THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
The Honorable Joe M. Crosby, Master-In-Equity



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Case No. 2011-CP-22-0180
Appellate Case No. 2013-001447

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Kennedy Funding, Inc. as predecessor-in-interest, and
BNP Paribas ..... Respondents,

v.

Pawleys Island North, LLC, Will Darwin Wheeler, Peggy Wheeler-Cribb, and J. Mars Sapp, Defendants,
of whom Pawleys Island North, LLC, Will Darwin Wheeler and Peggy Wheeler-Cribb
are Respondents and

J. Mars Sapp is the..... Appellant.

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# PETITION FOR REHEARING BY APPELLANT

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## Introduction

In accordance with Rule 221, SCACR, Appellant J. Mars Sapp respectfully petitions this court for a rehearing and reconsideration of Unpublished Opinion 2015-UP-138, (the "Opinion") filed March 11, 2015, which affirms in part and reverses in part the lower court's orders. The Opinion properly holds that a conveyance of property by Will Darwin Wheeler ("Wheeler") to Pawleys Island North ("Pawleys") was fraudulent, but mistakenly finds that a mortgage then conveyed by Pawleys to Respondent Kennedy Funding, Inc. ("Kennedy"), is superior to the judgment lien of Wheeler's defrauded creditor, Sapp.

Sapp respectfully submits that Parts II and III of the Opinion mistakenly focus on whether the Kennedy loan and mortgage itself was fraudulent (Part II) and the case of *Atlas Supply* which has no application where property is fraudulently conveyed (Part III). Sapp submits that Kennedy had actual notice of the fraudulent transfer from Wheeler to Pawleys; therefore, Kennedy could not be a bona fide purchaser for value **without notice**.

Kennedy's notice, moreover, is more than just notice. Based on Kennedy's loan file and testimony:

- Kennedy knew that Wheeler was indebted to Sapp. *See, e.g.,* Kennedy Ex.1, R. pp. 506, 507 (memorandum to Kennedy from its attorneys 21 days before the loan closing stating that Wheeler is being sued by Sapp for $556,099 for non-payment of a lease); Kennedy Ex. 4, R. 531 (Kennedy closing checklist circulated to the closing attorney and Kennedy employees that Pawleys was to provide status of litigation by Sapp against Wheeler).

- Kennedy, required that Wheeler convey the property to the LLC. Wolfer Dep. 2, R. 653, ll. 4 – 9.
- Kennedy knew that the LLC was a family owned company. Kennedy Ex. 1, R. 243, (Loan and Security Agreement between Pawleys and Kennedy at para. 6.(h)).
- Further, the lender knew that there was no consideration for the transfer it required, and that the transfer was by quitclaim deed. Kennedy Ex. 4, R. 530 (Kennedy closing checklist reciting that deed has been received and is under review).

Kennedy was not only on notice that its borrower had taken the property by a fraudulent transfer from Wheeler, but Kennedy had actual knowledge of facts which should have led to further inquiry and due diligence which would have unmistakably shown that its borrower, Pawleys, had acquired the property by fraudulent transfer.

It is under these facts - a transferor of property being sued for breach of a lease guaranty, the transferor's conveyance of the property to a family member (in this case to a family-owned company), the conveyance being for no consideration, and the lender's knowledge thereof – that a lender cannot be deemed a good faith purchaser for value without notice. Coupling these facts with Kennedy's actually requiring the transfer leads to the logical conclusion that Kennedy was on notice that its borrower did not have good title to the property as to Wheeler's creditors, one of whom was Sapp.

A ruling in this case in favor of Sapp and against Kennedy cannot adversely impact lending in South Carolina. The facts herein reflect a *de minimus* number of loan transactions, only those transactions where there is a conveyance of property by a debtor

for no consideration to a family member and the lender has notice of such facts when it records a lien on the property. In other words, it will only impact loans where there is a fraudulent conveyance and the lender has notice.

**Argument**

In support of the petition, Sapp would respectfully show as follows:

**A. The Opinion misapprehended or overlooked the effect of Kennedy's actual notice of Wheeler's fraudulent conveyance and the unmistakable warnings signs associated with that fraudulent conveyance.**

In focusing on the issue whether the mortgage itself was proven fraudulent, the Opinion overlooked the impact of the lender's actual knowledge of the debt owed by Wheeler to Sapp, and other aspects of the lender's actual knowledge of the fraudulent conveyance from Wheeler to Pawleys. The lender, Kennedy, knew that Wheeler was indebted to Sapp and that suit was pending for enforcement of that obligation. Kennedy knew that the property was being transferred to a family owned limited liability company. Kennedy knew that there was no consideration for the transfer. Kennedy actually required that Wheeler convey the property, out of his name, into the limited liability company, the effect of which would be to shield the property from Wheeler's creditors, one of which was Sapp.

The law is well established in South Carolina that notice of one's unrecorded equity in property will defeat the mortgage priority claim of one who took the mortgage with notice of the unrecorded equity, since one taking with notice cannot be a good faith purchaser without notice. This is an issue separate and apart from whether the mortgage itself was fraudulent, as set forth in the following discussion and the authorities cited herein. However in steering off course to analyze if the mortgage was fraudulent the

Opinion cited *Kirton v. Howard*, 137 S.C. 11, 134 S.E. 859, 868 (1926), apparently for the proposition that Kennedy was purchaser for value without notice.

*Kirton* starkly contradicts that conclusion. It neither supports nor permits the holding that Kennedy was a purchaser for value without notice. Instead, it clearly sets out the three elements that one must meet in order to be deemed a purchaser for value, *none* of which were met by Kennedy. To qualify as a purchaser for value without notice, Kennedy must: (1) not have had notice of the debt to Sapp and the pending lawsuit before paying the purchase price; (but he did) (2) must not have had notice before acquiring the mortgage; (but he did) and therefore; (3) must have purchased "bona fide without notice." (but he did not).

Each of these elements presupposes some form of "notice." If there be any question as to the degree or sufficiency of Kennedy's notice, under the proof in this case, the following statement from the *Kirton* court is dispositive: "One cannot successfully interpose this defense, where the circumstances are sufficient to put one upon inquiry, or where one might by due diligence have ascertained the facts. One is charged with notice of every fact which such inquiry and such diligence will certainly disclose." *Kirton*, 134 S.E. at 868.

The Respondents did not cite any case to the Court where a court enforced a deed or mortgage over one's equity in property arising from a fraudulent conveyance where the grantee or mortgagee took his interest in the property with notice of the fraudulent conveyance. In contrast, the cases found and cited by Sapp never enforce in equity a mortgage (or deed) where the mortgagee has notice of the fraudulent conveyance.

In *Coleman v. Daniel*, 261 S.C. 198, 199 S.E.2d 74 (1973), the Supreme Court held that fraudulently conveyed property was subject to sale in satisfaction of a creditor's judgment which had been obtained after the lender's mortgage was recorded.. The Court refused to allow for payment of the lender's mortgage taken from the fraudulent grantees. The public records of which the lender would have had notice showed a family transfer for inadequate consideration. The facts of this case are worse for Kennedy than the facts in *Coleman*. In the case before this Court Kennedy knew that Sapp was being sued for a substantial amount, the conveyance was for no consideration (not just inadequate consideration) and Kennedy even required the conveyance, thus insulating the property from Sapp's soon to be obtained judgment.

In *Messervy v. Barelli*, 11 S.C. Eq. (2 Hill Eq.) 576 (1837), a mortgage was deemed null and void as to the claims of the mortgagor's children. The children themselves were supposed to be protected by a mortgage to their mother which had not been recorded, but the mortgagee, Barelli, took the mortgage with notice of the children's claims against the property securing Barelli's mortgage, even though the mortgage for the children's benefit was not recorded. The lower court found that Barelli had notice of the children's interest in the property mortgaged to him.[1] The lower court held that Barelli's mortgage "be set aside, and vacated, and utterly null and void." 11 S.C. Eq. (2 Hill Eq.) 567, 577-578 (1837). The court ordered a sale of the property in satisfaction of the children's interest allowing

[1] Respondent and this Court attempted to distinguish *Messervy* by contrasting Barelli's close relations with the Messervy family with the less close relationship between Kennedy and Wheeler/Pawleys. This distinction is of no consequence as the issue is what did Barelli, and in this case Kennedy, have notice of. Barelli's close relations with the Messervy family may have made the finding of notice easier in that case, but the more distant relationship of Kennedy in this case still cannot overcome Kennedy's incontrovertible loan documentation that it knew of Sapp's equity.

the debt owed to Barelli to be paid from any excess proceeds. In effect, the Court recognized that the mother owed a debt to Barelli, but postponed its payment until after the unrecorded children's claims were satisfied from the property.

In a case similar to *Messervy, Rilling v. Schultze*, 95 Tex. 352, 67 S.W. 401 (1902), the court held that a mortgage executed by a fraudulent grantee is invalid as to creditors of the fraudulent grantor when the mortgagee had notice of the fraud. *Rilling* held that where (1) a debt was incurred and a mortgage executed after the fraudulent conveyance (like here) and (2) the mortgagee was on notice of a fraudulent conveyance (like here), that the mortgage was invalid as to the defrauded creditor. Both of these conditions are present in the case before this Court.

> The grantee can no more give a lien to a subsequent creditor who has notice of the fraud than he can sell to a purchaser with such notice. Very clearly the mortgage is not valid as to the debts created at the time the mortgage was executed; and since Rilling has failed to show that his judgment was for a debt which existed at the time of the execution of the fraudulent conveyance, the mortgage as to that debt must also be held void as to Caroline Schultze.
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> 95 Tex. at 358, 67 S.W. at 404.

In *Brunson v. Sports*, 239 S.C. 58, 121 S.E.2d 294 (1961), the Supreme Court analyzed the notice issue in the context of a deed, holding that the grantee's notice of another's claim defeats the grantee's claim of being a bona fide purchaser. In *Brunson,* Dukes took a deed to property from West. The property was subject to an unrecorded trust of which Dukes had notice. The Supreme Court stated, "The law is well settled that actual notice of an outstanding equity will cut off the defense of bona fide purchaser." *Brunson*, 239 S.C. at 68, 121 S.E.2d at 299. In the case before this Court, Kennedy had actual knowledge of Sapp's pending Complaint for judgment against Wheeler which would

encumber Sapp's property,[2] and other badges of fraud constituting a fraudulent conveyance.

In *Matthews v. Montgomery*, 193 S.C. 118, 7 S.E.2d 841, 848 (1940), the Supreme Court found in favor of a judgment creditor on a Statute of Elizabeth claim, who secured his judgment after a secondary purchaser obtained and recorded a deed to the property. Like the case before this court, the secondary purchaser was on notice of the judgment creditor's claim even though it had not been reduced to judgment at the time of execution and recording of the his deed.

> But it is urged that the appellant was not a judgment creditor at the time of the tax sale nor at the time of the tax deed a year later, and that until entry of her judgment she had no interest in or lien upon the land; that until entry of judgment the debtor had a legal right to deal as she chose with her own property and if she let it be sold for taxes anyone could purchase it from the Forfeited Land Commission unaffected by a judgment subsequently entered. This argument is doubtless sound if the property had been purchased in good faith by an innocent stranger for value and without notice.
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> 7 S.E.2d at 848.

In the Opinion, it appears that the Court thought Kennedy had taken action to protect itself and that Sapp had not. The Court referenced Kennedy's reliance on counsel and the fact that Sapp did not file a *lis pendens* on the property "to protect his interests." However, as stated in *Brunson*, the law is well settled that an opinion of reputable counsel will not save a party from its actual notice of an outstanding equity of another party. 239 S.C. at 68, 121 S.E.2d at 299. In short, an opinion of counsel will not defeat one's rights established in the law.

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[2] A Horry County Magistrate had already issued an eviction order for non-payment of rent. R. 759.

As to the *lis pendens,* it is an extraordinary right and is not appropriate for an action simply seeking money damages. *Carolina Park Associates, LLC v. Marino*, 400 S.C. 1, 732 S.E.2d 876 (2012). Thus, Sapp could not have filed a *lis pendens* to protect his interests. Moreover, the filing of a *lis pendens*—even in a proper case--is designed to put parties on notice. Here, Kennedy was not only on notice of Sapp's claim, but also of the many badges of Wheeler's fraud. The circumstances were sufficient to put Kennedy on inquiry, and Kennedy is charged with knowledge of the facts which such inquiry would disclose. *Kirton.*

**B. The Court misapprehended the facts in *Coleman*, further mistakenly focusing on whether the Kennedy mortgage was fraudulent, and as a result overlooked *Coleman's* binding effect.**

Part II of the Opinion begins with the sentence "Sapp argues the mortgage transaction between Pawleys and Kennedy was fraudulent." Part II then concludes, "Thus, because we find Kennedy's mortgage was not a fraudulent conveyance, we find Kennedy's lien had priority over Sapp's lien on the property." However, whether the mortgage itself could be classified as "fraudulent" is inconsequential to the Sapp's contention that his judgment lien has a superior priority to Kennedy's mortgage taken from the fraudulent grantee, Pawleys, under *Coleman v. Daniel*, 261 S.C. 198, 199 S.E.2d 74 (1973).

The facts of *Coleman* are effectively identical to the facts before this court. In *Coleman* the fraudulent grantor, Rogers, conveyed the real property at issue to his daughter and son-in-law, the Daniels. Less than a month later the Daniels refinanced an existing debt on the property and granted a new mortgage on the property to a commercial lending

institution. Approximately a year and six months after these transactions, Coleman obtained his judgments against the fraudulent grantor, Rogers.

In the case before this Court the fraudulent grantor, Wheeler, conveyed the property at issue a to a limited liability company solely owned by him and his mother. Two days later Pawleys, the fraudulent grantee, refinanced an existing debt on one of the parcels of the property and granted a new mortgage on the property to Kennedy. A year and one month after these transactions Sapp obtained his judgment against the fraudulent grantor, Wheeler.

In analyzing the mortgage transaction as being fraudulent, the Opinion attempts to distinguish the facts of the case before this Court with Coleman. It is unnecessary under *Coleman* to determine that the mortgage was fraudulent, but in seeking to distinguish *Coleman,* the Opinion misapprehends the underlying transaction in this case. The Opinion states:

> Sapp also cites *Coleman v. Daniel*, 261 S.C. 198, 199 S.E.2d 74 (1973), and *Messervy v. Barelli*, 11 S.C. Eq. (2 Hill Eq.) 567 (1837). Each of these cases involves transactions between close friends or family. Whereas here, the transfer was between an LLC and a corporation.

Legally, the above distinction would be illusory. But, as shown below, it must surely be based on a misapprehension of the facts, as the distinction between an individual mortgagor and legal entity as a mortgagor is of no consequence. Neither could give a mortgage enforceable against a defrauded creditor (or one with an equity interest in the property) to a lender on notice of the fraud (or equity).

In both the case before this court and the *Coleman* case, the fraudulent grantee borrowed money from a commercial lender, and gave that lender a mortgage on the property. Prior to borrowing the money and granting the mortgage, in both cases, the

property in question had been transferred among family - *Coleman* being a father-to-daughter transfer, and this case being a son-to-family-owned limited liability company. The family relationships among the parties to these property transfers are irrelevant to the present issue because, in this case and in *Coleman,* the underlying conveyances were held to have indeed been fraudulent. In this case as in *Coleman,* the Court is faced with deciding the effect of an already determined fraudulent conveyance on a new mortgage given by the fraudulent grantee. Thus the only parties whose interests are now at stake in the case before this Court are *an individual defrauded creditor and a financial institution.* Such was the case in *Coleman.* The material facts in *Coleman* are identical in effect to those at issue here, and *Coleman* properly controls this Court's determination. .

Further, Coleman refused to recognize the priority of the loan taken from the fraudulent grantee over the lien of the judgment creditor. In *Coleman,* the Supreme Court refused to allow for payment of the lender's mortgage taken from the fraudulent grantees when it remanded for sale of the property to satisfy the judgment creditor's lien. This issue was squarely before the Supreme Court as discussed in Justice Bussey's dissent. On remand and sale of the property, he would have provided for payment of the financial institution's mortgage debt, but the majority refused to favor the lender who took its mortgage from fraudulent grantees.

> We therefore hold that the trial judge erred in dismissing the complaint and in failing to grant the relief sought by Coleman. The deed from Linzie Rogers to Annie Margaret Rogers Daniel and James D. Daniel, II, dated October 26, 1964, is void as to Coleman and the property described in the deed is therefore subject to the lien of Coleman's judgments. Coleman may seek an order of the lower court for sale of the property in satisfaction of his judgments unless the amounts due him be sooner paid.
>
> 261 S.C. at 211, 199 S.E.2d at 80.

*Coleman* held that the judgment creditor was entitled to have the property sold in satisfaction of **his** judgments, and no provision was made for the payment of the lender's mortgage from the fraudulent grantee. The Opinion inadvertently deviates from and conflicts with *Coleman*.

### C. The Opinion misapprehends the impact of a fraudulent conveyance or other unrecorded equity in relying upon the recording statute and *Atlas Supply* to give Kennedy's mortgage priority over Sapp, the defrauded creditor.

The Opinion mistakenly relies on the case of *Atlas Supply Co. v. Davis*, 273 S.C. 392, 256 S.E.2d 859 (1979) which interprets the South Carolina recording statute and prioritizes between a judgment creditor and a mortgage. Reliance upon *Atlas* to control a party's rights where there is a fraudulent conveyance is misplaced. To so apply *Atlas* would nullify the Statute of Elizabeth, and would conflict with this court's decision in *Leasing Enterprises, Inc. v. Livingston,* 294 S.C. 204, 363 S.E.2d 410 (Ct. App. 1987.) If *Atlas* be blindly applied even in fraudulent conveyance cases, a creditor who secures his judgment (which is always based on an antecedent debt) after the fraudulent conveyance would never have a remedy.

To the contrary, South Carolina precedent demonstrates that *Atlas Supply* and the recording statute do not give Kennedy's mortgage priority over Sapp's judgment. In *Leasing Enterprises* a judgment creditor ("LEI") brought an action to attack a conveyance of real property from a judgment debtor ("Livingston") to his mother (Margaret Schlee) for nominal consideration. Based on an antecedent debt, LEI recorded its judgment against Livingston after the transfer of property and recording of the deed. LEI then filed suit and alleged, inter alia, that the deed from Livingston to Schlee constituted a fraudulent conveyance. The Court stated:

> Section 30-7-10, Code of Laws of South Carolina, 1976, is the recording statute. If this deed was acceptable for recording, Leasing's judgment would not have priority over Schlee under the current recording statute **unless Leasing shows the deed is a fraudulent conveyance**.
>
> *Id.* at 207, S.E.2d at 411. (emphasis added)

After a discussion of *Atlas*, the Court further stated:

> Our reading of the current statute indicates the recording act is a race-notice act which will provide protection to the subsequent purchaser or creditor provided he records first. Therefore, even though Leasing had no actual or constructive notice of the deed between Livingston and Schlee when the Lease Purchase agreement was made and was a subsequent creditor of Livingston, it has no protection under the recording statute **unless . . . Leasing can demonstrate a fraudulent conveyance**.
>
> *Id.* at 208, S.E.2d at 412. (emphasis added)

The reason the bare language of *Atlas* is not applicable here is because of Kennedy's knowledge of the facts of the fraudulent conveyance. As a matter of equity Kennedy's lien cannot take priority and it must be subordinated to Sapp's judgment lien. This distinction was elucidated by this Court in an equitable subordination case in *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011). Regions Bank made a construction loan to Wingard secured by a recorded mortgage on three lots. At the time of the loan and mortgage, Regions knew that Covington had given Wingard a $276,700 down payment to purchase one of the lots. There was no public recording of the purchase agreement showing Covington had any record interest in the lot. Nevertheless, based upon Regions' knowledge of the down payment, this Court found that Covington's unrecorded, but equitable interest in the property had priority over Regions' recorded mortgage.

Sapp's equitable interest in Wheeler's property arose when Wheeler made the fraudulent conveyance. *Matthews v. Montgomery, supra.* Kennedy knew of the facts

giving rise to Sapp's equitable interest when it made the loan to Pawleys. Just like *Leasing Enterprises* and *Wingard*, *Matthews* refused to apply the recording act to an unrecorded equity in the property of a creditor with a pending suit to collect a debt. In *Matthews*, the court held the recording act inapplicable where the person seeking benefit of the act had notice of the unrecorded equity, the later recorded judgment based on an antecedent debt.

The *Coleman* case may also be analyzed as an application of the holdings of *Leasing Enterprises*, *Wingard,* and *Matthews*. In *Coleman*, the lender was on notice of an intra-family transfer for inadequate consideration. As discussed above, the *Coleman* court determined that the property should be sold in satisfaction of an antecedent debt reduced to judgment after new debt was incurred and the lender's mortgage was recorded. It appears from the *Coleman* opinion that the only facts of which the lender had knowledge were the intra-family transfer for inadequate consideration, as opposed to this case in which Kennedy knew of Sapp's pending suit, Kennedy knew the transfer was for no consideration, and Kennedy required the transfer of property. Even in *Coleman*, under less knowledge than Kennedy has in this case, the court would not apply the recording act to give the lender priority.

*Atlas Supply* does not involve a defrauded judgment creditor. It does not control the priority of a recorded mortgage lender against a defrauded judgment creditor. The cases which apply are those which directly address the priority of judgment creditor whose equity arises upon the fraudulent transfer of property, and that equity will not be cut off by *Atlas Supply* or the recording act where the lender is on notice of facts which should put it on inquiry, including the facts in this case which reasonable inquiry would lead to the inescapable conclusion of a fraudulent conveyance. *See, Kirton v. Howard, supra*, refusing

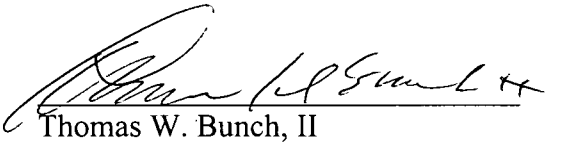
to grant good faith purchaser status where the grantee was on notice of facts of another's interest in the property. "One cannot successfully interpose this defense, where the circumstances are sufficient to put one upon inquiry, or where one might by due diligence have ascertained the facts. One is charged with notice of every fact which such inquiry and such diligence will certainly disclose." *Id.,* p. 868.

**Conclusion**

In this foreclosure case, a case in equity brought by Kennedy, Kennedy's lien cannot take priority over Sapp. Kennedy's conduct should have barred its claim in equity. Wheeler gave his property away to Pawleys. Kennedy not only knew it, Kennedy required it. Pawleys – whose title is void and of no effect as to Sapp as a result of the fraudulent conveyance - then borrowed money and gave a mortgage on the property to Kennedy when Kennedy was fully knowledgeable of Wheeler's debt to Sapp and of the pending suit for a judgment on that debt. The mortgaged property is the very property upon which Sapp must resort to satisfy Wheeler's debt to him. The law does not permit a debtor to grant a mortgage for a new loan to the detriment of his existing creditors, particularly where the new creditor (Kennedy here) knew of the existing debt and required Wheeler to transfer the property so that Sapp's lien could not attach it. In the face of no contrary authority cited by the Respondents, under the holdings of *Coleman, Rilling, Messervy, Brunson, Leasing Enterprises, Inc., Matthews,* and *Wingard,* this Court should rehear this case and issue its decision that the orders of the lower court be reversed in their entirety, and that the case be remanded to the Master-in-Equity to conduct a sale of the property to satisfy first Sapp's judgment against Wheeler, with any excess proceeds payable to Kennedy.

*Signature on following page*

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
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APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
The Honorable Joe M. Crosby, Master-In-Equity

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Case No. 2011-CP-22-0180
Appellate Case No. 2013-001447

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**Kennedy Funding, Inc. as predecessor-in-interest, and BNP Paribas.....Respondents,**

**v.**

**Pawleys Island North, LLC, Will Darwin Wheeler, Peggy Wheeler-Cribb, and J. Mars Sapp, Defendants,**
**of whom Pawleys Island North, LLC, Will Darwin Wheeler and Peggy Wheeler-Cribb are Respondents and**

**J. Mars Sapp is the .....Appellant.**

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## PROOF OF SERVICE

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I certify that I have served Appellant's Petition for Rehearing on opposing counsel by depositing a copy of it in the United States Mail, postage prepaid, on **March 26, 2015** addressed as follows:

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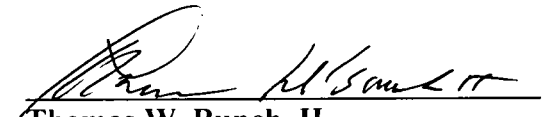

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March 26, 2015

**VIA HAND DELIVERY**



The Honorable Jenny A. Kitchings, Clerk of Court
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**Re: Kennedy Funding, Inc., as predecessor-in-interest, and BNP Paribas v. Pawleys Island North, LLC, et al of whom J. Mars Sapp is the Appellant**
**State Court Case No. 2011-CP-22-00180**
**Appellate Case No. 2013-001447**
**File No. 30440-0003**

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven copies of Respondent's Petition for Rehearing in the referenced matter. Please return a clocked copy with our courier. I am also enclosing our filing fee in the amount of $25.00.

By copy of this letter, I am serving same upon opposing counsel.

Thank you for your consideration of this matter.

Yours very truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Thomas W. Bunch, II

TWB:aelw
Enclosure

cc: Robert H. Jordan, Esquire (w/enclosure)
Robert H. Gwinn, III, Esquire (w/enclosure)