

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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MAR 16 2015  
**SC Court of Appeals**

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III

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Case No.: 2009-CP-07-3201  
Appellate Case No.: 2014-001296

NATIONAL BANK OF SOUTH CAROLINA      Respondent,

v.

THADDEUS F. SEGARS; KCS  
INVESTMENTS, LLC; SINGLETON  
PLACE HOMEOWNERS ASSOCIATION,  
INC., and SUNTRUST MORTGATE, INC.      Defendants

Of Whom Thaddeus F. Segars is the      Appellant

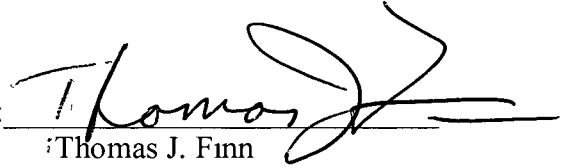
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REPLY BRIEF OF APPELLANT

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By:



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This 24 day of March, 2014  
Hilton Head island, South Carolina

TABLE OF CONTENTS

Table of Authorities.....3  
Argument.....5  
Conclusion.....8

TABLE OF AUTHORITIES

*Hickman v Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481 (Ct. App. 1990)....6

*Robertson v First Union Nat'l Bank*..... 7  
350 S.C. 339, 565 S.E.2d 309 (Ct. App.2002)

*Stevens & Wilkinson of S. Carolina, Inc , v City of Columbia*.... 6  
409 S.C. 563, 762 S E. 693 (2014)

*Turbeville v Floyd*  
288 S.C. 126 171, 341 S.E.2d 651 (Ct. App. 1986).....5

STATEMENT OF ISSUES ON APPEAL  
AS ASSERTED IN APPELLANTS INITIAL BRIEF

- I. Did the lower Court err in granting Summary Judgment to Plaintiff NBSC when Appellant filed a mandatory // compulsory counterclaim within time allowed for filing.
  
- II Did the lower Court err by granting Summary Judgment to Plaintiff NBSC holding that the Statute of Limitations had expired when Appellant had no way of discovering Bank's negligence until he saw the appraisal.

## ARGUMENT

### 1. APPELLANT PRESERVED ISSUES FOR APPEAL

Appellant claims in its brief that Segars' set forth new theories regarding the tolling or waiver of the Statute of Limitations and furthermore, that Appellant's claims were not timely raised. A hearing on the parties cross motions for summary judgment was heard on March 24, 2014. Subsequent to the hearing asked Judge Dukes if Segars could submit additional material on issues relating to the possible tolling or waiver of the Statute of Limitations. Subsequent to the hearing, on January 13, 2014 counsel for the Segars submitted a letter to the Honorable Marvin Dukes primarily regarding issues related to the statute of limitations. This letter was copied to Daniel Saxon, Esquire, trial counsel for respondent NBSC. Mr. Saxon on January 15, 2014 responded to Mr. Finn's January 13, 2014 letter. to Judge Dukes with a four page single spaced letter. As of January 13, 2014 the Court had not yet ruled on the cross motions for summary judgment. In fact a hearing of oral arguments was not heard by Judge Dukes almost two months later on March 24, 2014. Judge Dukes Order granting summary judgment was dated \_\_\_\_ and file stamped \_\_\_\_ 2014. Segars filed it Motion to reconsider the Order granting NBSC summary Judgment on \_\_\_\_\_. Judge Dukes denied Segars Motion to Reconsider on February 27, 2015.

### 2. APPELLANTS ISSUES WERE RAISED, ARGUED AND AND BRIEFED AT THE LOWER COURT

NBSC argues in their Appellate Brief that Segars issues related to the preservation of issues on appeal were not properly raised,. NBSC cites *Turbeville v Floyd*, 288 S.C. 171, 174, 341 S.E.2d 651, 653 (Ct. App. 1986). In *Turbeville* the circuit court's order granting summary judgment was reversed because the issue in question was never raised

at the trial court level. In the present case, not only was the argument raised to the lower court before ruling, but briefed by both sides in letters dated January 13, 2014 and January 15, 2014 respectively. The Court didn't rule until March February, 2015. Segars Motion to Reconsider, therefore, included the arguments regarding tolling the statute of limitations Unlike *Turbeville*, Segars raised the issues before judgment was rendered and, in fact before, oral argument. The transcript of the March 24, 2015 hearing go into great detail as to the statute of limitations issues which respondent claims were not before the court.

Respondent also asserts that "Segars new theories were not preserved for appellant review in the motion to reconsider." Appellant cites *Stevens v Wilkinson of S. Carolina, Inc , vs. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 and *Hickman vs Hickman*, 301 S.C. 455, 456, 392 S.E2d 481 (Ct. App.1990). "A party cannot use Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment but did not." Every issue NBSC claims was not raised or properly preserved for appeal was, in fact, raised prior to Judge Dukes' Order and certainly raised and argued prior to Appellant's Motion to reconsider Respondents Claims to the contrary are disingenuous and misleading.

3 APPELLANT IS ABLE TO PROVE ALL ELEMENTS OF  
NEGLIGENT MISREPRESENTATION

Respondent asserts additional sustaining grounds that Appellant cannot establish the elements of his counterclaim for negligent misrepresentation as a matter of law. Appellant would be required to prove (1) NBSC made a false representation to Segars, (2) NBSC had a pecuniary interest in making the representation, (3) NBSC owed a duty of care to see that it communicated truthful information to Segars, (4) NBSC breached that

duty by failing to exercise due care, (5) Segars justifiably relied on the representation and (6). Segars suffered a pecuniary loss as a proximate result of his reliance upon the representation. NBSC told Segars that the appraisal came in at \$1.6 million which was based upon NBSC's appraisal / agent publishing the appraisal to NBSC. Respondent claims that 'there is no evidence in the record that NBSC made any representations to Segars regarding the appraisal or the appraised value of the property. NBSC indicated to Segars that the NBSC loan was contingent upon an appraisal valuing the property at \$1.6 million. NBSC conveyed to Segars that the loan was approved and in fact loaned the money. To assert that a bank, in this instance NBSC, does not have a pecuniary interest in making a \$1.6 million dollar loan flies in the face of reason. NBSC, under the terms of the note and mortgage was going to make a sizeable profit on this loan. Any party to a contract, in this case a loan, has an obligation to convey truthful information. The appraiser, at all relevant times was an agent of NBSC. The appraisal was flawed and the information contained therein was incorrect. When NBSC informed Segars that the conditions precedent to the loan being made had been met it misrepresented the facts. The subject lot could not have been the value represented because it could not be built upon. There is no doubt Segars suffered a pecuniary loss in this matter. NBSC obtained a sizeable judgment as a result of the loan and subsequent default. In addition, Segars had invested his own fund to purchase the lot.

### 3. APPELLANT RELIED ON ETH REPRESENTATIONS OF THE RESPONDENT

Respondent also claims that Segars cannot show reliance. Segars moving forward with the loan and purchase of the subject property shows, in fact, that he relied upon NBSC's appraisal. Appellants cite *Robertson v First Union National Bank* 350 S.C. 339,

565 S.E.2d 309 (Ct App. 2002). *Robertson* is quite similar to the present case in many respects but overall does not favor Appellants position. In *Robertson* the glaring evidence was that the defendant purchaser did not in fact rely on the appraisal in determining whether to proceed with the purchase. The most flagrant distinction between the present case and *Robertson* is that the defendant purchaser's business partner secured the appraisal in that case. The *Robertson* court alluded to this fact in its decision seemingly indicating the lender might have been liable if it procured the appraisal.

#### CONCLUSION

The respondent NBSC agreed to loan Appellant Segars \$1.6 million if certain conditions precedent were met. One condition was that the subject property have an appraised value of \$1.6 million. Respondent NBSC retained The Linsday Group to conduct an appraisal of the subject property. Linsday conducted an appraisal and issued an appraisal to its client NBSC valuing the subject property at \$1.6 million. An NBSC corporate officer, Doug Matney, informed Segars that NBSC had agreed to make the loan thereby implying that the value of the subject property was at least \$1.6 million based upon the Linsday appraisal

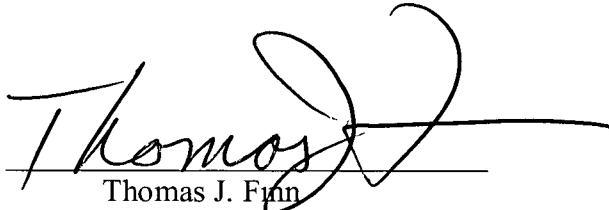
Appellant was unable to make some payments pursuant to the terms and conditions of the loan documents and NBSC filed a foreclosure action and Segars asserted various counterclaims including the sole surviving counterclaim for negligent misrepresentation. Respondent argued at the lower court that the applicable three year statute of limitations had expired on Segars claim. Segars, however, only became aware that the appraiser, Linsday, had made a mistake when doing the appraisal and failed to indicate that restrictions on the subject property were such that nothing could be built on

the lot. This fact substantially affected the value of the lot. This fact was also only discoverable by inspecting the appraisal and documents used in preparation of the appraisal which had never been at Segar's disposal. The statute in the present case should have begun to run when Segars became aware that the appraisal was incorrect.

For the reasons stated, this Court should reverse the judgment of the Circuit Court, and remit this matter for further trial on the merits.

Respectfully Submitted,

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March *DTG* 2015.  
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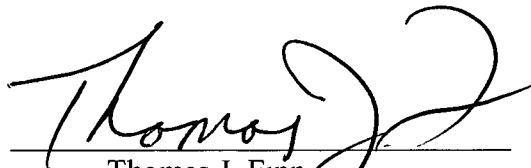
PROOF OF SERVICE

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I CERTIFY THAT I HAVE SERVED one (1) copy of Appellants' Reply Brief on Respondent, National Bank of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid and emailed, on March \_\_\_\_\_, 2015, addressed to their attorney of record, Bryson M. Geer and Dan Saxon at each of their offices listed at the address listed below.

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March , 2015.

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March 12, 2015

VIA-FAX & US-MAIL

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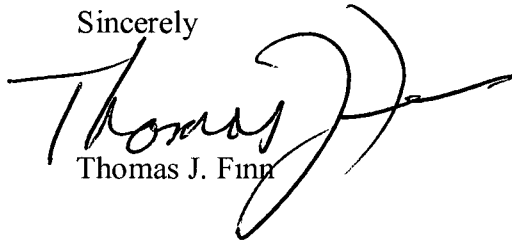
**RE: NATIONAL BANK OF SC vs. THADDEUS F. SEGARS;  
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INC.  
CASE NO.: 2009-CP-07-3201  
APPELLATE CASE NO.: 2014-001296**

Dear Mrs. Kitchings:

Enclosed please find one (1) copy of Appellants' Reply Brief on Respondent and a Proof of Service.

If you have any questions or comments, please do not hesitate to contact the office.

Sincerely



Thomas J. Finn

TJF: caw

cc:

Bryson M. Geer, Esq.  
Daniel Allen Saxon, Esq.

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