complain.

Guaranty Agreement

The Bank continues to claim that Meisner, as Guarantor, is liable for amounts greater than the two Guaranty Agreements that are in the record. The Bank introduced the Guaranty Agreements for \$31,140.00 in case # 6317 and \$36,000.00 in case # 6318. The Bank has now interjected a third Guaranty Agreement in the amount of \$50,000.00.¹ However, the Bank did not introduce this Guaranty Agreement into evidence at the Foreclosure Hearing on April 25, 2012 nor was this third Guaranty Agreement included in the Bank's Amended Complaint.

The Bank erroneously asserts that the Defendants have not disputed its claim for attorney fees. The Defendants thoroughly briefed their objections to the Bank's claim for attorney fees in their Motion to Alter or Amend and argued their objections during the hearing on the motion.

¹ The third Guaranty Agreement is attached as Exhibit 3 to the "Plaintiff's Memorandum of Law Guaranty Agreement."

The Bank also claims the Defendants have not appealed the attorney fees or the principal amounts awarded in the Master's Judgment of Foreclosure and Sale. The Bank is correct that these awards have not been appealed. However, as the Bank is well aware, the Defendant's filed a Motion to Alter or Amend the Master's Judgment of Foreclosure and Sale. When a Motion to Alter or Amend has been filed the time for appeal does not begin until thirty (30) days after the receipt of written notice of the entry of the order on the Motion to Alter or Amend.² The Court has not yet entered an order on the Motion to Alter or Amend, nor has the Defendants received written notice of the entry of the order.

The Bank also indicated in its "Memorandum of Law Guaranty Agreement" that attorney fees "continue to accrue." However, the Bank has not submitted a formal claim for attorney fees that describe the nature of the fees or the amounts charged that "continue to accrue." The Bank should not be allowed to claim attorney fees and costs that relate to the Motion to Vacate the Foreclosure Sale. The Defendants continue to object to the award of attorney fees and costs to the Bank in these cases. The Bank has not filed an affidavit of attorney fees or an itemized statement of the attorney fees and costs with the Court.³ The Bank did submit an affidavit; however, the key component of the affidavit is an itemized statement of the fees, which has never been provided. Neither the Court nor the Defendants can reasonably evaluate the Bank's claim without an itemized statement. Much of the effort expended by the Bank was to deny the Defendants their rights under the law. The Court should require the Bank to file an affidavit of attorney fees and costs, including an itemized statement, and give the Defendants an opportunity to object as to the reasonableness of the Bank's claim before awarding any attorney fees and costs as part of the deficiency judgment.

² See Rule 59(f), SCRCP and Rule 203(b)(1), SCACR.

³ The Defendants have not received a copy of a filed affidavit.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

v.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS
DOCKET NO. 11-CP-40-6317
DOCKET NO. 11-CP-40-6318

CERTIFICATE OF SERVICE

2012 NOV -2 PM 2:09
KAREN L. W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

I, Glenn Bowens, attorney for the Defendant, do hereby certify that I have this day served a copy of the foregoing **Defendants' Memorandum on Judicial Estoppel and Appraisal Statute** in connection with the above referenced case by placing a copy of the same in the United States Mail, postage prepaid, to the following Address:

Terri Stomski
Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

This the 2nd Day of November 2012 A.D.


Glenn Bowens

IN THE STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

South Carolina Bank and Trust, N.A.

Plaintiff,

vs.

Rhonda Meisner and Sand Dollar 31, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-06317

**MEMORANDUM IN OPPOSITION TO
MOTION TO VACATE SALE**

RICHLAND COUNTY
FILED
2012 NOV 5 AM 11:09
JENNIFER L. MCBRIDE
C.C. J.G.S.

South Carolina Operating Room Equipment, LLC ("SCORE"), by and through its undersigned counsel, does hereby file its memorandum in opposition to the motion to vacate the sale of the property to SCORE, pursuant to the foreclosure sale. The motion to vacate the sale was filed by South Carolina Bank and Trust, N.A. ("SCBT").

In opposing this motion, SCORE would point out that there is no factual basis to set aside the sale and there is no legal basis to set aside the sale. Contrary to the positions taken by SCBT, (1) this Court made no error and engaged in no misconduct, (2) the sale of the property was for more than SCBT was willing to bid for the property, thus must be presumptively for an adequate price and not so insufficient as to shock the conscience of anyone and (3) there is no "scheme" unless SCBT is arguing that the South Carolina legislature has participated and authorized a "scheme." Further, in reliance upon this court's deed, SCORE has rented the property and made improvements to the property. Thus, to set aside the sale would substantially damage SCORE.

FACTS

This matter involves three separate and distinct legal entities, (1) Sand dollar 31, LLC (the "Borrower"), Rhonda Meisner (the "Guarantor") and South Carolina Operating Room Equipment,

SCANNED

LLC ("SCORE"). Chronologically, the facts associated with this matter are as follows:

1. The initial foreclosure sale was scheduled for June 4, 2012. SCBT through their agent bid at the initial foreclosure sale. For the property subject to the foreclosure sale in civil action number 11-CP-40-6317, SCBT submitted a bid of \$10,000. For the property subject to the foreclosure sale in civil action number 11-CP-40-6318, SCBT submitted a bid for \$25,000. Because SCBT was demanding a deficiency, statutorily, the bidding remained open for thirty (30) days. Because thirty (30) days fell on a holiday (July 4, 2012), the bidding remained opened until July 5, 2012.
2. While everyone agrees that this bid is below fair market value, whether the price was below fair market value is not the test. SCBT made the decision, without coercion, without threat, without any compulsion and without any representation by the Borrower, the Guarantor or SCORE. SCBT was presumably making this bid in good faith with full knowledge of the property and upon its completion of its due diligence as to the value of the property. This Court acting in good faith, accepted the bid on July 4, 2012 and properly acted in keeping the bidding open until July 5, 2012. This Court made no misrepresentations or errors.
3. Prior to the deficiency sale on July 5, 2012, the Borrower through its attorney Glenn Bowens (the "Borrower's Attorney") requested the court to delay the deficiency sale to prevent the injury to any third party purchasers of the properties. A conference call was arranged on July 5th, 2012 between Borrower's Counsel, this honorable court, and counsel for SCBT, Teri Stomski ("Lender's Counsel"). Lender's Counsel successfully argued on the conference call that SCBT would be highly prejudiced by delaying the sale for any reason and requested the court to order the sale to continue as scheduled for later in the day on July 5, 2012.
4. On July 5, 2012, SCORE bid an amount higher than the amount bid by SCBT and SCORE deposited the required 5% of the bid amount into this Court in both foreclosure actions. Thereafter, within the statutory time required, SCORE fully complied with the terms of the judicial sale and received the Master's deed for both properties. It is important to note that SCBT has not argued any irregularities of the bidding process or that the Court did anything improper or anything in error in executing the Deed to the successful bidder.
5. Regarding the Sale on July 5th, 2012, contrary to the representation fo SCBT, Kevin Knowles never acted on behalf of Rhonda Meisner in her personal capacity. Knowles instructions for bidding were relayed specifically in the name of SCORE. Thus, it was SCORE who submitted both the 5% deposit and the final payment and it was SCORE that became a bonafide purchaser for value.
6. Further, SCBT established the opening bid and SCBT established the bidding

procedures by not waiving the deficiency demanded. SCORE had nothing to do with the bidding procedures or SCBT's decision on the amount to bid. SCORE had no duty to pay more than necessary to purchase the property regardless of any opinion of value they or anyone else had.

In its clear from the facts, that SCBT wants to blur the lines of legal entities, tell the court who can and who cannot purchase property, interfere with commerce all the while simultaneously arguing that they have been damaged because SCBT bid too low and now SCBT contrary to laws regarding deficiency judgement cases wants another chance to bid again.

ARGUMENT

South Carolina recognizes only two reasons to set aside a judicial sale. Specifically, the court will set aside a judicial sale when "(1) the sale price 'is so gross as to shock the conscience[;]' or (2) the sale 'is accompanied by other circumstances warranting the interference of the court.'" *Wells Fargo Bank N.A. v. Turner*, 378 S.C. 147, 150, 667 S.E. 2d 424, 425 (Ct. App. 2008) (citing *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 157, 177 S.E. 24, 27 (1934)). In this case, (1) this Court made no error and engaged in no misconduct, (2) the sale of the property was for more than SCBT was willing to bid for the property, thus must be presumptively for an adequate price and not so insufficient as to shock the conscience of anyone and (3) there is no "scheme" unless SCBT is arguing that the South Carolina legislature has participated and authorized a "scheme."

1. This Court made no error and engaged in no misconduct.

In the case of *Spillers v. Clay*, 233 S.C. 99, 103 S.E.2d 759 (1958), the Court goes to great length to discuss the "other circumstances warranting the interference of the court." Specifically, in *Spillers*, the sale was conducted on a busy day. The person conducting the auction confirmed a bid on the property of \$2,500. In fact, two different bidders thought they had bid the \$2,500. When the attorney for one realized that the auctioneer had selected the other bidder as the successful bidder,

he immediately raised an objection. Thus, it was the confusion created at the sale and the conduct of the auctioneer that constituted the "other circumstances." The Court went further and stated:

A judicial sale should not be set aside except for cogent reasons. The purpose of the law and of the proceedings in which a sale has been decreed is that it shall be final. As was said in Farrow v. Farrow, 88 S.C. 333, 70 S.E. 459, the successful bidder makes himself a party to the cause, and, except where title to the property is defective, or where he can show fraud, misrepresentation, mistake, or other circumstances of unfairness in the sale, he may be compelled by the court to perform his contract of purchase. In the absence of such circumstances, therefore, his contract should be upheld. These principles are well established. Henry v. Blakely, 216 S.C. 13, 56 S.E.2d 581; Appeal of Paslay, 230 S.C. 55, 94 S.E.2d 57.

In the case last cited, petitioners alleged that they had been prepared, through their attorney, to bid at least \$1,000.00 for the property that was sold in partition, to a stranger to the suit, for \$450.00; and it appeared, also, that their attorney had been prevented from attending the sale because of mechanical failure of his automobile. But we held the disparity between the sale price and the alleged value of the property not so shocking as in itself to vitiate the sale, and that counsel's explanation of his failure to be present was not sufficient, in the circumstances, to warrant our setting it aside. Distinction between that case and this is readily apparent. There no factor was present for which the selling officer had any responsibility; here the claim of misapprehension and excusable mistake on the part of counsel was in relation to the conduct of the sale.

233 S.C. at 104-05, 103 S.E.2d at 761-62. In this case, there is no allegation that the Court engaged in any misconduct or any in appropriate behavior. Further, there is no allegation of fraud, misrepresentation, mistake, or other circumstances of unfairness in the sale. Simply, as a matter of law, there are no "other circumstances" justifying the setting aside of the judicial sale. See also *Eastern Savings Bank, FSB v. Sanders*, 373 S.C. 349, 354, 644 S.E.2d 802, 805 (2007) (requiring the selling officer or the purchaser to engage in conduct that prevented the Bank from making higher bid).

As stated by the South Carolina Supreme Court, the other circumstances "must be such irregularity in the proceedings as to show that the sale was not fairly made, or that appellant was defrauded or misled to his injury and loss." *Howell v. Gibson*, 208 S.C. 19, 28-29, 37 S.E.2d 271, 275 (1946). In this case, there is no argument that the sale was not fairly made or that SCBT was defrauded or misled to its injury and loss.

2. Adequate Price

As provided in S.C.Code Ann. § 15-39-720 (2005), when a deficiency is sought, the mortgagee gets to make a single bid. The purpose of this statute is understood to be that "[t]he mortgagee must enter his bid at the time the sale is made and is precluded from entering any other bid after his last bid at the initial sale. This effectively forces the mortgagee to enter his highest and best bid at the initial sale." See *Eastern Savings Bank, FSB v. Sanders*, 373 S.C. 349, 354, 644 S.E.2d 802, 805 (2007) (quoting 27 S.C. Juris. *Manner of Sale* § 128 (1996) (internal citation omitted)). So, as a matter of law, the bid by SCBT on these properties was its "highest and best bid."

In *Eastern Savings Bank, FSB v. Sanders*, 373 S.C. 349, 644 S.E.2d 802 (2007) the Supreme Court states that "South Carolina has not established a bright line rule for what percentage the sale value must be with respect to the actual value in order to shock the conscience of the court. However, a search of South Carolina jurisprudence reveals only when judicial sales are for less than ten percent of a property's actual value, have our courts consistently held the discrepancy to shock conscience of the court." 373 S.C. at 359, 644 S.E.2d at 807. However, when the price is above 10% the courts have consistently held that the discrepancy does not shock the conscience of the court. *Id.* (purchase prices was 1/3 of value); *Singleton v. Mullins Lumber Co.*, 234 S.C. 330, 108 S.E.2d 414 (1959) (successful bid of 13% of value of the property was not sufficient to "shock the conscience");

In this case, the purchase price by SCORE is nearly 1/3 of the value, even assuming the value of the property is the amount of the mortgage. Thus, the purchase price was clearly in excess of 10% and as a matter of law cannot shock the conscious of the court.¹

3. THERE IS NO "SCHEME"

In the motion to set aside the sale, SCBT alleges that the Borrower, Guarantor and SCORE engaged in a "scheme" by (a) petitioning the Court pursuant to South Carolina's appraisal rights statutes and (b) by having SCORE purchase the property. Clearly, by adopting the appraisal rights statutes, the South Carolina legislature did not participate in any type of "scheme." Thus, SCBT's argument in this regard is beyond absurd.

As it relates to SCORE purchase the property, SCBT sites the case of *Interstate Building & Loan Ass'n v. Waters*, 50 S.C. 459, 27 S.E. 948 (1897) as providing some authority for the proposition that a related entity should not be allowed to purchase the property at foreclosure. In fact, there is no prohibition on the mortgagor or a related entity purchasing the property at a foreclosure sale. In *Gardner v. Nash*, *Gardner v. Nash*, 225 S.C. 303, 82 S.E.2d 123 (1954), a bidder claimed to be bidding for the mortgagor at the foreclosure sale. When this successful bidder refused to transfer the property to the mortgagor, the Court required the transfer, even though there was no writing. Thus, mortgagors can buy the property at the foreclosure sale and SCBT can offer no authority to the contrary because there is no contrary authority.

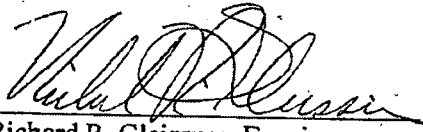
¹ SCORE would note that the issue of deficiency judgment pursuant to the South Carolina Appraisal Statutes is presently pending before this same court. Because SCBT has taken the position in its motion to vacate the sale, that the value of the property must be measured by the amount of its mortgage, SCBT must now be judicially estopped from arguing a lesser value pursuant to the appraisal statutes. Thus, any and all deficiency claimed by SCBT must be removed as a matter of law.

As it relates to *Interstate*, in that case, the property was being sold at a tax sale. The debtor husband borrowed the money to pay the taxes, but instead of paying the taxes, he purchased the property at the tax sale and put the property in his wife's name. That is a fraudulent conveyance. He either gave money to his wife for no consideration to purchase the property at the tax sale or he purchased the property at the tax sale and transferred it to his wife for no consideration. None of that occurred in this case. Attached hereto as Exhibit 1 is a copy of a printout from the South Carolina Secretary of State's website showing that SCORE has been in existence since 2010. It was not created for the purpose of buying this property and has its own independent existence, assets and liabilities. There is no evidence that suggests a fraudulent conveyance from the Borrower or the Guarantor allowed SCORE to purchase this property. Simply, *Interstate* is not authority for setting aside this sale.

CONCLUSION

This Court made no error and engaged in no misconduct warranting the setting aside of the judicial sale fairly made. The sale of the property was for more than SCBT was willing to bid for the property, thus must be presumptively for an adequate price and not so insufficient as to shock the conscience of anyone. Lastly, there is no "scheme". There is no evidence of a "scheme." There is no fraud, mistake or fraudulent conveyance. There is no reason to set aside this sale. Further, because there is no factual basis or legal basis to support the motion, SCORE requests that the Court sanction the movant and require the movant to pay SCORE's legal fees for responding to this motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard R. Gleissner', written over a horizontal line.

Richard R. Gleissner, Esquire
S.C. Bar Number 15139
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for the Purchaser
South Carolina Operating Room Equipment, LLC

IN THE STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

South Carolina Bank and Trust, N.A.

Plaintiff,

vs.

Rhonda Meisner and Sand Dollar 31, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-06317

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2012 NOV -5 AM 11:09
JEANETTE W. MCBRIDE
C.P. & G.S.

I, the undersigned employee of the Gleissner Law Firm, LLC, attorneys for the interested party, South Carolina Operating Room Equipment, LLC, do hereby certify that I have served a copy of the documents listed below in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

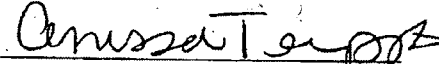
Documents served

Memorandum in Opposition to Motion to Vacate Sale

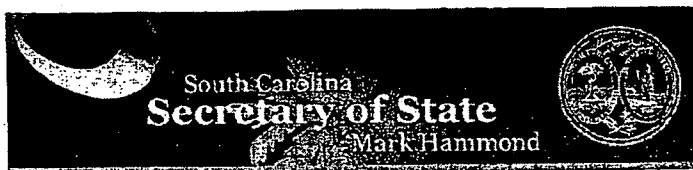
Counsel served

Glenn E. Bowens, Esquire
Post Office Box 424
Winnsboro, SC 29180

Teri Lee Kimball-Callen, Esquire
Rogers Townsend & Thomas, PC
Post Office Box 100200
Columbia, SC 29202


Anissa Terpstra, Paralegal to
Richard R. Gleissner, Esquire

November 2, 2012



SOUTH CAROLINA OPERATING ROOM EQUIPMENT, LLC

Note: This online database was last updated on 11/1/2012 6:01:30 PM.
See our Disclaimer.

DOMESTIC / FOREIGN:

Domestic

STATUS:

Good Standing

STATE OF INCORPORATION

SOUTH CAROLINA

/ ORGANIZATION:

Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:

RHONDA MEISNER

ADDRESS:

ONE CHESTER ROAD

CITY:

BLYTHEWOOD

STATE:

SC

ZIP:

29016

SECOND ADDRESS:

FILE DATE:

11/08/2010

EFFECTIVE DATE:

11/08/2010

DISSOLVED DATE:

//

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Domestic LLC	11/08/2010	AT WILL	

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

Physical Address: Edgar Brown Building - 1205 Pendleton Street Suite 525 Columbia, SC 29201
Mailing Address: SC Secretary of State's Office 1205 Pendleton Street Suite 525 Columbia, SC 29201

Exhibit 1

SUBT, N.A.
PO BOX 100113
COLUMBIA SC 29202

001 081 04 C0526 Page: 1
Loan: 11742806 08/04/2011

Telephone: 800-277-2175

Exhibit 11
Replacement

RHONDA WEISNER
1 CHESTER RD
ELYTHERWOOD SC 29016-8555

----- Copy -----
* Past Due Notice *

Borrower: SAND DOLLAR 31 LLC

Loan Type:	COMMERCIAL MORTGAGE	Maturity Date:	07/25/2011
Principal Balance:	31,535.04	Original Loan Date:	07/24/2006
Current Rate:	8.5000	Original Loan Amount:	36,000.00
Interest Thru 08/04/2011:	305.15	Last Payment Received:	06/24/2011
One Day's Interest:	7.44	Last Payment Amount:	1,892.28
Late Charge Balance:	74.98		
Collateral/Property:	6331 WINNEBAGO HIGHWAY MYRTLEWOOD, SC 29016		
Past Due Date:	07/25/2011		
Amount Past Due:	31,840.19		
Late Charges:	74.98		
Total Amount Due:	31,915.17		

Replacement Due to loss of exhibit.
Respondant provided this copy and will
stipulate addition to record on appeal

CERTIFICATE OF COUNSEL RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Joseph E. Strickland, Master-in-Equity

Appellate Case No. 2012-213558

SCBT, N.A.

Respondents,

v.

Sand Dollar 31, LLC; Rhonda
Meisner, Defendants, of
whom Rhonda Meisner is

Appellant.

CERTIFICATE OF APPELLANT

The undersigned certifies that this the Record on Appeal contains all records requested of any party and complies with Rule 211(b), SCACR.

October 23, 2013



Rhonda L. Meisner, Appellant

Post Office Box 689

Blythewood, South Carolina 29016

pegasus@nuvox.net

(803)960-3696

IN THE MATTER OF APPELLATE CASE #2012-213558

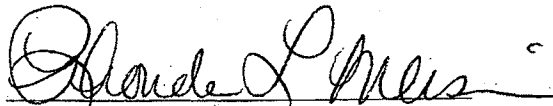
Appellant Rhonda Meisner certifies she has sent a copy of the RECORD ON APPEAL VIA HAND DELIVERY TO THE FOLLOWING ATTORNEYS THIS 16th DAY OF October, 2013. Appellant further states she has filed the requisite 15 copies of the RECORD ON APPEAL WITH THE COURT OF APPEALS VIA HAND DELIVERY.

Jason Wyman
Rogers, Townsend and Thomas, PC
220 Executive Center Drive
Columbia, South Carolina 29210
(803) 771-7900

RECEIVED

OCT 16 2013

SC Court of Appeals



Rhonda Meisner, Appellant

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

The Honorable Joseph E. Strickland, Master-in-Equity

Appellate Case No. 2012-213558

SCBT, N.A

Respondents

v.

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

Appellant.

FINAL BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- 1.) DID THE MASTER-IN-EQUITY ERR IN DENYING THE MOTION TO ALTER AND AMEND THE JUDGMENT?
- 2.) ARE RESPONDENTS JUDICIALLY ESTOPPED FROM VALUING THE PROPERTIES DIFFERENTLY THAN IN THE BANK'S MOTION TO VACATE THE JUDICIAL SALE?
- 3.) DID THE MASTER-IN-EQUITY ERR IN AWARDING ATTORNEY FEES WITHOUT A FILED AFFIDAVIT OR ITEMIZATION OF ATTORNEY'S FEES.

Background

This is an appeal of a personal judgment, the valuation of the properties subject to a mortgage foreclosure proceeding and the entry of the judgments into the public index in excess of the amount owed, including an appeal of the associated attorney's fees. The Defendant, Rhonda Meisner ("Meisner") was the guarantor of a mortgage loan that was initiated by Sand Dollar 31, LLC ("Sand Dollar") with SCBT, N.A. ("Bank"). Meisner is the single-member of the Sand Dollar Limited Liability Company. Sand Dollar subsequently defaulted on the loans and the Bank sought foreclosure of the properties securing the loans. The Bank filed a lis pendens on September 27, 2011 and subsequently filed a lawsuit seeking to foreclose on the properties. The Bank also named Meisner as a Defendant as she signed the Guaranty Agreement associated with the loans. Defendants Sand Dollar and Meisner answered the complaint by and through their attorney, Glenn Bowens. Meisner and Sand Dollar sought a declaratory judgment on whether both entities were entitled to appraisal rights pursuant to S.C. Code §29-3-680 and a declaratory judgment of the rights and liabilities of each of the parties under the note, mortgage and guaranty agreement and the amount of the deficiency judgment, if any. Defendants specifically preserved their rights to an appraisal and invoked the valuation protections of the Appraisal Statute in their Answer and Counterclaim. The Bank sought a deficiency against Sand Dollar and the enforcement of a guaranty agreement associated with the properties that were signed by Meisner. The foreclosure hearing was held April 25, 2012 and the Court ruled the evidence of the debt was sufficient and the foreclosure of the properties could proceed, but that both Sand Dollar and Meisner retained their appraisal rights according to the Appraisal Statute. The sale

was scheduled for June 4, 2012. Because the Bank had demanded a deficiency, the sales bidding process would remain open for 30 days and the deficiency sale was scheduled for July 5, 2012. Prior to sale of the properties and the completion of the appraisals, on May 16, 2012 the Bank entered judgment in the public roles for both Sand Dollar and Meisner indicating each entity was responsible for the entire amount the Bank demanded as payment for the sums owed. The properties were sold at the deficiency sale on July 5th, 2012 to South Carolina Operating Room Equipment, LLC (SCORE). After the sale of the properties, the Bank filed a motion to vacate the foreclosure sale, based on the fact that Meisner was the single member of SCORE, LLC and that Meisner in her individual capacity filed a certified petition as outlined in the Appraisal Statute for the valuation of the properties. The Bank named both Meisner and Sand Dollar as Defendants in the Motion to Vacate Judicial Sale, but did not name SCORE, LLC as a Defendant in the Motion to Vacate Judicial Sale. The Court scheduled a status conference for November 6, 2012 to hear the Motion to Vacate and to hear arguments on the memorandums regarding the Motion to Vacate which were previously submitted to the Court regarding the valuation of the properties. At the hearing, Judge Strickland apologized that due to the Presidential election there would not be a court reporter available to make a record. The parties agreed to proceed with the caveat that if necessary another hearing would be held to create a record. After an update on the submitted memorandums, the order to deny the Motion to Alter and Amend the Judgment was ruled on by the Court and recorded on November 6, 2012 effectively ruling on the outstanding issues of the Declaratory Judgment, the guaranty agreement, and the property valuation. A Notice of

Appeal was served on all parties and a copy provided to the Honorable Judge Joseph M. Strickland on December 6, 2012. This appeal follows.

STATEMENT OF THE CASE

South Carolina Bank and Trust, N.A. (Bank) by and through their attorney Teri Stomski, (Stomski) an attorney with the firm Rogers, Townsend and Thomas, PC initiated foreclosure proceedings against Sand Dollar 31, LLC (Sand Dollar) and sought to enforce a guaranty agreement signed by Rhonda Meisner (Meisner) by filing a lawsuit. The Bank filed the amended lis pendis against the properties on September 27, 2011. Glenn Bowens (Bowens) attorney for the Defendants' Sand Dollar and Meisner answered the lawsuit on January 19, 2012. In the Answer and Counterclaim, Defendants explicitly stated they would pursue appraisal rights under the Appraisal Statute, S.C. Code §29-3-760; requested the Court to reference the guaranty agreement attached to the lawsuit for the exact terms of the guaranty agreement and requested a Declaratory Judgment for the rights, responsibilities and obligations of each of the parties under the note, mortgage and guarantee agreement associated with the properties involved in the foreclosure. The foreclosure sale was held on April 25, 2012. Meisner testified that she brought one property current and submitted to the Court as evidence the payment receipt from the Bank in receipt of her payment. After hearing from both the Bank and Meisner, the Honorable Judge Joseph M. Strickland ruled the debt owed on both properties was confirmed and the properties could be sold at the foreclosure sale and instructed Stomski that the Bank should revise the prepared order to include a ruling that Sand Dollar and Meisner retained appraisal rights. On May 3, 2012 Kathy Clark, a paralegal with the Bank's attorneys' firm sent an email to Bowens and someone in the Master's office

identified as CorneliusS@rc.gov that included attachments which were the proposed orders and record of the hearings in both foreclosure cases. On May 17, 2012 the Bank sent an email to the attorney for the Defendants, Glenn Bowens, stating the hearing was held on April 25, 2012 and the scheduled foreclosure sale would proceed on June 4, 2012. On May 29, 2012 the Bank sent a letter directly to Sand Dollar and to Meisner indicating the hearing on April 25, 2012 occurred and a judgment was entered against Meisner and Sand Dollar on May 16, 2012. Meisner received the letter dated May 29, 2012 on June 6, 2012; however, attorney for Sand Dollar and Meisner, Glenn Bowens was not copied on the letter and did not receive a copy of the May 29, 2012 letter indicating the judgments had been filed in the public record. On June 7, 2012, Bowens filed a Motion to Alter and Amend the Order and Judgment filed by the Bank which included attorneys fees based on the letter and Form 4 judgments sent to Meisner. On July 4, 2012 Bowens sent a letter to the Court requesting to delay the deficiency sale for both properties scheduled for the next day, July 5, 2012, so that the Court could consider the Motion to Alter and Amend prior to conducting the sale. Stomski sent a letter to the Court via facsimile dated July 5, 2012 opposing the delay of the deficiency sale. The letter indicated her clients, the Bank, would be prejudiced by delaying the sale for any reason. The Court scheduled a conference call for the morning of July 5th between Stomski, Bowens and Judge Strickland to hear the respective arguments delaying the sale. The Court ruled the deficiency sale scheduled for later in the day on July 5, 2012 would proceed as scheduled. Kevin Knowell, (Knowell) an agent for South Carolina Operating Room Equipment, LLC (SCORE) was the successful bidder on behalf of SCORE, LLC on both properties. SCORE, LLC is a Limited Liability Company in good

standing with the Secretary of State's office and Rhonda Meisner (Meisner) is the single member of SCORE, LLC. Later in the day on July 5, 2012, but prior to the deadline in the Master of Equity's instruction on fulfilling the requirements of the sale, SCORE, LLC deposited the required 5% of the bid price in the second step of complying with the foreclosure sale as outlined in the Master's Order of Foreclosure and Sale; the first step being Knowell's bid on behalf of SCORE, LLC. On July 18, 2012, Bowens filed with the Court his memorandum in support of the Motion to Alter and Amend the judgment. The Court scheduled a hearing on July 18, 2012 to discuss the Motion to Alter and Amend filed by Bowens. Present at the hearing were Bowens, Stomski, Meisner, and Judge Strickland. During the hearing the Court asked the parties to brief their positions on the guaranty agreement and the application of the guaranty agreement to the deficiency amount. The Bank also requested the Court to consider a Motion to vacate the judicial sale and Stomski was directed to consult with her client and then file a formal motion if the Bank wanted to file a Motion to vacate the

Judicial sale. The Bank via Stomski sent a letter to Bowens providing the Affidavit of Attorney's fees. The Bank filed their return to the Motion to Alter and Amend on July 27, 2012. On July 30, 2012 Stomski filed a Motion to Vacate the Judicial sale on behalf of the Bank naming Meisner and Sand Dollar as Defendants but not including SCORE, LLC as a Defendant. Only July 31, 2012 Meisner filed a certified petition for appraisal for both properties sold at the deficiency sale on July 5, 2012 which complied with the time constraints associated with the instructions of the Appraisal Statute. On August 8, 2012 the Master's office filed the Report on Sale and Disbursements and Order of Confirmation of Sale. On August 10, Bowens filed a memorandum on the guaranty

agreement on behalf of Sand Dollar and Meisner. Meisner also filed a memorandum with the Court on the guaranty agreement. On August 30, 2012 the Bank filed a Motion to Vacate the Judicial sale naming Sand Dollar and Meisner as Defendants. On September 27, 2012 Rick Gleissner, Attorney for SCORE, LLC made an appearance in the case by filing a Notice of Appearance and noticing Plaintiff Bank via Stomski and Defendants Sand Dollar and Meisner via Bowens. On November 2, 2012 Defendants, Sand Dollar and Meisner via their attorney Glenn Bowens filed a memorandum on Judicial Estoppel and the Appraisal Statutes. At the hearing on November 6, 2012 Judge Strickland signed the order denying Defendants Sand Dollar and Meisner's Motion to Alter and Amend the Judgment entered in the public record by the Bank. The Motion to alter and amend the judgment was filed by Bowens on the Defendants' behalf earlier in the year on June 7, 2012. On November 8, 2012 Bowens wrote a letter to Judge Strickland outlining the outstanding issues with regard to the foreclosure cases as Judge Strickland had requested at the status conference on November 6, 2012. On November 7, 2012 Stomski sent a letter to Bowens enclosing the filed stamped copy of the order denying the Motion to alter and amend which Bowens received on November 10, 2012. The Notice of Appeal was filed and served on all parties on December 6, 2012. A copy of the Notice of Appeal was also sent to the Honorable Judge Joseph M. Strickland on December 6, 2012.

ARGUMENT

1)BECAUSE RESPONDENT FILED A PREMATURE AND INACCURATE FORM 4 JUDGMENT; RESPONDENT HAS CAUSED DUPLICATE JUDGMENTS TO BE FILED IN THE PUBLIC RECORDS IN VIOLATION OF THE SUPREME COURT RULES FOR ENTERING FORM 4 JUDGMENTS AND CONTRARY TO THE ORDER OF FORECLOSURE

Prior to the foreclosure hearing on April 25, 2012, the Bank and Defendants Sand Dollar and Meisners' attorney had agreed that the hearing on April 25, 2012 was only to discuss whether or not the foreclosure could proceed and the debt Sand Dollar, the only Defendant subject to the foreclosure proceeding owed to the Bank. (R.p.62 lines 6-14) The application of the Appraisal Statutes and the application of the Guaranty Agreement to the deficiency, if any, would be evaluated after the sale of the properties. (R. p 87 lines 16-25) Wendy Wolfson, Vice President of SCBT (Bank) testified to the debt and to the fact the bank paid attorney's fees to Stomski which is necessary to validate the debt to the Bank prior to initiating the foreclosure proceedings against Sand Dollar. However, her testimony was not sufficient to show how Meisner, in her individual capacity owed the identical debts to the Bank. (R. p68 lines10-21) Wolfson's testimony did not identify that Meisner signed the Guaranty Agreement in her individual capacity and not as a member of Sand Dollar. (R. p69 lines 1-13) The Guaranty Agreement itself does not designate Meisner's legal status on the form. (R p.249) The Form 4 was filed **prior** to the foreclosure sale, **prior** to the application of the appraisals and or the valuation of the properties by the Bank, and **prior** to the application of the Guaranty Agreement to the debts owed by Sand Dollar. (R pp. 12-13) Each of these separate applications of funds or credits would reduce the amount of the judgment to both Sand Dollar and Meisner. The Bank erroneously filed judgments against Sand Dollar and **contemporaneously** filed the same erroneous amounts of judgments against Meisner. (R pp. 12-13) These amounts

were in excess of the amounts identified in the Guaranty Agreement and conveyed to third parties that both Sand Dollar and Meisner owed **the identical debt** to the Bank **essentially doubling** the judgment amounts owed in the eyes of third parties viewing the public judgment roles. The instructions for filing the Form 4 were not followed **(R.pp.203-204)** and the Form 4 that was sent to Defendant was not signed by the judge.**(R. pp.201-202)** The Form 4 Order indicates that Sand Dollar and Meisner each owe \$63,734.92 (Civil Action #11-CP-40-6317) (Appellate Case #213558) and \$43,220.45 (Civil Action #11-CP-40-6318) (Appellate Case #213559). The Form 4 Order, is used to index the parties' name and amount of the judgment in the public record. Based on the instructions for the use of a Form 4 Order, the Plaintiff should not have filed the Form 4 Order. **(R.p.203 #4)** Instruction #2 provides: "The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index." **(R.p. 203 #2)** The judge did not sign the Form 4 Order. **(R.p.202)** Instruction #10 provides:

When an Order of Foreclosure is filed, neither the parties nor the 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.pp. 14-20)** Instruction #12 provides: "....subsequent information, including deficiency judgments can be added after the case is over..."**(R p.204)**

The Foreclosure Order signed by the court did not specifically require entry of the full judgment amount before the foreclosure sale . The order stated in paragraph 33 that

the Order for Deficiency would be entered **after crediting** the proceeds of the sale, not the full judgment before the sale. **(R.p.19 #33 line 6)** The Bank ignored the order of the Court and entered the full judgment amounts against Sand Dollar and Meisner and entered identical amounts of debts owed to the Bank, thereby doubling the amounts owed. Moreover, counsel for the Bank knew when she filed the Form 4 Order that the sale and appraisal had not taken place and the amount recorded in the public record would be reduced. Making matters worse, counsel for the Plaintiff sent someone to the Foreclosure Sale to bid on the properties: \$25,000.00 on the Linden Street property and \$10,000.00 on the Winnsboro Road property, which meant she **absolutely knew** the amount recorded was **not the correct amount. (R.p.260)** The filing of the Form 4 Order gave the false impression that both Sand Dollar and Meisner owed \$63,734.92 and \$43,220.45 and became a lien **on all properties** owned by Sand Dollar and Meisner, **not just the ones subject** to the foreclosure actions. The Guaranty Agreement is a separate contract from the Mortgage Contract. **(R.pp33-34)**

The Form 4 should have never been filed as the application of the Appraisals and the guaranty agreements and the foreclosures themselves had not yet been completed. Additionally, by the time the Judge signed the order denying the Motion to Alter and Amend on November 6, 2012, the foreclosure sales **were complete** and the Bank was in possession of the funds received from the Court which were distributed from the sale of the properties which reduced the amounts of the debt at least by \$25,001 and \$10,501 respectively. Refusing to amend the amounts entered in the public roles via the Order of Judgment when this information was in front of the Court was clearly erroneous. Sand Dollar or Meisner **never** owed the amounts entered in judgment in the public index. This

is the very reason the Supreme Court issued the rules against entry of the order on Form 4, and why the Court should have required the Bank to remove erroneous entries based on the Order of Foreclosure and the Supreme Court rules. The judgments are not accurate and therefore they cannot be legal. Meisner is prejudiced by the entry of the judgments as the judgments affects title to other lands outside of the current action because it creates a lien on other properties owned by Meisner. This is the very reason the Supreme Court issued the rules for entering judgments in foreclosure cases. Meisner was not the Defendant to the foreclosure action, but a guarantor, until the amount determined to be owed by Meisner is decided, the erroneous amounts enrolled in the public roles should not be sanctioned by the Court.

2)BECAUSE RESPONDENTS FILED A MOTION TO VACATE THE JUDICIAL SALE; RESPONDENTS ARE JUDICIALLY ESTOPPED FROM VALUING THE PROPERTY LESS THAN THE VALUE CLAIMED IN THEIR MOTION TO VACATE THE SALE FOR A DEFICIENCY AGAINST APPELLANT.

Also by the time the Court signed the denial of the Motion to Alter and Amend on November 6, 2012, the Bank had admitted the value of the properties was the amount of their mortgage on each associated properties in their Motion to Vacate the Sale. **(R P.262)** By naming Sand Dollar and Meisner in their Motion to Vacate the Sale, the Bank created a privities of parties or privities of interest in the valuation of the properties with SCORE, LLC which would not have existed had the Bank not named Sand Dollar and Meisner as Defendants in the Bank's Motion to Vacate the Judicial Sale. **(R.p.260)** By the time the Motion to Vacate the sale was filed by the Bank, the Judicial Sale was complete therefore extinguishing any legal or equitable rights that could be claimed by either Sand Dollar or Meisner. **(Rp.20 #36)** Naming both Meisner and Sand Dollar via

the Motion to Vacate the Sale created privities of interest between the three entities regarding the valuation opinion submitted by the Bank in the Motion to Vacate the Sale. The Bank's valuation of the properties, the limitations of the guaranty agreement, and the application of the funds received from the Judicial Sale effectively extinguished the liability of Meisner for any outstanding obligations of Sand Dollar regarding the foreclosure of the two properties involved.

Privities of Parties/Judicial Estoppel

Privities of Parties deals with the relationship of the parties to the subject matter and not to the relationship between the parties. **(R.p.277 footnote #1)** While the Motion to Vacate the Judicial Sale involves three separate and distinct legal entities; Sand Dollar, Meisner and SCORE, by naming Sand Dollar and Meisner as Defendants in the Motion to Vacate the Sale in the confines of the foreclosure proceedings the Bank created a privities of parties with regard to the subject of the valuation of the property. Roberts v. Recovery Bureau Inc. 316 S.C. 492,496,450 S.E 2d 616,619 (Ct App 1994). In this case, Sand Dollar and Meisner lost all equitable and legal interest in the properties subject to the Bank's foreclosure proceedings on June 4, 2012 **(R. p.20¶36)** However, Meisner and Sanddollar at the time of the Bank's Motion to Vacate Judicial Sale on September 6, 2012, retained an interest in the valuation of the properties under the Appraisal Statutes based on the deficiency demanded by the Bank **(R.p.25)**. The Bank, instead of naming the legal owner of the properties, SCORE, in a separate and distinct lawsuit, named both Meisner and Sanddollar as Defendants in their Motion to Vacate the Judicial Sale and tied the Motion to the original foreclosure proceeding. **(R. p260)**. South Carolina

recognizes only two reasons to set aside a Judicial Sale. Specifically, South Carolina will set aside the Judicial Sale when, (1) "The sales price is 'so gross as to shock conscience; or (2) the sale is accompanied by other circumstances warranting interference from the Court". Wells Fargo Bank, N.A. v. Turner, 378 S.C. 147,150,667 S.E. 2d 424,425 (Ct. App. 2008) (citing Poole v. Jefferson Standard Life Ins. Co. 174 S.C. 150,157,177 S.E. 2d,27 (1934). In this case, (1) the Court made no error in the sale (2) the price paid was more than the Bank was willing to pay, therefore it shouldn't shock the conscience of the Bank (3) there is no "scheme" unless the Bank is suggesting the South Carolina legislature has participated and "authorized" a "scheme" as the purchase by SCORE, LLC conformed to the Order of Sale by the Masters order and as in compliance with the laws regarding foreclosure sales. The laws of South Carolina do not prevent the Mortgagee from purchasing the properties; therefore to suggest the law prevents SCORE, LLC from purchasing a property in a foreclosure is not consistent with the statutory construct in South Carolina for mortgage foreclosure sales.(R p19 ¶32¶34)

Additionally, it is important to note, the Bank does not make any accusations about irregularities in the bidding process or the Judicial Sale itself, only about the purchaser. Had the property been purchased by the Bank itself, or any other citizen or company, Meisner and Sanddollar would retain their appraisal rights. If it is legal for the Bank to purchase without penalty, the same would be true for any other company or individual. (R.p.19¶32)

In their Motion to Vacate the Judicial Sale of the properties, in foreclosure actions 11-CP-40-6317 and 11-CP-40-6318 the Bank has claimed that the value of the properties

should be set at the mortgage amount for the properties. (R.p.262¶4 lines 3-7_) Defendants "Sanddollar" and "Meisner" previously petitioned the court for their Statutory Appraisal Rights and the Bank has conceded both entities maintain their statutory rights to an appraisal. (R p.83 lines1-3;15-17)South Carolina Operating Room Equipment, LLC (SCORE) outbid the Bank at the deficiency sale and became the legal and equitable owner of both properties upon receipt of the deed from the Richland County Master in Equity (R p274). The Bank, by naming Sanddollar and Meisner as Defendants in the Motion to Vacate the Judicial Sale, has created a "privities of parties" with regard to Bank's valuation of the properties based on the Appraisal Statutes and Common Law Doctrine of Equity.

3) BECAUSE RESPONDENTS NAMED APPELLANTS AS DEFENDANTS IN THE MOTION TO VACATE THE JUDICIAL SALE; RESPONDENTS CANNOT CHANGE THEIR POSITION ON THE VALUATION OF THE PROPERTY FOR THE DEFICIENCY ACTION.

Appraisal Statute

The Appraisal Statute was specifically instituted to protect Mortgagors from Mortgagees foreclosing on properties; then under-bidding at the Judicial Sale only to later sell the property for a profit and subsequently demand a large deficiency from the Mortgagors and or Guarantors. (R.p.262-3) Here, the Bank's "scheme" to bid low at the Judicial Sale as contemplated by the Legislature in enacting the Appraisal Statute is admitted by the Bank in both the bidding process and the valuation of properties via the Motion to Vacate the Judicial Sale . The Bank knew the properties were worth more than the amount they bid at the Judicial Sale, but still bid a minimum amount (Rp.262). The Bank was not prejudiced by SCORE, LLC's purchase of the property in excess of the

Bank's bid, and to the contrary, the Bank should have bid an adequate amount initially. South Carolina is one of the few states that does not hold the purchase price against the purchaser even when the purchaser is the Mortgagee. The Bank then argued in the Motion to Vacate the Judicial Sale that "...the mortgage value is a fair gauge of the property's value in the hands of the buyer" of the properties is the amount of the mortgage owed on the properties. **(R p.262)** The Bank further argues the Court could set aside a sale when "...the discrepancy between the winning bid and the fair market value"... The Bank seems to forget that the **Bank's bid is the bid that was upset**. The **Bank should have bid** the "fair market value". **(R p.263)** Meisner and Sanddollar accepted the Bank's "mortgage amount" valuation of the properties under the Appraisal Statute **(R.p.267)**. The Appraisal Statute gives a specific process for valuing the properties where a deficiency is demanded to protect the Mortgagors and or Guarantors in the valuation of properties. As such, the Statute on Deficiency sales states the Mortgagee must put their highest and best bid at the time of the Judicial Sale. **R. p267 lines 9-16)** The Appraisal Statute also gives guidance to who would qualify as an appraiser for the purpose of setting the value of the property. The Court gave direction to both parties to get the properties appraised and submit the value to the Court if both appraisers agreed. **(R. p. 114 line 24-25)** If the appraisers did not agree, the Court would appoint a third appraiser and come up with the value if necessary. **(R. p114 line 25 p. 115 lines 1-2)** In this case, prior to the return of the appraisers, the Bank itself, via the Motion to Vacate the Judicial Sale, valued the properties at the amount of the mortgage which was accepted by Sanddollar and Meisner. **(R.p. 267 lines 1-5)** In order to increase the amount of the deficiency judgment against Sand Dollar and Meisner, the

Bank intends to suggest a lower value for the properties under the Appraisal Statute. The Bank is asking the Court to determine the amount owed in the deficiency judgment based on these lower property values when it previously asked the Court to set aside the foreclosure sale by valuing the properties at the market values represented by their respective mortgages (i.e. \$62,280.00 for #6317 and \$36,000.00 for #6318).

The Bank is judicially estopped from changing its position on the facts regarding the value of the property between the Motion to Vacate the Foreclosure Sale and the Motion for a Deficiency Judgment. The Bank asserted the value of the properties was the value of the mortgage in order to attempt to set aside the foreclosure sale; it cannot now claim a different property value for the same properties in order to increase the amount of the deficiency judgment. The South Carolina Court of Appeals has held:

“Judicial estoppel preclude a party from adopting a position in conflict with one earlier taken in the same or related litigation.”

When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him.

Cothran v. Brown, 350 S.C. 352, 566 S.E. 2d 548 (S.C. App 2002).

The Bank bid low at the Judicial Sale in order to get the properties so that it could turn around and sell them at a higher price and make a profit while at the same time pursuing a Deficiency Judgment against Sand Dollar and Meisner. The Bank is seeking to increase the amount of the Deficiency Judgment by changing its position on the value of the property and is asking the Court to aid it in its “scheme” to both make a profit on the property and increase the amount of the deficiency judgment; the Bank’s “scheme” is not equitable.

Ironically, it was the Bank's premature and inaccurate indexing of judgments against Sand Dollar and Meisner that prevented either entity from being able to secure financing in order to repurchase the properties and subsequently resulting in the Bank's "confession" of the true value of the properties. **(R.p.260)** The motive for the Bank's action is simple and has three separate and distinct parts. First, the Bank filed the Motion to Vacate the Sale against Sand Dollar and Meisner to have a second chance to get ownership of the properties and the equity **(R.p.117 lines 14-19)** e.g.: the chance to re-bid; the South Carolina Deficiency Sale Statute specifically requires the Mortgagee to enter their highest and best bid at the foreclosure sale. Second, they filed the Motion to Vacate the Judicial Sale in connection with the foreclosure proceeding in an attempt to continue to have the attorney's fees paid by the Defendants which was not contemplated in the original mortgage agreement. Third, if Sand Dollar or Meisner would have been the successful bidder, the Bank would not have tried to vacate the sale and in their argument for the "Motion" mistakenly admit the Bank's true opinion of the value of the properties to the Court. **(R.p.262)** Had Sand Dollar or Meisner re-gained ownership of the properties, the previously filed erroneous Form 4 judgments would immediately attach to the properties and the Bank would still have received the equity. Had the Bank purchased the property, they could have sold the properties for a profit and still claimed the erroneous judgments filed against both Meisner and Sand Dollar. The only problem with the Bank's "Motion to Vacate the Sale" as it played out in front of the Court was the fact that inadvertently, the Bank admitted the value of the properties should be set at the amount of the mortgage associated with the properties.

Meisner testified that she had lost her job and the tenants at both properties were unable to pay their rent as the reason for non-payment of the mortgages (**R p79 lines 16-25**). She further testified that she had previously brought one property current and was attempting to catch up the payments on the other property from her recent job loss when the Bank refused to accept payments on either property and initiated the foreclosure actions. (**R p 71 lines 21-15**) In 2010 the Supreme Court announced stricter scrutiny of foreclosures and a process to evaluate the actions of Banks when a mortgagor's primary home was involved. (**R p. lines 1-9**) These properties did not qualify for the protective order of the Supreme Court as they were rental properties. However, the Supreme Court did make reference to the fact that foreclosure should be the last resort, not the first tool to be taken out of the tool box.

Guaranty Agreement

During a hearing held on July 18, 2012, the Court requested the parties brief the issue of the application of the Guaranty Agreements with regard to the liability of Meisner on any deficiency judgment as Defendants had previously filed a Motion for Declaratory Judgment in their Answer and Counterclaim to the original foreclosure proceeding. (**R. p.107 lines 22-25**)

The Defendants' Answer and Counterclaim previously had asked for a Declaratory Judgment to determine the parties' rights and liabilities under the Note, Mortgage and Guaranty Agreement, and to determine the rights and obligations of the parties with respect to the amount of the Deficiency Judgment requested by the Plaintiff. (**R. p53 ¶18**) The Guaranty Agreements placed monetary limitations on Meisner's

personal liability. Meisner sought this Declaratory Judgment because she wanted to make certain that, should there be a Deficiency Judgment, her liability did not exceed those limitations.

During the trial of Civil Action 11-CP-40-6317 (Appellate case #213558) and 11-CP-40-6318 (Appellate case #213559), held on April 25, 2012, the Plaintiff presented two Guaranty Agreements executed by Meisner guaranteeing payment of the two promissory notes between the Plaintiff and Sand Dollar. **(R. p.31 ; p48-49)** Meisner claims her maximum liability for a Deficiency Judgment based on these Guaranty Agreements is \$31,140.00 for the loan in 11-CP-40-6317 (Appellate case #213558) and \$36,000.00 for the loan in 11-CP-40-6318 (Appellate case #213559) as provided in the two respective Guaranty Agreements the Bank sued for in the foreclosure proceedings; Meisner requested the Court issue a Declaratory Judgment to that effect. A review of Guaranty Agreements in question offers no evidence of whether Meisner was acting in her personal capacity or as a member of Sand Dollar. **(R. p. 48-49)** There are no words such as "personal guaranty" or "jointly and severally" or "individually" and "corporate" or "acting as a member on behalf of Sand Dollar". In fact, without acknowledgement from Meisner, a reader of the guaranty would not be able to determine Meisner's legal capacity regarding the agreement. There are no "articles of instruction" for members or "articles of organization" required as part of the loan for Sand Dollar indicating Meisner had been given authority to act as a member of Sand Dollar. Since none of the LLC documents are attached to the loan, it is not unreasonable to presume that the Guaranty Agreement could serve the function of providing a "right to act" agreement on the behalf of the LLC by Meisner as a part of the loan processing. As

such, an independent reviewer would not recognize without additional information whether the guarantees were executed in Meisner's personal capacity or in the capacity of "member" Sand Dollar 31, LLC. While Meisner acknowledges the guaranty was presented to her as a personal guaranty for a business loan, an outside reader of the documents might not be able to discern the relationship of Meisner to Sand Dollar and the intent of the parties, further giving credence to the fact the guaranty is ambiguous and therefore requires extrinsic evidence to interpret the intent of the parties. (R p.48-49)

Meisner claims that the purpose of the Guaranty Agreements and the intent of the parties were to guarantee the Plaintiff received \$31,140.00 for the loan in 11-CP-40-6317 and 36,000.00 for the loan in 11-CP-40-6318 should Sand Dollar default. These amounts represented the money actually loaned by the Plaintiff to Sand Dollar. Meisner also claims that if the high bid at the foreclosure sale **or the appraised value was equal to or exceeded** those amounts, then her liability under the Guaranty Agreements will be satisfied as the Plaintiff will have received the guaranteed amounts provided in those agreements.

Meisner bases her claim that the Guaranty Agreements limit her liability to \$36,000.00 and \$31,140.00 on three basic grounds. First, the Guaranty Agreements specifically state the maximum dollar amount in paragraph A. Second, paragraph 4 provides that the guarantor is liable for "all indebtedness, without limitation as to amount" if "no amount is stated". However, since an amount is stated, i.e. \$31,140.00 and \$36,000.00, then the guaranty is limited to those amounts. Third, this was the

understanding of the parties at the time the Guaranty Agreements were made, based on representations made by the Bank to the effect that the amount guaranteed was the dollar amount stated in the agreement.

The Bank disagrees with Meisner's interpretation of the Guaranty Agreements; and claims she owes \$63,734.92 in 11-CP-40-6317 (Appellate case #213558) and \$43,220.45 in 11-CP-40-6318 (Appellate case #213559); these amounts represent the money actually loaned to Sand Dollar **plus** other debts allegedly incurred by Sand Dollar in the form of attorneys' fees, interest, corporate charges, late charges, taxes, escrow, advances, costs of litigation and other charges. The Bank bases these claims on its interpretation of paragraph 4 of the guaranty; however, paragraph 4 is in conflict with paragraph A. The Bank's interpretation of paragraph 4 reveals an inherent ambiguity between paragraph 4 and paragraph A.

Guaranty Agreements are contracts and their interpretation is governed by the same contract law principles as any other contract. The South Carolina Court of Appeals has held:

A contract is ambiguous when the terms of the contract are reasonably susceptible to more than one interpretation.

The uncertainty in interpretation can arise from the words of the instrument, or in the application of the words to the object they describe.

Whether a contract is ambiguous must be determined from the entire contract and not from any isolated clause of the agreement. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 672 S.E. 2d 799 (Ct.App. 2009) (internal citations omitted)

When a contract is susceptible of more than one interpretation, the non-drafting party is given the benefit of the ambiguity. The South Carolina Supreme Court has held:

"(A)mbiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage. "

It is generally held that an ambiguity in a written contract should be construed most strongly against the drafters. We quote, with approval, the following from 17A C.J.S. Contracts 324:

The reason for the rule of strict construction against the party preparing the contract is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes in meaning more than one with whom he is dealing, and that he who has brought the agreement into existence and is thus primarily responsible for its inadequacy should justly suffer for its shortcomings."

Myrtle Beach Lumber Company, Inc. v. Willoughby, 276 S.C. 3, 274 S.E. 2d 423 (S.C. 1981).

There is no dispute that the Guaranty Agreements at issue were drafted and prepared by the Bank. Based on the Supreme Court's holding, the ambiguity must be resolved in favor of Meisner. The parties' conflicting interpretations requires the Court to interpret the agreement and issue a Declaratory Judgment. When a written contract is

ambiguous extrinsic evidence may be admitted to determine the parties' intent. Duncan v. Little, 384 S.C. 420,682, S.E. 2d 788 (2009).

The Guaranty Agreements in the two cases are preprinted forms and are identical with the exception of the dates and dollar amounts. Both Guaranty Agreements contain two options, paragraph A and B, with a box beside each paragraph, one of which is to be marked with an "X". Paragraph A was marked in both 11-CP-40-6317 and 11-CP-40-6318. Importantly, paragraph A limited the amount guaranteed to \$31,140.00 (11-CP-40-6317) and \$36,000.00 (11-CP-40-6318) respectively. On the other hand, paragraph B, which was **not checked**, required payment by the guarantor of:

....each and every debt, liability and obligation **of every type and description** which Borrower may now or at any time hereafter owe to lender (**whether such debt, liability or obligation now exists or is hereafter created or incurred**, and whether it is or may be direct or indirect, due or become due, **absolute or contingent**, primary or secondary, liquidated or unliquidated, or joint, several or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "indebtedness"). (emphasis added)

The Bank claims that Meisner is liable for payment of Sand Dollar's debts beyond the \$31,140.00 and \$36,000.00 stated in the guaranty are exactly the type of debts contemplated by paragraph B; at the time the Guaranty Agreement was executed these other debts:

- (1) did not exist;(2) they were neither created nor incurred;
- (3) were indirect and secondary to the amount borrowed;
- (4) were contingent and had not yet become due.

The Bank wants to focus just on paragraph 4 which itself is ambiguous; however, when interpreting a contract the contract must be read as a whole, without focusing on any single provision to determine the contract's meaning. Pee Dee Stores, at 242. Paragraph 4 must be interpreted in light of paragraphs A and B. The Bank's argument that paragraph 4 makes Meisner liable for these additional debts would make more sense if paragraph B had been checked; however, the parties did not check paragraph B. Even under the Bank's interpretation that the specific dollar amount stated in the Guaranty Agreement referred to the amount of "principal" guaranteed, the Plaintiff still claims \$48,698.20 is due in principle in 11-CP-40-6317 (Appellate case #213558), when the Guaranty Agreement only provided for \$31,140.00, which is over \$17,000.00 more in principle than the Bank is allowed under its own interpretation of the agreement.

The question before the Court is whether the Guaranty Agreements place a monetary limitation on Meisner's personal liability (as claimed by Meisner) or whether Meisner's liability is unlimited (as claimed by the Bank). The South Carolina Court of Appeals has held:

Although not yet decided in South Carolina, in the absence of an express limitation of an amount of a guaranty as a general rule the amount of the liability, or, in other words, the measure of damages, on a default by the principle obligor is that amount of loss which the guarantee has sustained by reason of such default....PPG Industries, Inc. v Orangeburg Paint Center, Inc. 297 S.C. 176,375 S.E. 2d 331 (Ct. App.1988)

The Guaranty Agreements in these cases do place "an express limitation of an amount" i.e. \$36,000.00 and \$31,140.00. If the parties intended for her liability to extend beyond stated dollar amounts then paragraph B would have been marked. Based on the

holding in PPG Industries, and Myrtle Beach Lumber Company, the ambiguity created by paragraph 4 and paragraph A must be resolved in Meisner's favor. Furthermore, the Bank has valued the property at the mortgage amount of the property which effectively satisfies the Guaranty Agreement.

4) BECAUSE RESPONDENTS HAVE NOT FILED AN AFFIDAVIT OF ATTORNEY FEES OR ITEMIZED STATEMENT WITH THE COURT ATTORNEY FEES SHOULD BE DENIED OR ADJUSTED

As of July 31, 2012 the Bank's attorney had still not filed with the Clerk of Court's office the Affidavit of Attorney's Fees to provide proof of the reasonableness of the fees under the Jackson v Speed criteria. The Bank claims attorney fees in the following amounts: (1) \$3,321.00; (2) \$2,679.00; and (3) an undisclosed amount for attorney fees under the category of "Allowable Advances". The Bank claims over \$6,000.00 in attorney fees related to the Linden Street property. This same property was previously foreclosed upon and the court awarded \$2,900.00 in attorney fees, less than one half the amounts being claimed in the present case. (**Rp.208**) The Court should deny this request for attorney fees without documentation supporting a claim for fees that are double the amount of the previous foreclosure on the same property.

Second, in Civil Action 11-CP-40-6318 (Appellate case #213559) the Bank claims attorney fees in the following amounts: (1) \$4,924.00; (2) \$3,760.00; and (3) an undisclosed amount for attorney fees under the category of "Allowable Advances". The Bank lists as "Allowable Advances": "escrow advances," "corporate charges," "expenses from the foreclosure action" and an ambiguous charge for "other charges." The Bank did not separately identify the amounts allocated from the \$6,263.60 for each of these

charges. Without an affidavit and itemized statement of attorney fees and costs it is impossible for the Court to evaluate the propriety and reasonableness of these claimed charges or for the Defendants to decide if these charges are objectionable.

The Court must evaluate the reasonableness of the claimed attorney fees based on the six factors outlined by the Supreme Court in Jackson v. Speed, 326 S.C. 289, 486 S.E. 2d 750 (1997). The Supreme Court held that the trial judge should consider the following six factors when determining the reasonableness of a claim for attorney fees: (1) the nature, extent, and difficulty of the case; (2) the time necessary devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Id. The Supreme Court also held that "on appeal, an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor" Id. The Court cannot accomplish this task without an itemized statement of attorney fees and costs. The Court should also consider that the Defendants offered to settle the case without the necessity of going to court and made a payment to bring the loan current when deciding the issue of attorney's fees. The Bank has engaged in conduct that Meisner considers to be improper, fraudulent, libelous, and abusive and in violation of rules governing the filing of

Form 4 Orders: (1) filing an order with a judgment amount the Bank knew was not correct and/or final, especially when the Bank knew it was going to be bidding on the properties at the foreclosure sale and thereby reduce the amount of the judgment by the amount of the bid; (2) filing an order without obtaining the trial court's signature on the order; (3) filing an order in violation of the instructions; (4) failing to notify Meisner's counsel that the proposed order had been transmitted to the court; (5) failing to notify

Meisner's counsel that the order had been signed and filed; and (6) send a letter, in an attempt to collect a debt that was in litigation, directly to Meisner when the Bank knew Meisner was represented by counsel.

The Appellant requests the Court consider the Plaintiff's conduct, which Meisner contends constitutes unclean hands, when deciding the Bank's request for attorney fees. As a result of the Bank's conduct, Meisner has been required to incur additional attorney fees and costs unnecessarily. By the Bank's actions the Bank has tried or will try to collect attorney's fees not contemplated in the original mortgage contract e.g.: the Motion to Vacate the Sale. The Appellant requests the Court to award Appellants' attorney fees and costs and/or make an appropriate adjustment to the attorney fees and costs that may be awarded to the Bank to offset the fees and costs incurred by the Defendants with respect to this motion.

Additionally the Attorney's for the Bank has increased the costs associated with this litigation by filing the Form 4 prematurely and inaccurately and therefore causing a required defense response. Many of the actions and hearings associated with this case are the result of the Bank's attorneys trying to garner rights for the Bank not available legally; such as trying to limit the appraisal rights of Meisner, naming Meisner as a Defendant in an action that does not legally include them e.g.: Motion to Vacate the Judicial Sale and by threatening to sue Meisner for comments made in open Court which counsel for the Bank knows these comments have an absolute privilege.

Conclusion

The entry of the judgment amounts on the Form 4 against Meisner in the public record is clearly erroneous. The Form 4 did not have the Judge's signature prior to

entering the full judgment of Sand Dollar's debts against Meisner. Additionally, the Order of Foreclosure did not dictate the full judgment amount should be entered for Sand Dollar much less Meisner, the Guarantor, prior to the foreclosure sale. The enforcement of the Guaranty Agreement necessarily assumes there is something to enforce. On November 6, 2012 when the written order was signed, the Court had considered the Guaranty Agreement, Appraisal Statute arguments, the Privities of Parties, and the Judicial Estoppel arguments regarding the valuations of the property's value and still sanctioned the entry of judgment in the public roles by denying the Motion to Alter and Amend the judgment. The order ruled against the Defendant with regard to the Guaranty Agreement, otherwise the order would have been vacated and replaced. The order did not set the valuation of the property suggested by the Bank and accepted by the Defendants via the Appraisal Statute by allowing a judgment stand for the full amount against Meisner. Furthermore, the Bank has admitted the "bad deeds" of bidding a minimal amount and then confessing the true value of the property in front of the Court. This information is usually hidden behind the walls of the institution, but here in front of the Court of Equity such inequitable behavior should not be tolerated. The only value for the properties in front of the Court is the suggested "mortgage value" put forth by the Bank in their Motion to Vacate the Sale and this "mortgage value" was accepted by the Defendants.

For the reasons noted above, the Court should not sanction a retroactive approval of inappropriate judgments being enrolled in the public indexes. As officers of the Court, attorneys not following the Supreme Court rules for the entry of judgments should have some economic repercussions considering the economic hardship this causes Defendants.

Furthermore, this retroactive approval of inappropriate actions further emboldens the Bank's attorneys to "take action" then beg for forgiveness later. In the instant case, the judgments filed against Meisner have never existed in the amounts enrolled in the public roles.

APELLANT'S ANSWER TO RESPONDENTS QUESTION #1

1. WHETHER MEISNER MAY ARGUE THE EFFECT OF THE MOTION TO VACATE THE JUDICIAL SALE WHEN THE MASTER IN EQUITY HAS NOT HEARD OR RULED ON THE MOTION TO VACATE THE JUDICIAL SALE?

The Bank's argument that Meisner is premature in appealing "the effects" of the Motion to Vacate the Judicial Sale and that the appeal of the Motion to Vacate the Sale is interlocutory is misplaced. It is important to note that Meisner does **not** have standing to appeal the Motion to Vacate the Judicial Sale itself as she has no equitable or legal interest in the property and as a matter of law cannot appeal the Motion to Vacate the Sale. Additionally, while a record was not created on November 6, 2013 all parties briefed the Court on the issue of the Bank's Motion to Vacate the Judicial Sale at which time, the Court instructed Teri Stomski, attorney for the Bank to deposit the checks sent to her firm from the Masters office as proceeds from the sale of the foreclosed properties.

The Bank has erroneously named both Meisner and Sand Dollar 31, LLC (hereinafter "sanddollar") as Defendants in a case where neither entity has a legal or equitable interest. Meisner does however have a "privity of parties" with South Carolina Operating Room Equipment, LLC (hereinafter SCORE, LLC) via an interest in the valuation of the properties asserted by the Bank in the Motion to Vacate the Judicial Sale. Meisner has never filed "an appeal" of the Motion to Vacate the Sale. Meisner's

reference to the Bank's motion is not only timely; but necessary , given the Court's final ruling which was a denial of a Motion to Alter and Amend the judgment amounts entered into the public roles via submission of the Form 4 by the Bank. Therefore, effectively ruling on the Guaranty agreement and the Declaratory Judgment as pled in the Plaintiff's Answer and Counterclaim and requested relief via Rule 59-e S.C.R.C.P. motion.

It would be naive for the Appellant to assume the Court would independently "correct" the figures submitted into the public roles by the Bank at some future date, since the Court had already declined to do so via the denial of the Motion to Alter and Amend the judgment. Prior to refusing to Alter and Amend the Judgment entered by the Bank, the Court had all of the necessary information regarding the full judgment amounts entered and still denied the Motion to Alter and Amend the judgment. To wit, on November 6, 2012 when the Court signed the denial of the Motion to Alter and Amend the judgment; the sale of the properties had already occurred and the Bank had already submitted their valuation opinions of the properties to the Court via the Motion to Vacate the Sale; thereby, making it a final judgment and not interlocutory.. Had Meisner not appealed , she would lose the right to challenge the personal judgments and the property valuations in the Appellate Courts.

Quite obviously, if the Court ruled to set aside the Sale of the properties as the Bank was requesting in their Motion to Vacate the sale, then that would be an issue for the purchaser of the properties SCORE, LLC; not for Meisner and not for the arguments regarding the Bank's valuation of the properties in this appeal. The salient point regarding the Motion to Vacate the Sale in this appeal is the Bank's valuation of the

properties in their Motion. The entire argument that the Bank has inadvertently created a "privity of parties" between Sand Dollar 31 LLC, (hereinafter " Sanddollar") Meisner and the purchaser of the properties SCORE, LLC with regard to accepting the Banks valuation opinion of the properties rests on the notion that "[i]f" the Bank had filed a "[s]eparate and distinct lawsuit" not involving Meisner or Sand Dollar, 31, LLC, Meisner would have no legal reason to reference the Bank's valuation opinions. This opinion would be submitted outside the Court's eyes and unavailable as proof of the "[c]orrect" value of the properties with regard to the deficiency. The Bank should have bid the amount they subsequently valued the properties at in the Motion to Vacate the Sale instead of the low amounts the Banks submitted as bids at the foreclosure sale.

APPELLANT'S ANSWER TO RESPONDENTS QUESTION #2

2.) WHETHER THE MASTER-IN-EQUITY PROPERLY DENIED THE MOTION TO ALTER AND AMEND THE JUDGMENT?

The Order of Foreclosure **did not state** the amount of judgment should be entered **prior** to the Sale of the properties, therefore it was clearly erroneous for the Court to sanction the erroneous amounts entered in judgment against Meisner in contradiction of the Order of Foreclosure. Additionally the form 4 judgment instructions were not followed and the Court should have made the Bank correct the "figures" or remove the judgement amounts for Meisner from the public roles as the entering of the judgments effected the legal status of other properties not involved in this foreclosure proceeding.

Here, the Bank, via the Bank's motion to vacate the Sale, issues an opinion that the properties should be valued at the amount of the mortgage; therefore due to the doctrine of collateral estoppel the Bank should be prevented from changing their

valuation opinions in the same cause of action when a "different" valuation of the properties is more beneficial to them later on e.g.: the enforcement of a personal guaranty agreement.

Meisner refers to the Bank's valuation opinion in the Bank's Motion to Vacate the Sale for the following reasons: 1) To support the value claims of both properties via the appraisal statute, 2) to agree with the Bank's reported value in the Motion to Vacate the sale, 3) to suggest to the Court the Bank has cancelled its own claims as to deficiency by valuing the property at the amount of the Mortgage owed. The appeal of inaccurate judgment amounts entered into the public roles is appropriate and timely. It is well understood that any judgment entered in the public roles in excess of the amounts owed is prejudicial and ; therefore, immediately appealable. Once entered into the public roles the Plaintiff is already harmed as other properties and assets in her name are immediately "attached" to the judgment. It is important to note that the amounts entered against Meisner have never been owed. The amounts entered did not take into account the sale amount and at the time the Court signed the denial of the Motion to Alter and Amend the Bank had already said " a fair value for the properties were reflected in the Mortgage amount" as such, the Court should have at a minimum required the Bank to give the credit for the sale of the properties.

Additionally, the Bank did not allocate the funds owed between the Mortgagor Sanddollar and the Guarantor, Meisner which resulted in duplicate amounts being entered in the public roles. The Bank admits in its Initial brief that Sanddollar and Meisner first brought up the issue of the Guaranty agreement in the Answer and Counterclaim in the form of a Declaratory Judgment request. After admitting the Declaratory judgment

request, the Bank then suggests the issue of the Guaranty agreement was first brought up in a Rule 59-e SCRCPP motion to alter and amend. It was the Bank who narrowed the issues to be discussed at the April foreclosure hearing. (R.p62 lines 6-14) Even if the Bank was accurate that the guaranty issue was first presented in the Rule 59-e SCRCPP, in a judge alone trial, the judge can re-open the case and find additional findings of fact and conclusions of law.(Rp.30)At the July Motion hearing, the judge directed the parties to brief the guaranty agreement .Thereby effectively re-opening the issue of the guaranty agreement via his request for briefing or conversely acknowledging Plaintiff's motion as correcting the error of not ruling on the declaratory judgment action in the initial hearing. The Bank also admits, in an action in equity the Appellate Court has broad discretion to find facts in accordance with the Court's own view. Here, the Bank has refused to follow the Supreme Court Rules for entering judgments in the public roles, admits the values of properties are in excess of the guaranty amounts and then ask the Court to deflect their eyes from the valuation made by Bank under the guise that the Trial Court has not ruled on the Motion to Vacate the Sale yet. It is important to note the Motion to Vacate the Sale does not affect Sanddollar 31, LLC or Meisner as neither have an equitable interest any longer. Because the Bank has named the wrong Defendants in its Motion to Vacate the Sale does not make it necessary to have a ruling on their Motion for the argument regarding valuation to be appropriate for Appellate review as the Banks arguments have already been presented to the Court and the Court has ruled via the denial of the Motion to Alter and Amend the judgment because the judgments have already been entered.

The Courts having not ruled on the Motion to Vacate the Sale does not defeat the collateral estoppel or privity of parties arguments. The Bank actually makes the case for

collateral estoppel in its Motion to Vacate the Sale argument . The equitable principle the Bank is attempting to undermine is changing the valuation opinions in the same or related litigation. The Bank erroneously entered identical amounts into the public judgment roles for both Sanddollar, 31, LLC (hereinafter " Sand Dollar") and Meisner thereby doubly the amount owed in the eyes of third parties. As an example, if someone looked at Judgments owed by Meisner and Sand Dollar independantly, they would assume each entity owes the same money thereby doubling the amounts. However, as a guarantor, Meisner only owes the amount of a deficiency, if any. Also during the hearing, Wendy Wolfson, the Banks representative did not testify as to whether Meisner signed the guaranty in her personal capacity or as a member of Sand Dollar 31, LLC. This is the very reason the Supreme Court of South Carolina has created rules for entering judgments and specifically instructs judgments in real estate foreclosures to be entered **after** the sale of the property, so as not to prejudice the parties. At the time the Court signed the denial of the Motion to Alter and Amend judgement on November 6, 2012, the amounts entered in the judgement had been reduced by the sale and income from the sale of the properties but the amounts entered did not reflect the reductions. Also, the Bank had suggested values for the properties in the motion to vacate the sale which eliminated all deficiencies because the Bank argued the appropriate value for the properties was the amount of the mortgage owed. Since the loans were several years old, each loan had reduced the amount owed from the initial mortgage amount. in addition the Bank only loans 70 % of loan to value on investment property; so in effect the values in the Motion to Vacate the Judicial Sale reflect the true value the Bank has assigned to each property.

APPELLANTS ANSWER TO RESPONDENTS QUESTION # 3

3.) WHETHER THE MASTER IN EQUITY PROPERLY AWARDED ATTORNEYS FEES?

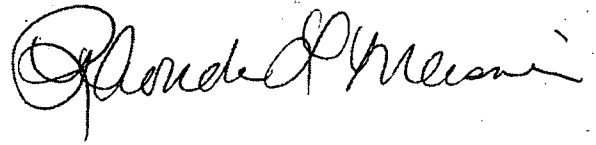
While respondents suggest the award of attorney's fees is appropriate, the affidavit of fees was not filed with the Court as of July 31, 2013 and as such there is no evidence from which the Master can properly award the fees other than the fees Ms. Wolfson testified were already paid by the Bank. Ms. Wolfson, the Bank's representative testified the Bank paid the fees to attorney Teri Stomski and therefore validated the debt owed the Bank. However, the affidavit of attorney's fees was never filed with the Court as of July 31, 2013 and should therefore be denied. Additionally, the Respondents named Sanddollar and Meisner as Defendants inappropriately and therefore caused Meisner to incur additional attorneys fees outside of the original contract that was contemplated by the parties. It is also important to note that Meisner testified and presented evidence that one of the properties was brought current and the Bank still continued with the foreclosure. **(R. 278)** The Bank should not be rewarded for their heavy handed actions. As for the argument the foreclosure was "highly contested" that is accurate but not for the reasons the Respondents suggest. The Respondents contested Meisner's right to invoke the appraisal rights statute with regard to valuation. Meisner testified she tried to comply and cure the deficiencies which were submitted into evidence at the foreclosure hearing.

FINAL CONCLUSION

For the above reasons, Appellant Rhonda Meisner respectfully requests the Court to REVERSE the decision of the Master-in-Equity and accept the valuation opinion submitted by the Bank in their Motion to Vacate the Judicial Sale as the appropriate valuation of the properties and REMAND the entry of Judgement to reflect the

appropriate valuation amounts and DENYING the inclusion of Attorney's fees for guarantor Meisner.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Rhonda Meisner".

Rhonda Meisner, Appellant
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(803)960-3696

This 16th Day of October 2013 A.D.

CERTIFICATE OF COUNSEL IN FINAL BRIEF

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Joseph E. Strickland, Master-in-Equity

Appellate Case No. 2012-213558

SCBT, N.A.

Respondents,

v.

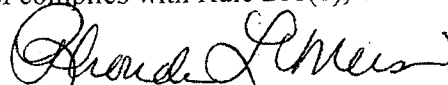
SandDollar 31, LLC: Rhonda
Meisner, of whom Rhonda
Meisner is Appellant

Appellant.

CERTIFICATE OF APPELLANT

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

October 16, 2013



Rhonda L. Meisner, Appellant

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Joseph E. Strickland, Master-in-Equity

Appellate Case No. 2012-213558

SCBT, N.A

Respondents

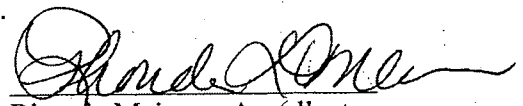
v.

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

Appellant.

CERTIFICATE OF SERVICE

Appellant, Rhonda Meisner certifies she has served upon attorneys of record the Appellants final brief in the above mentioned case by hand-Delivery to Jason Wyman of Rogers, Townsend and Thomas 220 Executive Center Drive Columbia, SC 29210 and have filed the Final Brief with the Court of Appeals this day of October 23, 2013.



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of whom Rhonda Meisner is Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER MEISNER MAY ARGUE THE EFFECT OF THE MOTION TO VACATE THE JUDICIAL SALE WHEN THE MASTER IN EQUITY HAS NOT HEARD OR RULED ON THE MOTION TO VACATE THE JUDICIAL SALE?
2. WHETHER THE MASTER-IN-EQUITY PROPERLY DENIED THE MOTION TO ALTER AND AMEND THE JUDGMENT?
3. WHETHER THE MASTER IN EQUITY PROPERLY AWARDED ATTORNEYS FEES?

STATEMENT OF THE CASE

This case arises from Respondent SCBT N.A.'s filing of a foreclosure action against Sand Dollar 31, LLC and Appellant Rhonda Meisner. (R. p. 21-47). SCBT sought to foreclose on its mortgages and enforce Meisner's guaranties.

Sand Dollar 31, LLC and Meisner filed an Answer and Counterclaim in which they requested a declaratory judgment as to the responsibilities and obligations of each of the parties under the Note, Mortgage and Guarantee Agreements associated with the properties involved in the foreclosure. (R. pp. 50-55).

On April 25, 2012, a final foreclosure hearing was held. (R. pp. 60-77). The court granted SCBT's causes of action for foreclosure and enforcement of the guaranties. (R. p. 4). A Judgment of Foreclosure and Sale was filed on May 16, 2012. (R. p. 4).

The subject properties were sold on June 4, 2012. Because SCBT demanded a deficiency judgment, the property was scheduled for a second sale on July 5, 2012.

Subsequently thereafter, a motion to alter or amend was filed on June 7, 2012. (R. p. 126). On or about June 27, 2012, SCBT filed a return to the motion to alter or amend. (R. p. 171).

On July 18, 2012, a hearing was held on Sand Dollar 31, LLC and Rhonda Meisner's motion to alter or amend. (R. p. 85) Counsel for each party was heard and supporting memorandum was provided to the court. On November 6, 2012, the court denied Sand Dollar 31, LLC's and Rhonda Meisner's motion to alter or amend. (R. p. 1).

Thereafter, SCBT filed a motion to vacate the judicial sale on September 6, 2012. (R. p. 260). This motion has never been heard or ruled on by the master in equity.

Meisner filed her Notice of Appeal on SCBT on December 6, 2012.

FACTS

This case arises from SCBT's efforts to collect amounts due under two mortgage loans that were made to Sand Dollar 31, LLC. On or about July 24, 2006, Sand Dollar 31, LLC delivered a promissory note to SCBT in the amount of \$36,000.00 to finance the purchase of a rental property. (R. p. 26). On or about July 24, 2006 Sand Dollar, 31, LLC delivered a second promissory note to SCBT in the amount of \$31,140.00 to finance the purchase of a second rental property. Each note was secured by a mortgage on the respective properties. As additional security for the notes, Meisner executed personal guaranties. On September 22, 2011, SCBT filed these foreclosure actions against Sand Dollar 31, LLC asserting the notes were in default and requesting the mortgages be foreclosed. (R. p. 21). On or about September 27, 2011, an amended summons and complaint was filed. In its amended complaint, SCBT further sought a judgment against Meisner on her guarantee of the debts of Sand Dollar 31, LLC. Sand Dollar 31, LLC and Meisner timely filed an Answer and Counterclaim. (R. p. 50-55). In their Answer and Counterclaim, Sand Dollar 31, LLC and Meisner counterclaimed for a declaratory judgment as to the responsibilities and obligations of each of the parties under the Note, Mortgage and Guarantee Agreements associated with the properties involved in the foreclosure. SCBT timely filed a Reply to the counterclaim. Both cases were heard on April 25, 2012. A representative of SCBT appeared and testified. (R. p. 62, line 18-p.72, line 5). The court also heard testimony from Ms. Meisner. (R. p. 73, line 17-p. 81, line 18). Following the hearing, a judgment of foreclosure and sale was filed on May 16, 2012. (R. p. 14).

On June 7, 2012, Sand Dollar, LLC and Meisner filed a motion to alter or amend. (R. p. 126). In their motion to alter or amend, Meisner raised the issue of the limitation on her personal

liability for the first time. (R. p. 128-130). On or about June 27, 2012, SCBT filed a return to the motion to alter or amend. On July 18, 2012, a hearing was held on Sand Dollar 31, LLC and Rhonda Meisner's motion to alter or amend. (R. p. 85). Counsel for each party was heard and supporting memorandum was provided to the court. (R. p. 171). On November 6, 2012, the court denied Sand Dollar 31, LLC's and Rhonda Meisner's motion to alter or amend. (R. p. 1).

Meisner, now proceeding pro se, filed this appeal on December 6, 2012.

STANDARD OF REVIEW

In an action in equity referred to a master for final judgment, the Court may find facts in accordance with its own view of the preponderance of the evidence. *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 231, 662 S.E.2d 452, 455 (Ct. App. 2008) (citing *Van Blarcum v. North Myrtle Beach*, 337 S.C. 446, 523 S.E.2d 486 (Ct. App. 1999)). This broad scope of review does not require the Court to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility. *Id.* at 232, 662 S.E.2d at 455 (citing *Plott v. Justin Enters.*, 374 S.C. 504, 649 S.E.2d 92 (Ct. App. 2007)).

ARGUMENT

I. Meisner's Appeal from the Motion to Vacate the Sale is Interlocutory and Not Immediately Appealable

On or about September 6, 2012, SCBT filed a motion to vacate the judicial sale. Meisner devotes much of her brief arguing the merits of the motion to vacate the sale and its impact on her personal liability. "The right of appeal arises from and is controlled by statutory law." *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005). "An appeal ordinarily may be pursued only after a party has obtained a final judgment." *Id.* See also Rule 201(a), SCACR ("Appeal may be taken, as provided by law, from any final judgment, appealable order, or decision."); Rule 72, SCRCP ("Appeal may be taken, as provided by law, from any final judgment or appealable order."). "The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. Code Ann. § 14-3-330." *Hagood* at 195, 607 S.E.2d at 708. "An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable." *Id.*; *Baldwin Constr. Co., Inc. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004). The provisions of § 14-3-330 "have

been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed.” *Hagood* at 196, 607 S.E.2d at 709.

In the present case, the Master in Equity has yet to hear or rule on the motion to vacate the judicial sale. Therefore, there is no order from which an appeal may be taken. Accordingly, Meisner’s appeal on that issue is interlocutory and is not immediately appealable.

II. The Master in Equity Properly Denied Meisner’s Motion to Alter or Amend

A. Meisner’s appeal of the issue of a limited guaranty or that the judgment to be awarded by the court could not exceed a certain amount was not properly preserved for appeal where it was raised for the first time by way of a Rule 59(e) Motion

Meisner failed to preserve for the appeal the issue of whether her liability was limited under the terms of the guarantes. “A party cannot raise an issue for the first time in a Rule 59(e), SCRCF motion which could have been raised at trial.” *MailSource, LLC v. M.A. Bailey & Associate, Inc.*, 356 S.C. 370, 374; 588 S.E.2d 639, 641 (Ct. App. 2003). *See also C.A.H. v. L.H.*, 315 S.C. 389, 434 S.E.2d 268, 270 (1993) (“a party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment, but did not.”)

Meisner raised her challenge to the guaranties for the first time in her Rule 59(e) motion after failing to raise it at the trial. Therefore, this issue is not properly preserved for appeal. This Court should affirm the Master’s Order on this ground.

B. Even if Meisner had preserved this issue for review, the Master in Equity properly denied her motion to alter or amend.

However, even if the issue had been raised at trial, it is still without merit, as the principal amount stated in the Judgment of Foreclosure does not exceed the principal amount stated in the guaranty.

SCBT and Meisner agree that: (1) all of the guaranties signed by Meisner are "pre-printed forms and are identical with the exception of the dates and dollar amounts," (2) guaranty agreements are contracts and their interpretation is governed by the same contract law principles as any other contract; and (3) when interpreting a contract, the contract must be read as a whole and that a certain provision cannot be used to determine the entire contract's meaning. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009). However, Meisner, in her appeal, asks this Court to do just that.

First, Meisner misstates that there are only two (2) guaranties, when Meisner is fully aware and acknowledge that she executed three (3) guaranties. The first two (2) guaranties were executed on July 24, 2006: one refers to a "Note Dated 07-24-2006 in the amount of \$36,000.00 in the name of Sand Dollar 31, LLC" (R. p. 222) and another refers to a "Note Dated 07-24-2006 in the amount of \$31,140.00 in the name of Sand Dollar 31, LLC" (R. p. 224). The third guaranty was executed on July 31, 2007- when the \$31,140 Note was renewed and increased from \$31,140 to \$50,000- and refers to a "Note Dated 07-31-2007" I/A/O \$50,000.00 I/N/O Sand Dollar 31, LLC" (R. p. 226). It is clear by even a cursory reading of Meisner's guaranties that the date and dollar amount shown on each guaranty corresponds with a Note of the same date and dollar amount.

Importantly, SCBT does not contend that Meisner's guaranties were "unlimited" as she argues in her brief. SCBT acknowledges that the guaranty's language states unambiguously in Paragraph A that it is limited to a particular indebtedness and in Paragraph 4 that the liability shall be limited to the principal amount of that indebtedness plus interest, fees and costs. It is Paragraph B, which was not checked in any of the three (3) Meisner guaranties, that would have made Meisner's liability unlimited because "Indebtedness" in Paragraph B is defined, not as a

single Note as in Paragraph A, but as "each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender...." (R. p. 222; p. 224; p. 226).

Meisner raises three grounds to support her argument that her liability was limited under the terms of the guaranties. Meisner first argues, "the Guaranty Agreements specifically state the maximum dollar amount in paragraph A". However, Meisner misrepresent what Paragraph A says. Nowhere in Paragraph A is the word "maximum" used, nor is there any mention of limiting liability. Paragraph A states:

...the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise of the debts, liabilities and obligations described as follows:

A. If this [X] is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: NOTE DATED 07-31-2007 I/A/O \$50,000 I/N/O SAND DOLLAR 31, LLC and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").*

*NOTE: Each of the three (3) guaranties has a different Note listed in the blank. This is an excerpt from one of the guaranties at issue. (R. p. 222; p. 224; p. 226).

Not only does Paragraph A not mention a maximum liability as Meisner claims, it actually says the opposite, stating the guarantor "absolutely and unconditionally guarantees to Lender the full and prompt payment of...the debts, liabilities and obligations described as follows:" at which point it describes the guaranteed "Indebtedness" as a particular Note, by referencing that Note's date and amount.

Paragraph 4 likewise limits the guarantor's liability to the principal amount of the particular indebtedness, which is consistent with the description of the indebtedness in Paragraph

A. However, in Meisner's brief, she hones in on a limited portion of Paragraph 4, in contravention of their assertion of the well-established rule of law that the Court must look at the guaranty contract in its totality, but fail to refer to the pivotal language that follows it. The following is Paragraph 4 as stated in the Guaranty:

"4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$50,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto."*

*NOTE: Each of the guaranties has a different amount listed in the blank that corresponds to the Note listed therein that is being guaranteed. This is an excerpt. (R. p. 222; p. 224; p. 226).

To read Paragraph 4 as saying Meisner's liability "is limited to those amounts" listed in that paragraph without mentioning that the adjacent phrase adds "plus accrued interest thereon and all other costs, fees, and expenses...and all attorney's fees, collection costs and enforcement expenses referable thereto...." is disingenuous and is contrary to the relevant case law.

Furthermore, Meisner claims that Paragraph A and Paragraph 4 are in conflict and an ambiguity exists. For the reasons set forth above, this is clearly not the case. The dollar amount listed in Paragraph A is the exact dollar amount listed in Paragraph 4 in all three (3) guaranties, so there is no conflict there. Paragraph A guarantees the full and prompt payment of the Indebtedness and Paragraph 4 requires payment of the principal amount of the indebtedness plus accrued interest, fees and costs, so there is no conflict there. (R. p. 222; p. 224; p. 226).

Meisner asks this Court to ignore the "cardinal rule of contract interpretation", *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003), which is to "ascertain and give effect to the intentions of the parties. To determine the intention

of the parties, the court must first look at the language of the contract.” *S.C. Dep’t of Transp. v. M & T Enters. of Mount Pleasant, LLC*, 379 S.C. 645, 655, 667 S.E.2d 7, 12 (Ct. App. 2008) (citation omitted). “Where the language of a contract is clear and unambiguous, it alone determines the contract’s force and effect. ‘This [c]ourt must give policy language its plain, ordinary and popular meaning.’” *BMW of North America, LLC, v. Complete Auto Recon Services, Inc.*, 399 S.C. 444, 731 S.E.2d 902 (Ct. App. 2012); *See also B.L.G. Enterprises, Inc. v. First Financial Ins. Co.*, 334 S.C. 529, 514 S.E.2d 327 (1999).

Here, the language in Paragraph 4, referring to a “limitation” of the guaranty does not have a “period” punctuation after the dollar amount listed therein. The sentence continues and is followed by the word “plus.” The plain, ordinary and popular meaning of the word “plus” is “increased by” or “used when adding something.” The language is clear that the dollar amount listed in Paragraph 4 was not *the* limit of liability because it is “increased by” accrued interest thereon and all other costs, fees and expenses...and attorney’s fees, collection costs and enforcement expenses...” which follow it. As the court is “constrained by the plain and unambiguous language”, *Jones v. SCDOT*, 360 S.C. 149, 154, 600 S.E.2d 543, 546 (Ct. App. 2004), of the guaranty contract, it is bound to interpret the phrase found in the guaranty as not limiting the guarantor’s liability just to the principal amount but also the accrued interest, fees and costs. It is well-established that “the rule of strict construction should not be applied so as to defeat the plain and obvious purpose of the instrument.” *Palmetto Dunes Resort, Div. of Greenwood Dev. Corp. v. Brown*, 287 S.C. 1, 6, 336 S.E.2d 15, 18-19 (Ct. App. 1985). The obvious purpose of a guaranty is for the lender to be repaid the sums they loaned. The amounts loaned are undisputed, as is the fact that neither the borrower nor the guarantor has repaid those sums.

Furthermore, Meisner admitted in her Answer (R. p. 51, lines 16 – 17; p. 56, lines 13-14) that she guaranteed the debt and at trial it was stipulated by all parties that the only matter before the court was to determine the amount owed. At no time did she raise any issue about the guaranties or any limitations thereto and therefore, cannot now. Meisner is unable to point to any language in the entire 2-page guaranty that says her liability cannot exceed a fixed dollar amount because there is nowhere in the guaranty where it does. If it was the true intent of the parties to set a fixed maximum dollar amount of liability for the guaranty, they certainly could have but did not. For these reasons, the Master's Order should be affirmed.

III. The Master in Equity Properly Awarded Attorney's Fees

Meisner incorrectly argues Plaintiff has not provided affidavits of attorney fees. These affidavits of attorney's fees were not only available to all parties at the foreclosure hearing, they were also mailed to Meisner's counsel and the Court pursuant to an agreement at the hearing on the Motion to Alter or Amend on July 18, 2012. Meisner now attempts to raise this issue for the first time on appeal. "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

Further, with regard to the attorney's fees awarded to Plaintiff, Meisner compares this heavily contested foreclosure to the prior foreclosure but fails to disclose that the previous foreclosure was uncontested and that there were no post-sale motions or petitions. Clearly, the distinctions between these two (2) actions explain the difference in attorney's fees awarded and which continue to accrue.

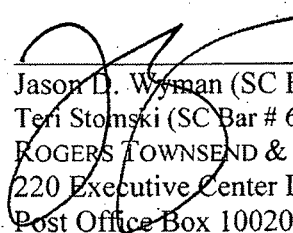
As for the other grounds of the Meisner's appeal that the amount listed in the Form 4 (R. 12) is incorrect, the final amount of the judgment will be determined after the second sale and

that amount will be shown on a Form 4 and indexed in the judgment roll and therefore, there is no prejudice to the Defendants.

CONCLUSION

Based on the foregoing and any additional sustaining grounds appearing in the record, SCBT would respectfully submit that the Master-in-Equity's Order on November 6, 2012, denying the motion to alter or amend should be affirmed.

Respectfully submitted,



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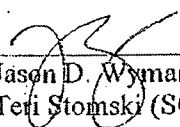
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CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Respondent complies with Rule 211(b),
SCACR.


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December 12, 2013

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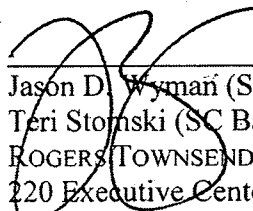
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PROOF OF SERVICE

I certify that I served the **Final Brief of Respondent** on Appellant by depositing a copy in the United States Mail postage prepaid, on November 5, 2013, addressed to Appellant Rhonda Meisner at Post Office Box 689, Blythewood, South Carolina, 29016.



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