

5
THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Appellate Case No. 2014-002242

Windswept Villas III
Horizontal Property Regime,

Respondent,

v.

Elaine Devlin Peery a/k/a
Elaine D. Peery

Appellant.

RECORD ON APPEAL

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Attorney for Appellant

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Attorney for Respondent

RECEIVED

APR 24 2015

SC Court of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N A ,

Plaintiff,

vs.

Elaine Devlin Peery a/k/a Elaine D Peery;
Kiawah Island Community Association, Inc ;
Windswept Villas III Horizontal Property
Regime, Inc ,

Defendant(s)

(511263 02244 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO 09-CP-10-5799

ORDER

BY

JULIE J ARMSTRONG
CLERK OF COURT

2011 APR 13 PM 2:37

FILED

This matter came before me at a hearing on April 8, 2011, on Plaintiff's Motion to Compel Discovery Responses from Defendant Elaine Devlin Peery a/k/a Elaine D Peery The court makes the following ruling based on the evidence presented and the arguments of counsel

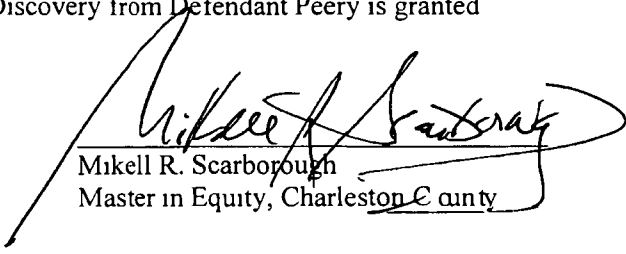
Plaintiff's Motion to Compel Discovery is granted. Defendant Peery is ordered to provide responses to Plaintiff's Interrogatories and Request for Production within ⁶⁰~~20~~ days from the date this Order is filed If Defendant Peery fails to provide discovery responses in accordance with this Order, Plaintiff's counsel has leave to file a motion for sanctions pursuant to Rule 37, SCRPC against Defendant Peery and ask for appropriate relief, including dismissal of Defendant Peery's responsive pleading.

IT IS HEREBY ORDERED

1 Plaintiff's Motion to Compel Discovery from Defendant Peery is granted

IT IS SO ORDERED

Charleston, SC
April 8, 2011


Mikell R. Scarborough
Master in Equity, Charleston County

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.

Plaintiff,

vs.

Elaine Devlin Peery a/k/a Elaine D. Peery; Kiawah Island Community Association, Inc., Windswept Villas III Horizontal Property Regime, Inc.

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 09-CP-10-5799

ORDER TO BE RELIEVED AS COUNSEL

2011 AUG -4 PM 2:53
JULIE J. ARMSTRONG
CLERK OF COURT
BY

(511263 02244 CSG)

A hearing on Defendant Elaine Devlin Peery a/k/a Elaine D. Perry counsel's Motion to be Relieved as Counsel was held on August 1, 2011.

Based upon a review of the file and the arguments of the parties, the relief sought by the movant is granted.

IT IS THEREFORE ORDERED that:

1. Vaughan Law Firm, PA and W Barnwell Vaughan are relieved as counsel for Defendant Elaine Devlin Peery a/k/a Elaine D. Perry,
2. Proceedings shall be stayed until October 1, 2011 to allow Defendant time to obtain new counsel and notify this Court of such or she will proceed pro se;
3. The Defendant shall have until October 31, 2011 to respond to any outstanding discovery;
4. If Defendant fails to provide discovery responses in accordance with this

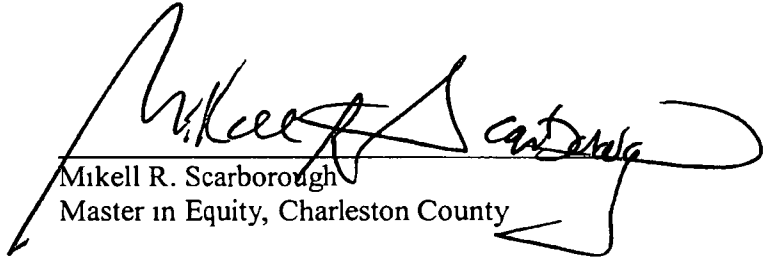
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Order, Plaintiff's counsel has leave to file a motion for sanctions pursuant to Rule 37, SCRPC against Defendant and ask for appropriate relief, including dismissal of Defendant's responsive pleading; and

5. It is ordered that if Defendant fails to obtain new counsel, Defendant's address for all service of process pursuant to the South Carolina Rules of Civil Procedure shall be her last known address of 3053 Pignatelli Crescent, Mt Pleasant, SC 29466-8057.
6. Vaughan Law Firm, PA shall provide its case file to Defendant.

IT IS SO ORDERED


Mikell R. Scarborough
Master in Equity, Charleston County

August 3, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009CP-10-5799

Bank of America

Elaine Devlin Peery, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Master in Equity

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ JURY VERDICT This action came before the court for a trial by jury The issues have been tried and a verdict rendered

☒ DECISION BY THE COURT This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered

☐ ACTION DISMISSED (CHECK REASON) ☐ Rule 12(b), SCRPC, ☐ Rule 41(a), SCRPC (Vol Nonsuit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other

☐ ACTION STRICKEN (CHECK REASON) ☐ Rule 40(j), SCRPC, ☐ Bankruptcy
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE) ☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☐ ends ☒ does not end the case

Additional Information for the Clerk

Defendant's request for a
Continuance is hereby respectfully denied.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3062

Judge Code

Date

1/23/12

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. ²⁰⁰⁹~~2008~~ CP-10-5799

Bank of America, N A

Elaine Devlin Peery a/k/a Elaine D Peery, Kiawah
Island Community Association, Inc., Windswept Villas
III Horizontal Property Regime

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Lydia P Davidson

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered

☒ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered

☐ **ACTION DISMISSED (CHECK REASON)** ☐ Rule 12(b), SCRPC, ☐ Rule 43(k), SCRPC (Settled), ☐ Other

☐ **ACTION STRICKEN (CHECK REASON)** ☐ Rule 40(j), SCRPC, ☐ Bankruptcy, ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☐ ends ☐ does not end the case
Additional Information for the Clerk

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Windswept Villas III Horizontal Property Regime	Elaine Devlin Peery a/k/a Elaine D Peery	\$27,034.02
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order ALL that certain apartment known as Villa Number 5108 in Windswept Villas III Horizontal Property Regime as shown on the plans and specifications attached to that certain Master Deed executed by Kiawah Island Company Limited, dated June 17, 1987, and recorded in Book E-166, Page 116 in the RMC Office for Charleston County, South Carolina

TMS 209-06-00-352

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3062

Judge Code

3/27/12

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: ~~10~~-CP-10-5799

09

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME

Petitioner/ Judgment Creditor,

vs.

ELAINE DEVLIN PEERY A/K/A
ELAINE D PEERY,

Respondent/ Judgment Debtor.

ORDER OF REFERENCE

FILED
2013 OCT 31 PM 3:07
JULIE J. ALLEN, CLERK OF COURT
BY _____

THIS MATTER CAME BEFORE ME upon motion of counsel for the Plaintiff/Petitioner Windswept Villas III Horizontal Property Regime ("Windswept") pursuant to S.C. Ann § 15-39-310 *et seq.* for an Order for supplemental proceedings against Defendant Elaine Devlin Peery a/k/a Elaine D. Peery. It appears to the Court that there is just cause for granting the motion and that a judgment has been entered against Defendant Elaine Devlin Peery a/k/a Elaine D. Peery.

It appears to me that, in the interest of time and judicial economy and under the authority of South Carolina law and Rule 53 of the South Carolina Rules of Civil Procedure, I may and should refer this matter to the Master-in-Equity for Charleston County to hold the examination of the Respondent Elaine Devlin Peery a/k/a Elaine D. Peery.

NOW, THEREFORE, on motion of the attorney for the Petitioner,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Windswept's Petition for Supplemental Proceedings is granted and that this matter is referred to the Charleston County Master-in-Equity.

Rmaji

IT IS FURTHER ORDERED:

1. That Elaine Devlin Peery a/k/a Elaine D Peery is directed to appear before the Honorable Mikell Scarborough on _____, at the Master-in-Equity Courtroom of the Charleston County Courthouse, and to answer questions under oath concerning her assets, savings account books, life insurance policies, stock certificates, deeds, notes, mortgages, bonds, and tax returns through the preceding five (5) years, both for the United States and for the State of South Carolina, and all current records pertaining to her financial status, and to show cause, if any can be shown, why a receiver should not be appointed to take charge of and dispense of Ms. Peery's property for the satisfaction of the aforesaid judgment
- 2 That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce to Petitioner's attorneys, Pratt-Thomas Walker, P.A., Attn: Katie Fowler Monoc, at 16 Charlotte Street, P.O. Drawer 22247, Charleston, SC 29413-2247 at least seven (7) days prior to the above scheduled hearing, her latest financial statements, including any balance sheets and profit and loss income statements
3. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted, an inventory of assets owned in whole or in part by her and, if any are under lien, a copy of the lien documents

Paul/2

4. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted, her latest bank statements for all bank accounts in her name or to which she has access or signatory power. This information should include all personal account numbers (including name and address of the corresponding financial institutions and account numbers) held (in whole or part) by Elaine Devlin Peery a/k/a Elaine D. Peery whether a checking, savings, operating, investment, retirement, trust, deposit, or any other account at any time during the past five years, in addition to all of the other documents requested below.
5. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted, all statements, ledgers, balance statements, cancelled checks, and check books of the accounts identified above, during the past five years.
6. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted all credit card statements for any credit card held (in whole or part) by Elaine Devlin Peery a/k/a Elaine D. Peery for the past five years
- 7 That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted any life insurance policies, stock certificates, deeds, notes, mortgages (to include the most recent copies of mortgage statements), investment or retirement account statements, bonds or evidence of any other investments, held or owned (in whole or part) by Elaine Devlin Peery a/k/a Elaine D. Peery for the past

hnd/3

five years or whereby Elaine Devlin Peery a/k/a Elaine D. Peery is obligated on such (in whole or part) during the past five years

8. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted all of her tax returns for the past five years, both for the United States and for the State of South Carolina, including all schedules and all documents showing income from any other source, including K-1 forms and the like.
9. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted all other documents evidencing the current assets of Elaine Devlin Peery a/k/a Elaine D. Peery during the past five years, whether held jointly or with another, including but not limited to equipment schedules, deeds, titles, leases, stocks, subscription agreements, receipts of contracts of sale and purchase, vehicle titles, and vehicle loan information, accounts receivables, settlement statements, contracts or agreements to provide services, investments, pay stubs, K-1 distribution forms and to testify under oath as to such property and income.
10. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted all documents and materials showing the sale or disposal of any assets over the past five years This information should include records of any transfer of property, real or personal, made by you from January 1, 2009 to present

A handwritten signature in black ink, appearing to be 'R. M. / 4', is located in the bottom left corner of the page.

11. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted a list of all entities, groups, associations, partnerships or the like which Elaine Devlin Peery a/k/a Elaine D. Peery owns any interest in and list the percentage of interest owned and the proper legal name of such.
12. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted documents which evidence all sources of income over the past five years for Elaine Devlin Peery a/k/a Elaine D. Peery.
13. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted all indebtedness and accounts receivable owed to her, in whole or in part.
14. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted all business records, agreements, contracts, invoices, receipts or the like evidencing income to Elaine Devlin Peery a/k/a Elaine D. Peery over the past five years as well as any work scheduled to be performed in the future.
15. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted information relating to the release of settlement proceeds, or pending release of settlement proceeds, or any other money owed to her or held on her behalf in trust by her attorney relating to such settlement proceeds.

16. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to appear in Court at the above date and time to testify, under oath, as to the accuracy of the documents produced and to other matters which Counsel for Petitioner shall question on matters related to the debt and ability to pay the judgments and to show cause, if any can be shown, why a receiver should not be appointed to take charge of and dispense of and assets or receivables or property of each for the satisfaction of the aforesaid judgments.
17. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to appear for a deposition to examine the documents produced, whether before or after the scheduled hearing in this case as noticed by Counsel for the Petitioner.
18. That Elaine Devlin Peery a/k/a Elaine D. Peery is restrained and enjoined from changing, altering, destroying, or defacing or omitting any of the instruments above mentioned and all others and from making any transfer or other disposition of the property not exempt by law from execution, except in the regular and ordinary course of business.
19. That should Elaine Devlin Peery a/k/a Elaine D. Peery not produce all of the above requested documents to Counsel for the Petitioner at least seven (7) days prior to the above scheduled hearing or should Elaine Devlin Peery a/k/a Elaine D. Peery not appear at the scheduled hearing, a contempt Order may be ordered by the Court.

IT IS SO ORDERED.




The Honorable Roger M. Young, Sr.
Chief Administrative Judge
Ninth Judicial Circuit

This 28th day of Oct, 2013
Charleston, South Carolina

DATE 10-22-2013
AMOUNT \$ 625.00
By: MIKELL R. SCARBOROUGH
MASTER IN EQUITY



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME
Petitioner/ Judgment Creditor,

vs.

ELAINE DEVLIN PEERY A/K/A
ELAINE D PEERY,

Respondent/ Judgment Debtor

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 109-CP-10-5799

ORDER ON SUPPLEMENTAL
PROCEEDINGS

FILED
2014 JAN 21 PM 2:53
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before me on January 13, 2014. Present were counsel for the Petitioner, Katie Fowler Monoc, Esquire, and counsel for the Respondent, John R. Cantrell, Jr., Esquire

Petitioner brought these Supplemental Proceedings in order to recover on its judgment in the above-captioned matter in the amount of \$27,034 02, plus reasonable attorneys' fees and costs of collection and interest at the legal rate from the date of judgment, until such time as the total amount is paid. The Respondent moved for a continuance of these Supplemental Proceedings given the fact that counsel for the Respondent appeared in the matter on the day of this hearing.

The base judgment amount, \$27,034 02, was identified as is being held in trust for Elaine Peery at the law firm of Thurmond, Kirchner, Timbes & Yelverton, PA

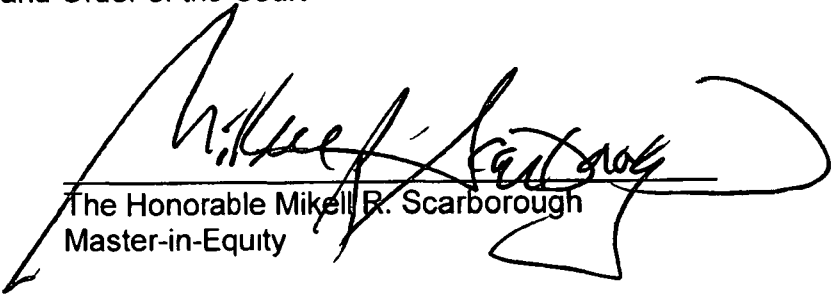
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that

1. These Supplemental Proceedings shall be continued, and such continuance is expressly conditioned on the acceptance of service by Counsel for the Respondent on January 13, 2014; and



2 Funds in the amount of \$27,034.02 held in trust for Elaine Peery at the law firm of Thurmond, Kirchner, Timbes & Yelverton, PA shall remain in that trust account and are subject to this Court's jurisdiction until such further notice and Order of the Court

IT IS SO ORDERED!



The Honorable Mikell R. Scarborough
Master-in-Equity

This 15 day of January, 2014

Charleston, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2009CP-10-5799

Bank of AmericaElaine Pezay

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON) ☐ Rule 12(b), SCRCP, ☐ Rule 41(a), SCRCP (Vol Nonsuit), ☐ Rule 43(k), SCRCP (Settled), ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON) ☐ Rule 40(j), SCRCP, ☐ Bankruptcy, ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX)
☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk

Notice to both parties to appear in court on Friday, June 20, 2014 at 9:30 AM. No continuance.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3062

Judge Code

Date

5/22/2014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO 09-CP-10-5799

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME
Petitioner/ Judgment Creditor,

vs

ELAINE DEVLIN PEERY A/K/A
ELAINE D PEERY,

Respondent/ Judgment Debtor

ORDER ON SUPPLEMENTAL
PROCEEDINGS

FILED
JUN 30 PM 3:15
JULIE A. HARRIS
CLERK OF COURT

This matter came before me on June 20, 2014. Present were counsel for the Petitioner, Katie Fowler Monoc, Esquire, and counsel for the Respondent, John R. Cantrell, Esquire and Vernee C. Hancock, Esquire. Also present was Lydia P. Davidson, Esquire, who represented Petitioner in the underlying matter.

The Petitioner/Judgment Creditor (hereinafter "Windswept") initiated these Supplemental Proceedings by a Motion to the Court on October 22, 2013 wherein Windswept sought to recover on its judgment against the Respondent/Judgment Debtor (hereinafter "Peery") in the amount of \$27,034.02 plus reasonable attorneys' fees, costs of collection, and interest at the legal rate from March 27, 2012, the date of judgment, until such time that all amounts owed are paid in full. An Order of Reference was executed by The Honorable R. Markley Dennis, Jr. on October 28, 2013 and filed on October 31, 2013. The Order of Reference required Peery to personally appear at the January 13, 2014 hearing on Supplemental Proceedings as well as to provide documents set forth in the Order. Although service had not been effected as of the

January 13, 2014 hearing, Peery's attorney, John Cantrell, Esquire, appeared on her behalf that day¹. At the hearing, it was determined that the base judgment amount owed by Peery (\$27,034.02) had been identified and was being held in trust for Elaine Peery at the law firm of Thurmond, Kirchner, Timbes & Yelverton, PA. The Court ordered that these Supplemental Proceedings be continued and that those funds held in trust remain in trust subject to this Court's jurisdiction until such further notice and Order from this Court.

The purpose of supplemental proceedings is to determine whether the judgment debtor has non-exempt property which may be applied towards payment of the judgment. See S.C. Code Ann. § 15-39-310. In addition, a judgment creditor may recover costs and attorneys' fees where such costs and fees were awarded in the underlying action. See Renaissance Enterprises, Inc. v. Ocean Resorts, Inc., 326 S.C. 460, 483 S.E.2d 796 (Ct. App. 1997), rev'd on other grounds, 334 S.C. 324, 513 S.E.2d 617 (1999) (holding that a party who was entitled to recover attorneys' fees in an underlying action is also entitled to recover attorneys' fees incurred in a supplemental proceeding). Post-judgment interest is set forth in accordance with South Carolina Code Section 34-31-20.

Here, Windswept is entitled to recover the underlying judgment amount owed by Peery along with all reasonable attorneys' fees, costs, and interest. Paragraph 5.07 of the Bylaws of Windswept Villas III Horizontal Property Regime addresses "Collection" and provides that "[i]f any overdue assessment is collected by an attorney or by action at law, the co-owner owing the same shall be required to pay all reasonable costs of

¹ An additional attorney, Vernee Hancock, Esquire, appeared on behalf of Peery on March 20, 2014.

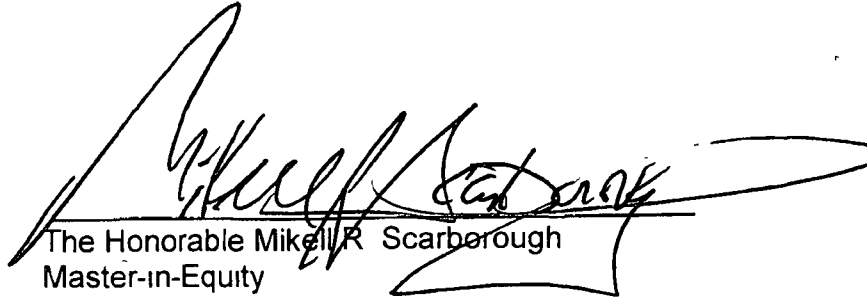
collection, including attorney's fees " Reasonable attorneys' fees and collection costs were awarded in the underlying action as evidenced by that Judgment on file with the Court. Accordingly, Windswept is entitled to such fees and costs in these Supplemental Proceedings

In this case, certain amounts belonging to Peery were identified as being held in trust at the law firm of Thurmond, Kirchner, Timbes & Yelverton, PA Additional supplemental proceedings are warranted to determine whether Peery has assets to pay additional fees, costs, and interest owed by her

Accordingly, I find that Windswept is entitled to the base judgment amount, \$27,034 02, which is being held in trust at the law firm of Thurmond, Kirchner, Timbes & Yelverton, PA and order that such funds be paid to the Petitioner immediately or as soon as practicable I further find that Windswept is entitled to all attorneys' fees, costs, and interest owed by Peery in this matter. I have reviewed *in camera* the attorneys' fees claimed by Counsel for Petitioner in this matter and find that such fees are reasonable under the circumstances As of June 20, 2014, those amounts are (1) \$15,195 62 in costs and attorneys' fees, and (2) \$ 4,616 01 in post-judgment interest NOW, THEREFORE, IT IS ORDERED that

1. In accordance with these Supplemental Proceedings, the amounts held in trust (\$27,034 02) at the law firm of Thurmond, Kirchner, Timbes & Yelverton, PA shall be immediately disbursed to Windswept
2. These Supplemental Proceedings will be continued until such other amounts owed and outstanding are paid to Petitioner in full, along with additional fees and costs and interest which may be ordered until such payment is made

IT IS SO ORDERED!



The Honorable Mikell R. Scarborough
Master-in-Equity

This 26th day of June, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME)

Petitioner/ Judgment Creditor,)

vs ^)

ELAINE DEVLIN PEERY A/K/A)
ELAINE D. PEERY,)

Respondent/ Judgment Debtor.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO 09-CP-10-5799

ORDER ON CANTRELL'S MOTION
TO WITHDRAW AS COUNSEL

FILED
2014 JUN 30 PM 3:11
JULIE CLEGG
CLERK
BY
COURT

This matter came before me on June 20, 2014. Present were counsel for the Petitioner, Katie Fowler Monoc, Esquire, and counsel for the Respondent, John R. Cantrell, Esquire and Vernee C. Hancock, Esquire. Also present was Lydia P. Davidson, Esquire, who represented Petitioner in the underlying matter.

On May 6, 2014, attorney Cantrell moved to be relieved as counsel because "he has been unable to reach the defendant by normal means of communication for the past several weeks and is therefore unable to properly represent the defendant or get input from the defendant regarding the pending matter." Counsel for the Petitioner objected to the Motion because of the undue burden and delay his withdrawal would pose in the matter, which was set for final hearing on June 20, 2014.¹

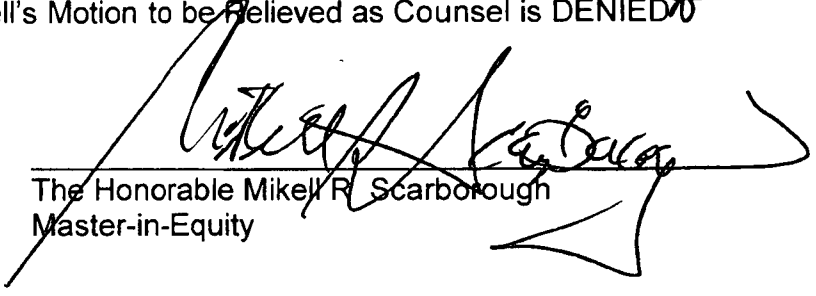
Under the circumstances of these protracted Supplemental Proceedings, which have been protracted because of Peery and her counsel's failure to timely comply with the October 28, 2013 Court Order, and because ~~there are~~ ^{the Court has} questions as to whether Cantrell communicated the Court-Ordered discovery to his client, I find that Cantrell's

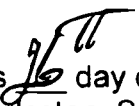
and his intention to withdraw

¹ Because Peery failed to appear at that hearing, the matter has been continued to

Aug 29, 2014. at 10 AM.

Motion to now be relieved as counsel at this final stage of the proceedings is not in the interest of justice. Accordingly, Cantrell's Motion to be Relieved as Counsel is DENIED.
IT IS SO ORDERED!


The Honorable Mikell R. Scarborough
Master-in-Equity


This 16th day of June, 2014
Charleston, South Carolina

**The Court Advised Mr Cantrell it would be
willing to entertain his motion in the future.
MRS*

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME)
Petitioner/ Judgment Creditor,)
vs.)
ELAINE DEVLIN PEERY A/K/A)
ELAINE D PEERY,)
Respondent/ Judgment Debtor)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.. 09-CP-10-5799

2014 JUN 30 PM 3:14
JULIE ALLEN HONG
CLERK OF COURT
BY 2

**ORDER ON JUDGMENT
CREDITOR'S MOTION FOR A RULE
TO SHOW CAUSE AND ORDER OF
CONTEMPT**

This matter came before me on June 20, 2014 Present were counsel for the Petitioner, Katie Fowler Monoc, Esquire, and counsel for the Respondent, John R Cantrell, Esquire and Vernee C Hancock, Esquire Also present was Lydia P Davidson, Esquire, who represented Petitioner in the underlying matter

The Petitioner/Judgment Creditor (hereinafter "Windswept") initiated these Supplemental Proceedings by a Motion to the Court on October 22, 2013 wherein Windswept sought to recover on its judgment against the Respondent/Judgment Debtor (hereinafter "Peery") in the amount of \$27,034 02 plus reasonable attorneys' fees, costs of collection, and interest at the legal rate from March 27, 2012, the date of judgment, until such time that all amounts owed are paid in full An Order of Reference was executed by The Honorable R. Markley Dennis, Jr on October 28, 2013 and filed on October 31, 2013 The Order of Reference required Peery to personally appear at the January 13, 2014 hearing on Supplemental Proceedings as well as to provide documents set forth in the Order. Although service had not been effected as of the



January 13, 2014 hearing, Peery's attorney, John Cantrell, Esquire, appeared on her behalf that day.¹ At the hearing, it was determined that the base judgment amount owed by Peery (\$27,034.02) had been identified and was being held in trust for Elaine Peery at the law firm of Thurmond, Kirchner, Timbes & Yelverton, PA. The Court ordered that these Supplemental Proceedings be continued and that those funds held in trust remain in trust subject to this Court's jurisdiction until such further notice and Order from this Court.

Counsel for Windswept then attempted to obtain the discovery ordered in the Court's October 31, 2013 Order to no avail. For this reason, a second hearing on Supplemental Proceedings was held April 21, 2014. Peery was properly noticed yet failed to appear. Because Peery failed to comply with the ordered discovery and failed to appear at Supplemental Proceedings, Windswept filed a Motion for Rule to Show Cause and for an Order of Contempt. Although Counsel for Peery was properly served with Windswept's Motion, Peery was not personally served.

Notwithstanding, this Court has the inherent power to punish for contempt. Such power "is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice." Ex parte Cannon, 385 S.C. 643, 660-61, 685 S.E.2d 814, 824 (Ct. App. 2009).

Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. A willful act is one . . . done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires.

¹ An additional attorney, Vernee Hancock, Esquire, appeared on behalf of Peery on March 20, 2014.



to be done, that is to say, with bad purpose either to disobey or disregard the law

Id. (internal citations omitted) The record demonstrates that Peery failed to comply with the Court-ordered discovery and failed to personally appear at Supplemental Proceedings to answer questions under oath as ordered by the Court. Nor did she or her counsel cooperate with Windswept's counsel to submit to a deposition. Peery and her counsel specifically failed to do what the law required to be done – namely, to participate in discovery and Supplemental Proceedings. I find that Peery has been on notice of these proceedings and the applicable discovery requests set forth in the Court's October 31, 2013 Order since late 2013 yet has failed to comply with the same and has failed to appear at a single hearing. For these reasons, I find that Peery is in contempt of Court and subject to sanctions, specifically, Peery's contempt provides an additional ground for the Judgment Creditor to recover reasonable attorneys' fees and costs (previously awarded in this Court's Order on Supplemental Proceedings on other grounds)

An additional hearing on the matter shall be set for August 29, 2014 at 10 a.m. The Judgment Creditor is to personally serve the Judgment Debtor, Elaine Peery, with notice of the August 29, 2014 hearing wherein Peery must show cause as to why she failed to appear at these Supplemental Proceedings and respond to discovery as required by the Court's October 31, 2013 Order. Should Elaine Peery fail to appear at the August 29, 2014 10 a.m. hearing, she will be subject to arrest and imprisonment. The Court will at that time also rule on additional attorneys' fees and costs that may be owed by Peery

A handwritten signature in black ink, appearing to be 'JL' or similar, located in the bottom right corner of the page.

IT IS SO ORDERED!



The Honorable Mikell R. Scarborough
Master-in-Equity

This 26th day of June, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Windswept Villas III
Horizontal Property Regime

Petitioner,

vs.

Elaine Devlin-Peery a/k/a
Elaine D. Peery,

Respondent.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

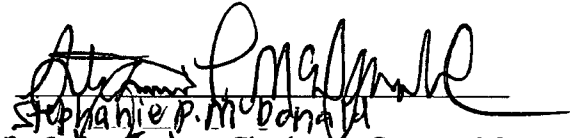
C/A NO: 2009-CP-10-5799

CONSENT ORDER ALLOWING
WITHDRAWAL OF ATTORNEY

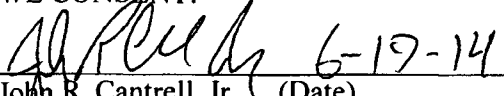
FILED
2014 JUL 30 AM 11:10
JULIE J. BRISTOL
CLERK OF COURT
BY

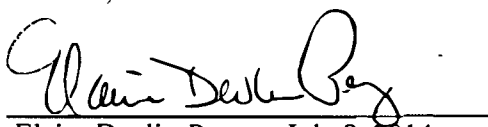
The undersigned Defendant, and John R. Cantrell, Jr, who is currently counsel of record for the Defendant, hereby consent that attorney shall be allowed to withdraw as counsel for the Defendant in this case. The Defendant has another attorney of record in this case, who will remain as counsel of record for the Defendant, and all communication regarding this matter should be directed to Vernee C. Hancock.

IT IS SO ORDERED this 20th day of July, 2014.


Stephanie P. McDonald
Presiding Judge, Charleston County, SC

WE CONSENT:


John R. Cantrell, Jr. (Date)
Attorney for the Defendant Elaine Devlin-Peery
Cantrell Legal, PC
PO Box 1276
Goose Creek, SC 29445-1276
(843) 797-2454 (office)
(309) 213-0922 (fax)
Email: lawyer@cantrellclan.com


Elaine Devlin-Peery – July 8, 2014
Defendant

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER **2009-CP-10-5799**

Windswept

-v-

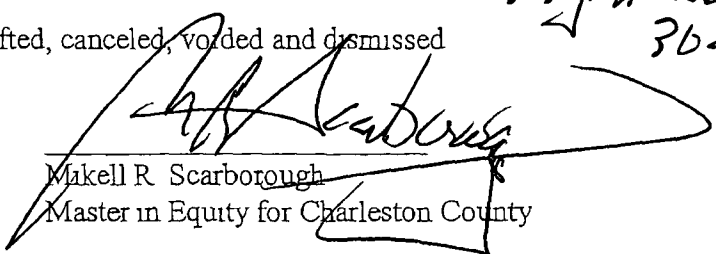
Elaine Perry

SUPPLEMENTAL PROCEEDING ORDER

A Hearing was held in the above captioned case on Friday, August 29, 2014

- _____ 1 No assets were discovered
_____ 2 The Defendant agreed to pay _____
_____ 3. The hearing was not held because . _____
_____ a the Defendant was not served and the hearing has been rescheduled for _____
_____ b the Defendant did not appear and a RTSC has been scheduled for _____
_____ c the parties requested the hearing be rescheduled for _____
_____ d the Plaintiff elected not to proceed

- ✓ e. At hearing on Contempt, Δ found in Contempt & Ordered to pay \$20,000 for Attorney's fees plus costs plus post-judgment interest to be determined in a separate Order.
_____ 4 The supplemental proceedings is held open until _____
_____ 5 The supplemental proceedings is dismissed and canceled without prejudice All Dequity due in 30 days.
Restraining Orders and Injunctions are hereby lifted, canceled, voided and dismissed


Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, SC

Dated 8/29/2014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.. 09-CP-10-5799

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME

Petitioner/ Judgment Creditor,

vs.

ELAINE DEVLIN PEERY A/K/A
ELAINE D. PEERY,

Respondent/ Judgment Debtor.

**ORDER OF CONTEMPT AND
SANCTIONS**

FILED
2014 AUG 29 PM 12:31
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before me on August 29, 2014. Present were counsel for the Petitioner, Katie Fowler Monoc, Esquire, and counsel for the Respondent, Vernee C. Hancock, Esquire. Also present were Elaine D. Peery, the Respondent/Judgment Debtor and Lydia P. Davidson, Esquire, who represented Petitioner in the underlying matter. The purpose of today's hearing was for the Respondent/Judgment Debtor to show cause as to why she failed to appear at these Supplemental Proceedings and respond to discovery as required by the Court's October 31, 2013 Order; and for the Court to consider sanctions as a result of the Respondent/Judgment Debtor's contempt. The record reflects that the Petitioner personally served the Respondent/Judgment Debtor with notice of this hearing on July 9, 2014.

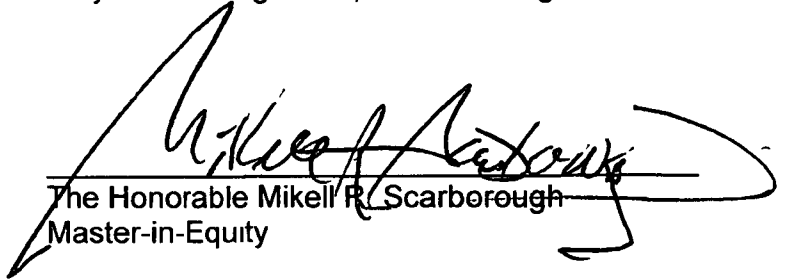
I find that the Respondent/Judgment Debtor is in contempt of court and subject to sanctions. For sanctions, I find that the Respondent/Judgment Debtor must pay \$20,000.00 in attorneys' fees and \$726.39 in costs. In addition, I hereby order that the


30

Respondent/Judgment Debtor pay \$5,072.23, the applicable post-judgment interest ¹

All amounts owed must be paid within 30 days of the August 29, 2014 hearing.

IT IS SO ORDERED!


The Honorable Mikell R. Scarborough
Master-in-Equity

This 29 day of August, 2014
Charleston, South Carolina

¹ Such amount was calculated with a pay-off date of August 29, 2014

STATE OF SOUTH CAROLINA
COUNTY OF
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2009CP-10-5799

Windswept

Elaine Perry

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON)** ☐ Rule 12(b), SCRCP, ☐ Rule 41(a), SCRCP (Vol Nonsuit), ☐ Rule 43(k), SCRCP (Settled), ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON)** ☐ Rule 40(j), SCRCP, ☐ Bankruptcy, ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☐ ends ☒ does not end the case

Additional Information for the Clerk

Motion to Vacate is denied. Court finds
Defendant made a voluntary appearance under Rule 4, SCRCP

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO . 09-CP-10-5799

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME

Petitioner/ Judgment Creditor,

vs

ELAINE DEVLIN PEERY A/K/A
ELAINE D. PEERY,

Respondent/ Judgment Debtor.

ORDER OF CONTEMPT AND
SANCTIONS

FILED
2014 AUG 29 PM 12:31
JULIE J. ARISTRONG
CLERK OF COURT

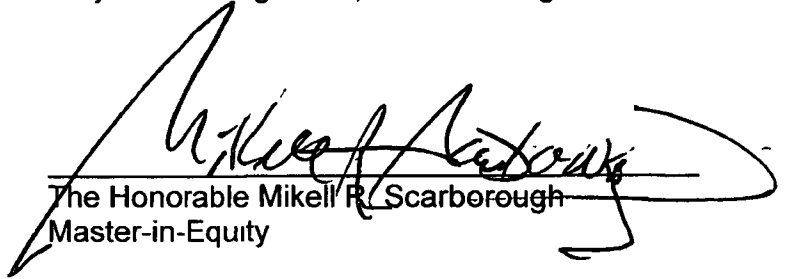
This matter came before me on August 29, 2014. Present were counsel for the Petitioner, Katie Fowler Monoc, Esquire, and counsel for the Respondent, Vernee C. Hancock, Esquire. Also present were Elaine D. Peery, the Respondent/Judgment Debtor and Lydia P. Davidson, Esquire, who represented Petitioner in the underlying matter. The purpose of today's hearing was for the Respondent/Judgment Debtor to show cause as to why she failed to appear at these Supplemental Proceedings and respond to discovery as required by the Court's October 31, 2013 Order; and for the Court to consider sanctions as a result of the Respondent/Judgment Debtor's contempt. The record reflects that the Petitioner personally served the Respondent/Judgment Debtor with notice of this hearing on July 9, 2014.

I find that the Respondent/Judgment Debtor is in contempt of court and subject to sanctions. For sanctions, I find that the Respondent/Judgment Debtor must pay \$20,000.00 in attorneys' fees and \$726.39 in costs. In addition, I hereby order that the

Respondent/Judgment Debtor pay \$5,072.23, the applicable post-judgment interest.¹

All amounts owed must be paid within 30 days of the August 29, 2014 hearing.

IT IS SO ORDERED!


The Honorable Mikell R. Scarborough
Master-in-Equity

This 29 day of August, 2014
Charleston, South Carolina

¹ Such amount was calculated with a pay-off date of August 29, 2014

10
Jude's
per master

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO 09-CP-10-5799

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME
Petitioner/ Judgment Creditor,

vs.

ELAINE DEVLIN PEERY A/K/A
ELAINE D. PEERY,

Respondent/ Judgment Debtor

**ORDER OF CONTEMPT AND
SANCTIONS**

FILED
2014 SEP 11 AM 11:21
JULIE J. ARSTRONG
CLERK OF COURT
BY

This matter came before me on August 29, 2014. Present were counsel for the Petitioner, Katie Fowler Monoc, Esquire, and counsel for the Respondent, Vernee C Hancock, Esquire. Also present were Elaine D. Peery, the Respondent/Judgment Debtor and Lydia P Davidson, Esquire, who represented Petitioner in the underlying matter. The purpose of today's hearing was for the Respondent/Judgment Debtor to show cause as to why she failed to appear at these Supplemental Proceedings and respond to discovery as required by the Court's October 31, 2013 Order; and for the Court to consider sanctions as a result of the Respondent/Judgment Debtor's contempt. The record reflects that the Petitioner personally served the Respondent/Judgment Debtor with notice of this hearing on July 9, 2014.

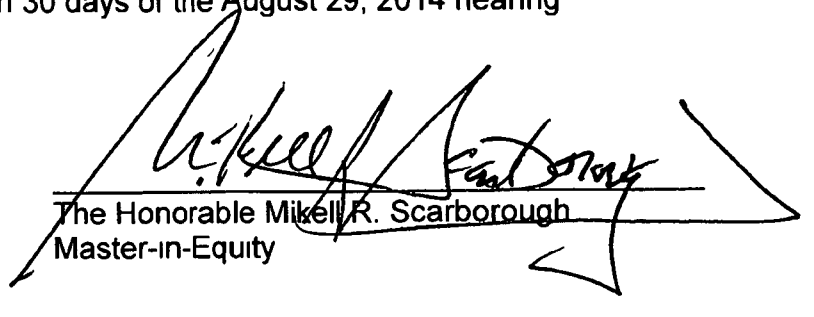
I find that the Respondent/Judgment Debtor is in contempt of court and subject to sanctions. For sanctions, I find that the Respondent/Judgment Debtor must pay \$20,000.00 in attorneys' fees and \$726.39 in costs. In addition, I hereby order that the



Respondent/Judgment Debtor pay \$5,072.23, the applicable post-judgment interest.¹

All amounts owed must be paid within 30 days of the August 29, 2014 hearing

IT IS SO ORDERED!


The Honorable Mikell R. Scarborough
Master-in-Equity

This 3rd day of Sept, 2014
Charleston, South Carolina

¹ Such amount was calculated with a pay-off date of August 29, 2014.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER **2009-CP-W-5799**

Windswept

-v-

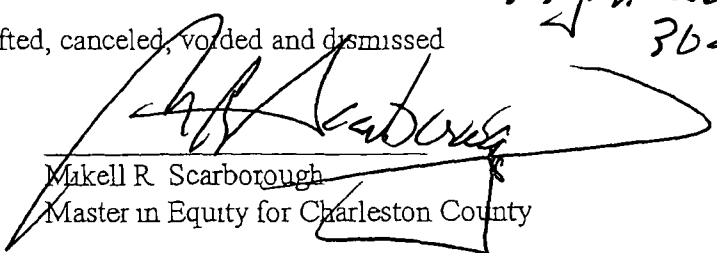
Elaine Perry

SUPPLEMENTAL PROCEEDING ORDER

A Hearing was held in the above captioned case on Friday, August 29, 2014

- ____ 1 No assets were discovered
____ 2 The Defendant agreed to pay _____
____ 3 The hearing was not held because _____
____ a the Defendant was not served and the hearing has been rescheduled for _____
____ b the Defendant did not appear and a RTSC has been scheduled for _____
____ c the parties requested the hearing be rescheduled for _____
____ d the Plaintiff elected not to proceed

- ✓ e At hearing on Contempt, Δ found in Contempt & Ordered to pay \$20,000 for Attorney's Fees plus costs plus post-judgment interest to be determined by a court.
____ 4 The supplemental proceedings is held open until _____ Formal Order.
____ 5 The supplemental proceedings is dismissed and canceled without prejudice All Request due in 30 days.
Restraining Orders and Injunctions are hereby lifted, canceled, voided and dismissed


Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, SC

Dated 8/29/2014

2009-5799

The South Carolina Court of Appeals

Windswept Villas III Horizontal Property Regime,
Respondent,

v.

Elaine Devlin Peery a/k/a Elaine D. Peery, Appellant.

Appellate Case No. 2014-001635

BY

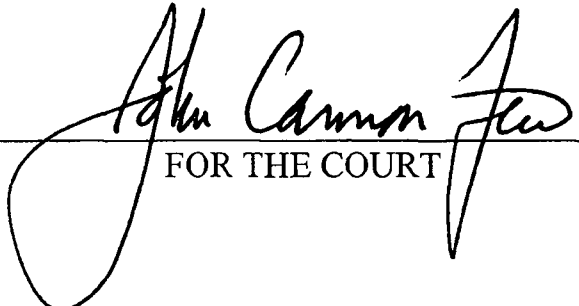
JULIE J. ARMSTRONG
CLERK OF COURT

2014 OCT -9 PM 1:05

FILED

ORDER

Appellant appeals from the master's order finding her in contempt and "subject to sanctions." This court requested memoranda of appealability from the parties, which have been received. Because the master will be issuing a final order following a hearing to determine whether to impose sanctions, this appeal is dismissed as premature.


FOR THE COURT

Columbia, South Carolina

cc:

Vernee Chnita Hancock, Esquire
Kathleen Fowler Monoc, Esquire

FILED

9/18/14

2009-CP-10-5799

The South Carolina Court of Appeals

Windswept Villas III Horizontal Property Regime,
Respondent,

v.

Elaine Devlin Peery a/k/a Elaine D. Peery, Appellant.

Appellate Case No. 2014-001635

ORDER

FILED
2014 DEC -5 AM 9:36
JULIE J ARMSTRONG
CLERK OF COURT
BY 3

Pursuant to Rule 222 of the South Carolina Appellate Court Rules, Respondent's motion for costs is granted in the amount of \$1,000. *See* Rule 222(b), SCACR (setting attorney's fees at \$1,000, enumerating the costs allowed under the rule, and providing that any costs other than those specifically enumerated "will generally not be allowed except in the most extraordinary of circumstances"). The lower court or tribunal is directed to add this award of costs to the remittitur.

Adrian Carmichael C.J.

Columbia, South Carolina

cc:

Vernee Chnita Hancock, Esquire
Kathleen Fowler Monoc, Esquire
Julie J. Armstrong

FILED
12/3/14

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009CP-10-5799

Bank of America

Elaine Devlin Peery, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Master in Equity

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (CHECK REASON) ☐ Rule 12(b), SCRPC, ☐ Rule 41(a), SCRPC (Vol Nonsuit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other

☐ **ACTION STRICKEN** (CHECK REASON) ☐ Rule 40(j), SCRPC, ☐ Bankruptcy
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE)
☐ Affirmed, ☐ Reversed, ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk

Defendant's request for a continuance is hereby respectfully denied.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3062

Judge Code

Date

1/23/12

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

v.

Elaine Devlin Peery a/k/a Elaine D. Peery,
Kiawah Island Community Association, Inc.;
Windswept Villas III Horizontal Property
Regime, Inc.;

Defendants.

(511263-02244 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 09-CP-10-5799

JUDGMENT OF FORECLOSURE AND
SALE

Deficiency Judgment Demanded against
Elaine D. Peery a/k/a Elaine Devlin Peery

Charles S. Gwynne
Attorney for the Plaintiff

Elaine Devlin Peery a/k/a Elaine D. Peery
Pro Se

Lydia P. Davidson
Attorney for Windswept Villas III Horizontal Property Regime, Inc.

FILED
2012 FEB -9 PM 4:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

A hearing was held January 24, 2012 at 10:00 a.m. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows.

FINDINGS OF FACT:

1. The Lis Pendens was filed on September 14, 2009.
2. The Summons and Complaint were filed on September 14, 2009.
3. Service was made upon all Defendants as shown by the proofs of service filed herein.
4. The Defendant Kiawah Island Community Association, Inc. is in default
5. The Defendant Elaine Devlin Peery a/k/a Elaine D. Peery is not in the


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Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit, certificate or order filed herein.

6. No Defendant raised any issues related to Plaintiff's standing to prosecute this action

7 Pursuant to the South Carolina Supreme Court Administrative Order 2009-05-20-01 dated May 22, 2009, the Plaintiff set forth its belief in its Complaint or by Affidavit, which is already of record in this case, that the mortgage loan which is the subject of this foreclosure action is not eligible for modification pursuant to the terms of the Home Affordable Modification Program (HMP). Pursuant to the South Carolina Supreme Court Administrative Order dated May 22, 2009, Plaintiff's attorney has not received a counter affidavit from any Defendant.

8. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011.

9 Elaine Devlin Peery a/k/a Elaine D. Peery filed an answer through her attorney, W Barnwell Vaughan on November 25, 2009. An Order relieving attorney W Barnwell Vaughan as attorney for Elaine Devlin Peery a/k/a Elaine D. Peery was filed on August 4, 2011. Defendant is now Pro Se.

10 Windswept Villas III Horizontal Property Regime, Inc. filed an answer and cross-claim through their attorney, Lydia P Davidson on or about September 23, 2009.

11. All Pro Se Defendants and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.

12 Elaine D. Peery for value received, made, executed and delivered an Adjustable Rate Note ("Note") dated March 27, 2008 promising thereby to pay to Plaintiff or its predecessor the sum of \$840,000.00 with interest at 6.700% per annum. Other terms and conditions are stated in the Note, of record herein.

13. To better secure the payment of the Note described above, Elaine D. Peery a/k/a Elaine Devlin Peery made, executed, and delivered to Bank of America, N.A. a certain real estate Mortgage in writing, dated March 27, 2008 covering real property in Charleston County, which is the same as that described in the Complaint. This Mortgage was filed on March 31, 2008, and is of record in the Office of RMC/ROD in Book J655 at Page 157

14. This Mortgage constitutes a first priority lien on the subject property,



subject only to ad valorem taxes or other liens given priority by statute.

15. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

16. Any notice required by the terms of the Mortgage or by state or federal statutes was given to the applicable Defendants prior to the commencement of this action.

17. Payment due on the Note was not made as provided for therein, and Plaintiff, as the holder or nominee for the holder thereof, elected to require immediate payment of the entire amount due thereon and placed the Note and Mortgage in the hands of the attorney herein for remedy by foreclosure.

18. The sum of \$16,138.97 is a reasonable amount to cover fees and costs to Plaintiff's counsel for services performed and anticipated to be performed and costs incurred until final adjudication of this action, under the terms of the Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. The services of counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel and their experience in handling foreclosure matters. The fee awarded herein is also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

19. According to Plaintiff's accounting, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Note, with interest at the rate provided in the Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney fee, all secured by the Note and Mortgage, is as follows:

A handwritten signature in black ink, appearing to be 'JMS', is located in the bottom right corner of the page.

Principal	\$831,652.66
Interest	\$161,376.97
Late Charges	\$1,626.12
Escrow Advances:	
County Tax	
12/02/09 \$4,706.79	
12/02/09 \$5,000.00	
12/02/09 \$5,000.00	
12/02/09 \$4,011.50	\$48,000.89
12/02/09 \$5,000.00	
12/02/09 \$5,000.00	
12/21/10 \$8,995.80	
12/09/11 \$10,286.80	
Corporate Advances:	
Property Inspections	
08/20/09 \$5.00	
09/29/09 \$10.00	
10/30/09 \$10.00	
11/25/09 \$15.00	
12/30/09 \$15.00	
02/01/10 \$15.00	
03/08/10 \$15.00	
04/07/10 \$15.00	
05/10/10 \$15.00	
06/15/10 \$15.00	
07/07/10 \$15.00	\$358.00
08/04/10 \$15.00	
09/02/10 \$15.00	
11/10/10 \$14.00	
12/07/10 \$14.00	
01/03/11 \$14.00	
02/03/11 \$14.00	
03/09/11 \$14.00	
04/06/11 \$14.00	
06/10/11 \$14.00	
07/07/11 \$14.00	
08/08/11 \$14.00	
08/31/11 \$14.00	
10/08/11 \$15.00	
11/22/11 \$14.00	
12/06/11 \$14.00	
NSF Charges	\$50.00
10/14/08 \$25.00	
12/08/08 \$25.00	
Attorney's Fees incurred (paid, billed but unpaid or unbilled)	\$12,627.00
Anticipated attorney fee's awarded herein	\$1,750.00
Expenses	\$1,461.97
(Case filing fee, Service of process, Publication of Summons, Motion fees,	

<i>Reference fee, Auto Mileage Reimbursement, Out-of Town Travel/Parking for Hearing)</i>	
Title Search	\$300.00
FINAL TOTAL DEBT SECURED BY NOTE AND MORTGAGE:	\$1,059,203.61

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 6.700% per annum (pursuant to the terms of the Note and first Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the first Mortgage through the date to which such interest is computed.

20. Plaintiff is seeking the usual foreclosure of the first mortgage and has expressly demanded the right to a personal or deficiency judgment pursuant to S.C. Code Ann. §29-3-660 demanded against Elaine D. Peery a/k/a Elaine Devlin Peery. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

21. The following Defendants may claim a subordinate lien upon or subordinate legal interest in the subject property and in the event there is a surplus from the sale of the subject property, these Defendants may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendants and such liens or legal interests are as follows.

a. Kiawah Island Community Association, Inc., by virtue of a Notice of Lien against Charles Peery and Elaine Devlin Peery in the amount of \$1,415.00, dated June 12, 2009, and recorded June 24, 2009 in Book 63 at Page 465.

b. Windswept Villas III Horizontal Property Regime, Inc., by virtue of a Notice of Lien against Elaine Devlin Peery in the amount of \$5,142.13, dated March 16, 2009, and recorded March 17, 2009 in Book 41 at Page 347. Windswept Villas III Horizontal Property Regime, Inc. is also known as Council of Co-Owners of Windswept Villas III Horizontal Property Regime.

IT IS THEREFORE ORDERED:

22. Plaintiff has fully complied with The South Carolina Supreme Court

Administrative Orders 2009-05-20-01 dated May 22, 2009 and 2011-05-02-01 dated May 2, 2011, and the foreclosure action may proceed.

23. The Receiver appointed by the court by Order filed on August 16, 2011 shall have its appointment expire on the scheduled sales date set by the court.

24. There is due on the Note and first Mortgage set forth in the Complaint the sum of \$1,059,203.61, as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

25. Plaintiff shall have judgment demanded against Elaine D. Peery a/k/a Elaine Devlin Peery. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

26. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and together with such interest shall constitute the total judgment debt due Plaintiff.

27. The amount of the judgment shall be subject to increase to permit Plaintiff to recover additional costs, commissions, and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorneys' services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing

28. The Defendant liable for the aforesaid judgment debt of the Note and Mortgage including interest at the rate of 6.700% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

29. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold at public auction at the Charleston County Courthouse, in the City of Charleston, and State of South Carolina on the next available sales date, at 11:00 AM, or a sales day determined by the below signed Master in Equity or Special Referee, on the following terms:

a. For cash or its equivalent: An immediate deposit of 5% is required on

the amount of the bid. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 30 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

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

c. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount

d. Purchaser to pay for deed preparation, costs of recording the deed and the satisfaction of mortgage, and transfer taxes on the deed.

e. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity or Special Referee.

30. Personal or deficiency judgment having been demanded, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Sec. 15-39-720 (1976).

31. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, of the South Carolina Rules of Civil Procedure, prior to sale.

32. The Master in Equity will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms thereof within 30 days after date of sale, then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

33. If Plaintiff is the successful bidder at the said sale for a sum not

A handwritten signature in black ink, appearing to be 'M. S.', is located in the bottom right corner of the page.

exceeding the amount of costs and expenses of the sale, plus the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

34. The Master in Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this sale and to any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT. To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including a reasonable attorney fee) or so much thereof as the purchase money will pay on the same; After crediting the proceeds of sale, net of any commission on sale, an Order for Deficiency Judgment shall be entered without further notice or hearing.

NEXT: Any surplus should be held pending further Order of this court.

35. In the event the successful bidder is someone other than the Defendant(s) in possession of the subject property, the Sheriff of Charleston County is ordered and directed to eject and remove from the property the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceable possession of said property without delay, and to keep said successful bidder or his assigns in such peaceable possession.

36. In the event the successful bidder is other than the Defendants in possession of the subject property and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said property, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

37. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property so sold, or any part thereof.

38. In accordance with Rule 77(d), of the South Carolina Rules of Civil Procedure, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon



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all parties not in default for failure to appear in this action.

39. The deed of conveyance made pursuant to the foreclosure sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee. The Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

40. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

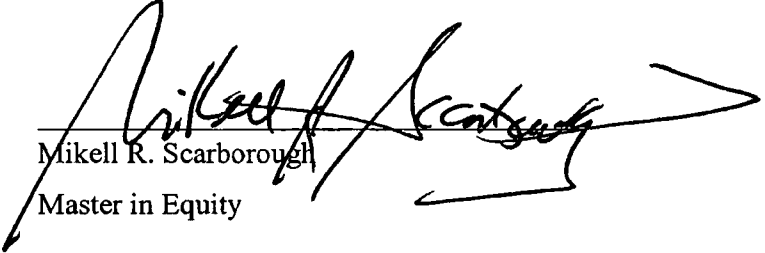
41. The following is a description of the property herein ordered to be sold:
All that certain Apartment known as Villa Number 5108 in Windswept Villas III Horizontal Property Regime as shown on the plans and specifications attached to the certain Master Deed executed by Kiawah Island Company, Limited dated June 17, 1987 and recorded in Book E-166, Page 116, RMC Office for Charleston County, South Carolina.

This conveyance is made subject to any and all covenants, restrictions, easements and rights of way of record

This being the identical property conveyed to Elaine Devlin Peery by Deed of Charles V. Peery, II dated March 16, 1999 and recorded March 17, 1999 in Deed Book N322 at Page 795.

Property Address: 5108 Sea Forest Dr
Johns Island, SC 29455

TMS# 209-06-00-352


Mikell R. Scarborough
Master in Equity

Feb 1, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N A ,

Plaintiff,

v

Elaine Devlin Peery a/k/a Elaine D Peery, Kiawah
Island Community Association, Inc , Windswept
Villas III Horizontal Property Regime, Inc ,

Defendant(s)

(011263-02244)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 09-CP-10-5199

SUMMONS AND NOTICES
(NON-JURY)
FORECLOSURE OF REAL ESTATE
MORTGAGE
Deficiency Judgment Demanded

FILED
2009 SEP 14 AM 10:57
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO THE DEFENDANT(S) ABOVE NAMED

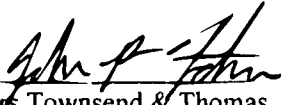
YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service, and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY

09.15336

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Bank of America, N A .



Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF
Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030) William S. Koehler (SC Bar# 74935)
Kevin T. Hardy (SC Bar #76015) Benjamin J. Powell (SC Bar #77205)
✓ John P. Fetner (SC Bar # 77460) Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina
September 11, 2009

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N A ,

Plaintiff,

v

Elaine Devlin Peery a/k/a Elaine D Peery, Kiawah
Island Community Association, Inc., Windswept
Villas III Horizontal Property Regime, Inc.;

Defendant(s)

(011263-02244)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 09-CP-18-5799

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE
MORTGAGE

Deficiency Judgment Demanded

FILED
2009 SEP 14 AM 10:57
JULIE J. ARMSTRONG
CLERK OF COURT
RY

Plaintiff alleges

1 This is an action for the foreclosure of a mortgage upon certain real estate in Charleston County, South Carolina.

2 Pursuant to S C Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina

3. Plaintiff is the owner and holder of the Note and Mortgage described hereafter and the subject of this action

4 The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the property is not the primary residence of the homeowner

5 Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein

6. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840

7 Heretofore, on or about March 27, 2008, Elaine D. Peery made, executed and delivered a certain Adjustable Rate Note ("Note") in the principal sum of \$840,000.00, payable in

monthly installments

8 In order to secure the payment of the Note according to the terms and conditions thereof, Elaine D. Peery a/k/a Elaine Devlin Peery made, executed and delivered unto Bank of America, N.A. a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home

All that certain Apartment known as Villa Number 5108 in Windswept Villas III Horizontal Property Regime as shown on the plans and specifications attached to the certain Master Deed executed by Kiawah Island Company, Limited dated June 17, 1987 and recorded in Book E-166, Page 116, RMC Office for Charleston County, South Carolina

This conveyance is made subject to any and all covenants, restrictions, easements and rights of way of record

This being the identical property conveyed to Elaine Devlin Peery by Deed of Charles V Peery, II dated March 16, 1999 and recorded March 17, 1999 in Deed Book N322 at Page 795

Property Address 5108 Sea Forest Dr
 Johns Island, SC 29455

TMS# 209-06-00-352

9 The Mortgage was signed, witnessed and probated March 27, 2008, thereafter the Mortgage was recorded in the Office of the RMC/ROD for Charleston County on March 31, 2008, in Mortgage Book J655 at Page 157.

10 The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the mortgaged premises

11 Any notice required by the terms of the Mortgage or by state or federal law has been given to the applicable Defendant(s) prior to the commencement of this action

12. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for April 1, 2009, and the conditions of the Note and Mortgage have been broken Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of April 1, 2009, the principal sum of \$831,652.66, with interest from March 1, 2009, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees

13 Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly demanded against Elaine D Peery a/k/a Elaine Devlin Peery

14. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate

15 Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt

16 Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record

17. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows

A Kiawah Island Community Association, Inc , by virtue of a Notice of Lien against Charles Peery and Elaine Devlin Peery in the amount of \$1,415.00, dated June 12, 2009, and recorded June 24, 2009 in Book 63 at Page 465

B Windswept Villas III Horizontal Property Regime, Inc , by virtue of a Notice of Lien against Elaine Devlin Peery in the amount of \$5,142.13, dated March 16, 2009, and recorded March 17, 2009 in Book 41 at Page 347 Windswept Villas III Horizontal Property Regime, Inc is also known as Council of Co-Owners of Windswept Villas III Horizontal Property Regime

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein and

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action

(2) Declare Plaintiff's Mortgage a first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action

(3) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency

(4) Appoint a Receiver to collect the rents, issues, profits or designated

sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

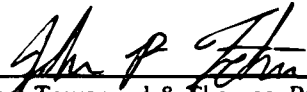
First, to the costs and expenses of the within action and sale,

Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid, and

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure,

(6) Issue an order directing the Sheriff of Charleston County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary,

(7) Order such other and further relief as may be just and proper



Rogers Townsend & Thomas, PC

ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellic C. Floyd (SC Bar #68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar #5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar #74030) William S. Kochler (SC Bar #74935)
Kevin T. Hardy (SC Bar #76015) Benjamin J. Powell (SC Bar #77205)
John P. Fetner (SC Bar #77460) Kelsey K. Brockbank (SC Bar #77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina
September 11, 2009

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT
15 U.S.C. Section 1692g, As Amended**

1. The amount of the debt as of April 1, 2009, is the principal sum of \$831,652.66, with interest from March 1, 2009, advances, late charges, and the costs and disbursements of this action, including attorney's fees
2. Bank of America, N A is the Creditor to whom the debt is owed
3. The debt described in this notice will be assumed to be valid by the Creditor's law firm unless you, the Debtor, within thirty (30) days after the receipt of this notice, dispute, in writing, the validity of the debt or some portion thereof
4. If you, the Debtor, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain a verification of the debt, and a copy of the verification will be mailed to the Debtor by the Creditor's law firm
5. If the Creditor named in this notice is not the original Creditor, and if you make a request to the Creditor's law firm within the thirty (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm
6. Written requests should be addressed to Rogers Townsend and Thomas, PC, Post Office Box 100200, Columbia, South Carolina 29202-3200
7. This notice should not be construed as a thirty (30) grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days

THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE



ROGERS TOWNSEND & THOMAS, PC

ATTORNEYS AND COUNSELORS AT LAW

Default Services Department Attorneys

Samuel C. Waters	Cheryl H. Fisher	Reginald P. Corley	Jennifer W. Rubin	Ellie C. Floyd	Michael P. Morris
Mary R. Powers		Robert P. Davis		William S. Koehler	
Eve Mordock Stacey	Kelsey K. Brockbank	John P. Fetner	Kevin T. Hardy	Benjamin J. Powell	

September 11, 2009

Julie J. Armstrong
Clerk of Court for County of Charleston
100 Broad Street, Suite 106
Charleston, SC 29401

Re. Bank of America, N A v Elaine Devlin Peery a/k/a Elaine D. Peery, Kiawah Island Community Association, Inc ; Windswept Villas III Horizontal Property Regime, Inc.,
Case No. , Charleston County
Our File No 011263-02244

Dear Sir/Madam:

Enclosed are the original Lis Pendens, Summons, Complaint and our check in the amount of \$150.00 in the above-referenced matter, along with copies of the first page of the Summons. Please be so kind as to file the Summons and Complaint immediately upon receipt, date stamp each copy of the Summons, and return the copies to me in the envelope provided

Thank you for your kind assistance in this matter

Sincerely

Rogers Townsend & Thomas, P C
Default Servicing Section

/JMS3
Enclosures

ATTENTION CLERK OF COURT: FOR ROSTER PURPOSES ONLY, PLEASE INDEX THE ATTORNEY OF RECORD FOR THE PLAINTIFF IN THIS CASE AS SAMUEL C. WATERS, ESQ., 220 EXECUTIVE CENTER DRIVE, STE. 109, COLUMBIA, SC 29202, USING THE PHONE NUMBER 803-771-7900.

of Paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17A of the Complaint, and therefore denies same.

6 The Association admits Paragraph 17B of the Complaint.

AS A FIRST CROSS-CLAIM

7 The Association restates and realleges the allegations of Paragraphs 1 through 6 above as if fully set forth herein

8 The Association is an organization composed of all the owners of property within the Windswept Villas III Horizontal Property Regime and was created pursuant to the Laws of the State of South Carolina, and is doing business in Charleston County, South Carolina

9 The Association possesses the rights, powers, and duties set forth in the Master Deed of Windswept Villas III Horizontal Property Regime as recorded in the Charleston County RMC Office in Book A128, Page 186, as may have been amended from time to time (the "Master Deed").

10. Defendant, Elaine Devlin Peery a/k/a Elaine D. Peery ("Peery"), is the owner of the real property which is the subject of this action, and this real property is located in Charleston County, South Carolina This real property is known as Villa Number 5108 (5108 Sea Forest Drive) Windswept Villas III, Kiawah Island, South Carolina 29455

11. Defendant Peery is indebted to the Association as of September 15, 2009, in the amount of \$13,000.19 for assessments imposed upon Defendant Peery to meet the expenses of the Association all as authorized by the Master Deed.

12. Defendant Peery is also obligated to pay interest, service fees, and penalties from the date of assessment first becoming due, and is further obligated to pay the Association's attorney's fees and costs of collection, and such other and further charges and assessments as have accrued since September 15, 2009, all as authorized by the Master Deed

13 Despite Association's repeated demands for payment of the assessments and charges Defendant Peery

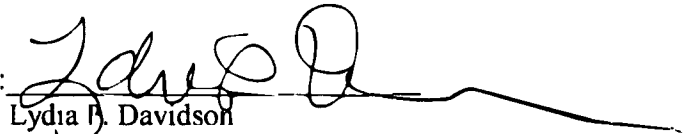
has failed and refused to make payments in the amounts owed to the Association

- 14 The Association is informed and believes that pursuant to the laws of the State of South Carolina and the Master Deed that it is entitled to a Judgment against Defendant Elaine Devlin Peery in the amount of \$13,000.19, together with accrued interest, service fees, penalties, attorney's fees, and costs of collection, plus such further charges, fees, and assessments as have continued to accrue since September 15, 2009

WHEREFORE, Windswept Villas III Horizontal Property Regime, Inc. prays that this Honorable Court will grant it a judgment in the amount of \$13,000.19, together with accrued interest, service fees, penalties, attorney's fees, and costs of collection, plus such other and further relief as this Court deems just and proper.

KRAWCHECK & DAVIDSON, L.L.C.

By:



Lydia P. Davidson
Leonard Krawcheck
Lydia P. Cowan
9 State Street
Charleston, SC 29401
(843) 577-2577
(843) 723-9951 (fax)

Charleston, South Carolina

Sept 23, 2009

09-CP-10-5799

I hereby certify that a copy of the attached pleading was sent via United States First Class

Mail, postage prepaid, on the 23 day of Sept, 2009 for service upon the following:

John P. Fetner, Esquire
Rogers Townsend and Thomas
220 Executive Center Drive, Suite 109
Columbia SC 29210

Michele Hay
Michele Hay

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2009 SEP 24 PM 3:57

FILED

Charleston, South Carolina

KRAWCHECK & DAVIDSON, L.L.C.
ATTORNEYS AT LAW
NINE STATE STREET
CHARLESTON, SOUTH CAROLINA 29401

LEONARD KRAWCHECK
LYDIA FRUITT DAVIDSON

LYDIA FRUITT COWAN

TELEPHONE
843 577-2577
FAX
843 723-9951
POST OFFICE DRAWER 1018
CHARLESTON, S.C. 29402

September 21, 2009

Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

Re: Bank of America, NA v. Elaine Devlin Peery, et al
Case No. 09-CP-10-5799

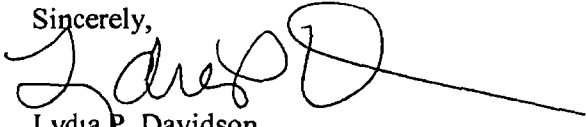
Dear Sir/Madam:

Enclosed please find the original and two copies of the Summons, Answer and Crossclaim of Defendant Windswept Villas III Horizontal Property Regime, Inc. in connection with the above referenced case. I ask that you file the original and return the filed copies in the envelope provided.

By copy of this letter to John P. Fetner, Esquire, I am serving this pleading upon him as attorney for the Plaintiff.

Thank you for your assistance with this matter. Please do not hesitate to contact me should you have any questions or concerns

Sincerely,


Lydia P. Davidson

LPD/mh

Enc

cc: John P. Fetner, Esquire (w/enc.)
Windswept Villas III (w/enc.)

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF CHARLESTON)
)
)
BANK OF AMERICA, N.A.)
)
Plaintiff,)
)
vs.)
)
)
ELAINE DEVLIN PEERY a/k/a)
ELAINE D. PEERY;)
KIAWAH ISLAND COM ASSOC, INC.; &)
WINDSWEPT VILLAS III HPR, INC.)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2009-CP-10-5799

**ANSWER, COUNTERCLAIMS
&
CROSS-CLAIM**

Jury Trial Demanded

2009 NOV 25 PM 4:48
JULIE J. ARMSTRONG
CLERK OF COURT

**ANSWER, COUNTERCLAIM
&
CROSS-CLAIM**

Defendant, ELAINE DEVLIN PEERY A/K/A ELAINE D. PEERY, responding to the allegations of the Complaint of Bank of America, N.A. would allege and show:

- 1) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the First Paragraph of the Complaint of Bank of America, N.A. would state that this is a legal conclusion not requiring a response, but Defendant denies the same and requires Plaintiff to prove the action.
- 2) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the Second Paragraph of the Complaint of Bank of America, N.A., lacks sufficient knowledge to either admit or deny and therefore denies the allegation in said complaint and demands strict proof thereof.
- 3) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the Third Paragraph of the Complaint of Bank of America, N.A., demands that Plaintiff prove that it is the owner and holder of the Note and Mortgage.
- 4) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the Fourth Paragraph of the Complaint of Bank of America, N.A., would allege that she has had numerous conversations with the servicing agent, all of which the plaintiff through their servicing agent has led Defendant to believe that she was eligible for a loan modification program, and therefore she denies this paragraph and demands strict proof thereof.
- 5) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the Fifth Paragraph of the Complaint of Bank of America, N.A, would state that this is a legal conclusion not requiring a response, but Defendant denies the same and requires Plaintiff to prove the allegations in said paragraph.

- 6) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the Sixth Paragraph of the Complaint of Bank of America, N.A., would state that this is a legal conclusion not requiring a response, but Defendant denies the same and requires Plaintiff to prove the allegations in said paragraph.
- 7) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the Seventh Paragraph of the Complaint of Bank of America, N A. would admit only that she, under financial duress, signed and delivered an adjustable rate Note in the principal sum of \$840,000.00 payable in monthly installments.
- 8) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the Eighth Paragraph of the Complaint of Bank of America, N.A., would admit only that she, under financial duress, signed and delivered a Mortgage that used as collateral the condominium apartment commonly known as Apartment 5108 Windswept Villas on Kiawah Island and Defendant craves reference to the document itself for the legal description.
- 9) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the Ninth Paragraph of the Complaint of Bank of America, N A , admits only that she signed a Mortgage and craves reference to the document itself for the witnessing, probating and recording.
- 10) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the Tenth Paragraph of the Complaint of Bank of America, N.A., states that this is a legal conclusion not requiring a response but instead craves reference to the document itself and demands that Plaintiff prove each allegation and conclusion.
- 11) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the Eleventh Paragraph of the Complaint of Bank of America, N.A. denies the allegations in this Paragraph and demands strict proof thereof.
- 12) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the Twelfth Paragraph of the Complaint of Bank of America, N.A would admit only that she has not made all of the payments due under the terms of the Note and Mortgage but demands proof of the amount due.
- 13) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the Thirteenth Paragraph of the Complaint of Bank of America, N.A. would allege that there is more than enough equity in the property, so that Plaintiff is not entitled to a deficiency judgment.
- 14) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the Fourteenth Paragraph of the Complaint of Bank of America, N.A., denies that Plaintiff is entitled to attorneys fees and if so demands a strict accounting.
- 15) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the Fifteenth Paragraph of the Complaint of Bank of America, N.A., denies that Plaintiff be reimbursed for anything over and above the original cost of the taxes and insurance,

because Defendant told Plaintiff about the delinquent taxes and was informed by Plaintiff that they had been paid, when in fact the taxes were not paid and the property has been sold at auction. The Insurance was being paid through the Regime.

- 16) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the Sixteenth Paragraph of the Complaint of Bank of America, N.A., would allege that this is a legal conclusion not requiring a response, but Defendant denies the same and demands strict proof thereof.
- 17) Defendant Elaine Devlin Peery a/k/a Elaine D. Peery responding to the Seventeenth Paragraph of the Complaint of Bank of America, N.A. would admit only that there are liens for non payment of homeowners dues to the Kiawah Community Association and to the Windswept Regime, but affirmatively asserts that the Windswept Regime owes her money from the proceeds of a lawsuit that have not been applied to this judgment that exceeds their claimed judgment amount.
- 18) Defendant denies each and every allegation of the Complaint not hereinbefore specifically and expressly admitted.

FOR A SECOND DEFENSE

- 19) The Complaint fails to state a claim or cause of action for which relief can be granted.

FOR A THIRD DEFENSE AND BY WAY OF A COUNTERCLAIM
(Estoppel)

- 20) The Plaintiff has sent numerous correspondence and phone calls to offer to modify the terms of the loan.
- 21) The Defendant has been sending information to the Plaintiff with the expectation that they would modify her loan on terms similar to terms in the home modification program even though this is not her primary residence
- 22) In every phone call, Defendant has made it clear that this is not her primary residence.
- 23) Plaintiff has continued sending her information and indicated that the plaintiff would restructure the loan.
- 24) Defendant has relied upon these representations and wishes to refinance her loan.
- 25) Defendant has suffered damages because she is unable to get another loan now with Plaintiff or any other lender.
- 26) Defendant, also has not listed the property for sale, because of the Bank's requirement of not intending to sell in order to qualify for the new loan.

**FOR A FOURTH DEFENSE AND BY WAY OF A COUNTERCLAIM
AND CROSS-CLAIM AGAINST WINDSWEPT VILLAS III HPR, INC.**

- 27) The Defendant was under duress to enter into the first loan with Plaintiff.
- 28) Windswept Villas III HPR, Inc. made special assessments against the unit totaling approximately \$224,624.40 for repairs on the building due to damage from faulty repairs.
- 29) Bank of America offered all unit owners to refinance their loans to pay this assessment.
- 30) Windswept Villas III HPR, Inc. commenced a lawsuit against the builder(s) and recouped some of the Assessment, but has not paid this back the full amount to the Owner.

WHEREFORE, the Defendant prays that this Honorable Court investigate the defenses and allegations of the Defendant, Counterclaimant and Cross-claimant and dismiss the foreclosure action against the Defendant Elaine D. Peery and award costs and expenses to Defendant Elaine D. Peery for the improper actions of the Plaintiff and the cross-defendant Windswept Villas III HPR, Inc. and for such other and further relief as this Court deems just and appropriate.

Respectfully Submitted,

VAUGHAN LAW FIRM PA



W. BARNWELL VAUGHAN

Attorney for the Defendant

SC Bar No. 6449

102 Wappoo Creek Drive, Suite 2-A

Charleston, South Carolina 29412

(843) 762-7825 Telephone

(843) 762-7827 Facsimile

Charleston, South Carolina

November 25, 2009

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BANK OF AMERICA, N.A.

Plaintiff,

vs.

ELAINE DEVLIN PEERY a/k/a

ELAINE D. PEERY;

KIAWAH ISLAND COM ASSOC, INC.; &

WINDSWEPT VILLAS III HPR, INC.

Defendants

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2009-CP-10-57999

CERTIFICATE OF SERVICE

2009 NOV 25 PM 4:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY

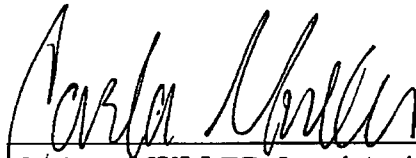
FILED

THIS IS TO CERTIFY that I, Carla Muller, Legal Assistant to W. Barnwell Vaughan, Esquire, Attorney for the Defendant, has this day sent a true and accurate copy of the Answer, Counterclaims, and Cross-Claim in the above-captioned matter to:

Mr. John P. Fetner, Esquire
Rogers Townsend & Thomas, PC
PO Box 100200
Columbia, SC 29210

via facsimile, email, or U.S Postal Service with First Class postage prepaid.

VAUGHAN LAW FIRM PA



CARLA MULLER, Legal Assistant
102 Wappoo Creek Drive, Suite 2-A
Charleston, South Carolina 29412
(843) 762-7825 Telephone
(843) 762-7827 Facsimile

Charleston, South Carolina
November 25, 2009

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CASE NO: 2009-CP-10-5799

Bank of America, N.A.,)
))
Plaintiff,)
Vs)
))
Elaine Devlin Peery a/k/a Elaine D.)
Peery, Kiawah Island Community)
Association, Inc., and Windswept)
Villas III Horizontal Property)
Regime,)
))
Defendants.)
_____)

Defendant Windswept Villas III
Horizontal Property Regime's Reply
to Defendant Peery's Crossclaim

FILED
2009 DEC 11 PM 2:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Defendant, Windswept Villas III Horizontal Property Regime, Inc. (the "Association"),
replying to the Crossclaim of Defendant, Elaine Devlin Peery, alleges and states as follows:

1. The Association denies each and every allegation of the Crossclaim not hereinafter expressly admitted, modified or explained.
2. The Association has insufficient information upon which to form a belief as to the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the Answer, Counterclaim and Crossclaim and therefore denies same.
3. The Association admits so much of the allegations of Paragraph 28 of the Answer, Counterclaim and Crossclaim as allege that a special assessment was levied; however, the Association denies any remaining allegation of Paragraph 28 of the Answer, Counterclaim and Crossclaim.
4. The Association has insufficient information upon which to form a belief as to the allegations of Paragraph 29 of the Answer, Counterclaim and Crossclaim and therefore denies same.
5. The Association admits so much of the allegations of Paragraph 30 of the Answer, Counterclaim and Crossclaim as allege that a lawsuit was brought against the builder, however, the Association denies any remaining allegation of Paragraph 30 of the Answer, Counterclaim and Crossclaim

WHEREFORE, Windswept Villas III Horizontal Property Regime, Inc prays that this Honorable Court will dismiss the Crossclaim, grant it a judgment in the amount of \$13,000 19, together with accrued interest, service fees, penalties, attorney's fees, and costs of collection, plus such other and further relief as this Court deems just and proper.

KRAWCHECK & DAVIDSON, LLC



Leonard Krawcheck
Lydia P Davidson
Lydia P. Cowan
9 State Street
Charleston SC 29401
(843) 577-2577
(843) 723-9951 (fax)

December 10, 2009
Charleston, SC

09-CP-10.5799

I hereby certify that a copy of the attached pleading was sent via United States First Class Mail, postage prepaid, on the 10 day of December, 2009 for service upon the following:

W. Barnwell Vaughn, Esquire
102 Wappoo Creek Drive, Suite 2-A
Charleston SC 29401

Ellie C. Floyd, Esquire
Rogers Townsend and Thomas
PO Box 100200
Columbia, SC 29202

Michele Hay
Michele Hay

BY
JULIE J. ARMSTRONG
CLERK OF COURT

2009 DEC 11 PM 2:55

FILED

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N A.,

Plaintiff,

vs.

Elaine Devlin Peery a/k/a Elaine D. Peery;
Kiawah Island Community Association, Inc.;
Windswept Villas III Horizontal Property
Regime, Inc.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 09-CP-10-5799

**PLAINTIFF'S MOTION TO COMPEL
DISCOVERY RESPONSES FROM
DEFENDANT ELAINE DEVLIN PEERY
A/K/A ELAINE D. PEERY**

(511263 02244 CSG)

**TO: W. BARNWELL VAUGHAN, ESQUIRE, ATTORNEY FOR DEFENDANT
ELAINE DEVLIN PEERY A/K/A ELAINE D. PEERY:**

YOU WILL PLEASE TAKE NOTICE that at such time and place as is set by the court, Bank of America, N.A. ("Plaintiff") will move the court for an order compelling Elaine Devlin Peery a/k/a Elaine D. Peery ("Defendant") to respond to the Plaintiff's Interrogatories and Request for Production, which were served on the Defendant on September 21, 2010

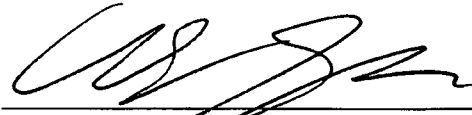
This motion is based on Plaintiff's First Interrogatories to Defendant Elaine Devlin Peery a/k/a Elaine D. Peery and Plaintiff's First Request for Production to Defendant Elaine Devlin Peery a/k/a Elaine D. Peery (a copy of which is attached as Exhibit A), SCRCPC 33, 34 and 37(a) and such other and further matters as may be properly presented to the court.

The undersigned attorney certifies that his firm communicated, in writing, with opposing counsel and has attempted in good faith to resolve the matters contained in the motion but to no avail

Signature page attached

FILED
2011 JAN -7 PM 1:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY *SC*

2011-406



Charles S. Gwynne Jr. (SC Bar # 73844)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive – Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

Dated January 5, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
BANK OF AMERICA, N A.)
)
Plaintiff.)
vs.)
)
Elaine Devlin Peery, aka Elaine D.)
Peery, and Kiawah Island)
Community Association, Inc , and)
Windswept Villas III Horizontal)
Property Regime, Inc)
Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 09-CP-10-5799

Notice And
MOTION TO RELIEVE
DEFENDANT ELAINE DEVLIN PEERY'S
COUNSEL

2011 JUN 30 PM 4:52
JUDGE J. ARISTARONG
CLERK OF COURT

FILED

To: **Elaine Devlin Peery Defendant**, Charles S. Gwynne, Jr., attorney for Plaintiff, and Lydia Davidson, attorney for Defendant Kiawah Island Community Association, Inc. .

PLEASE TAKE NOTICE that the Defendant Elaine Devlin Peery's Attorney, W. Barnwell Vaughan, hereby moves for an Order relieving W. Barnwell Vaughan as attorney due to health and other reasons, and requests that a new attorney be substituted in his place within 30 days of this motion

Defendant Elaine Devlin Peery's Attorney, W. Barnwell Vaughan is a solo practitioner. Defendant's attorney had a back problem followed by an infection in his spine for which he has been receiving treatment and continues to receive treatment. The court had protected his appearance in this and several other cases. Nonetheless, the Plaintiff, Bank of America wanted a swift resolution and has been pushing discovery. In the interest of moving this case along, the Defendant's attorney requests to be relieved of his responsibilities and another counsel replace him and to further grant new counsel additional time to respond to discovery requests.

Respectfully Submitted,

W. Barnwell Vaughan

W. Barnwell Vaughan
Attorney for the Petitioner

102 Wappoo Creek Drive
Suite 2A
Charleston, SC 29412
Phone (843) 442-0340
SC Bar No. 6449

June 30, 2011
Charleston, SC

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Bank of America, N.A.)
Plaintiff,)
vs.)
Elaine Devlin Peery a/k/a Elaine)
D. Peery; Kiawah Island Com)
Assoc., Inc. and Windswept Villas)
III HPR, Inc.)
Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A NO.: 2009-CP-10-5799

**NOTICE OF MOTION AND MOTION
FOR APPOINTMENT OF RECEIVER AND
TO EXCLUDE DEFENDANT PEERY
FROM USE OF THE COMMON AREAS
AND RECREATIONAL FACILITIES OF
WINDSWEPT VILLAS III**

JUL 15 AM 11:50
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for Windswept Villas III Horizontal Property Regime, Inc. (hereinafter "the Association"), will move before the Honorable Mikell Scarborough, Master in Equity for Charleston County, South Carolina, at the earliest available date, at least four (4) days after the service hereof, when counsel may be heard, for an Order appointing the manager of the Association as receiver for Villa Number 5108 (5108 Sea Forest Drive) Windswept Villas III, Kiawah Island, South Carolina 29455, the subject of this action, for the rental of the villa and collection of rents in accordance with the governing recorded instruments. The undersigned further move for an Order to exclude Defendant Peery from the use of the common areas and recreational facilities of Windswept Villas III in accordance with those same governing recorded instruments. These motions are made on the following grounds:

1. The Association filed a cross-claim against Defendant Peery on September 23, 2009, to recover Peery's accrued unpaid assessments owed to the Association. In its cross-claim, the Association showed that it possesses the rights, powers, and duties set forth in the Master Deed of Windswept Villas III Horizontal Property Regime as recorded in the Charleston County RMC Office in Book A128, Page 186, as may have been amended from time to time ("Master Deed")
2. Section 6.03 of the Master Deed, attached hereto as Exhibit "A," provides that the Association can have a receiver appointed as part of the foreclosure of a lien for unpaid assessments. This Section of the Master Deed also allows the Manager or the Board to rent the unit being foreclosed on, in this case Villa Number 5108, during the foreclosure process
3. The Master Deed gives Bank of America's mortgage lien priority over the Association's lien for unpaid assessments. Bank of America's Mortgage, attached hereto as Exhibit "B," however, lacks a provision giving it the right either to appoint a receiver or assigning it rents. Accordingly, because the Master Deed is senior to the Bank of America mortgage, Bank of America takes subject to all its terms, which include the Association's right to appoint a receiver and collect the rents during the pendency of this foreclosure action.
4. Appointing a receiver at this time is proper pursuant to South Carolina Code § 15-65-10(1). The Association has an apparent right to Villa Number 5108 (5108 Sea Forest Drive) Windswept Villas III, Kiawah Island, South Carolina 29455 under the Master Deed § 6.03 Rents and profits of Villa Number 5108

are in danger of being lost or materially injured or impaired. Therefore, the Association seeks an Order appointing the Association Manager as receiver to collect rents and profits owed pursuant to the Master Deed and under South Carolina law.

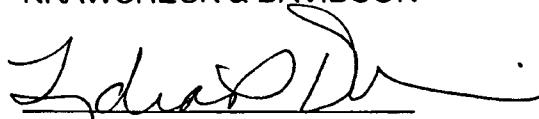
5. Article I, Section 1.15 of the By-Laws recorded at the Charleston County RMC Office in Book E 166, Page 116, as amended on February 14, 1994, provides that the "Board of Directors shall have the power and authority to suspend the voting rights and rights to use the common areas and recreational facilities of a co-owner(s) any period in which such co-owner(s) shall be in default of any payment of any assessment levied by the Council." Article I, Section 1.15 of the By-Laws, as amended, is attached hereto as Exhibit "C." Accordingly, the Association seeks an Order from this Court excluding Defendant Peery from the use of the common areas and recreational facilities of Windswept Villas III.

This motion is also based on the Master Deed, the By-Laws, the Pleadings, and the attached affidavit of Marilyn Summers, who is the Regime and Association Manager of Ravenel Associates. Windswept Villas III further requests that it be awarded reasonable attorneys' fees and costs incurred in connection with this motion and other relief this Court deems just and proper.

Please be present if so minded

[Signature to Follow]

KRAWCHECK & DAVIDSON



Lydia P. Davidson

P.O. Box 1018

Charleston, S.C. 29401

(843) 577-2577

lpd@krawdavlaw.com

July 4, 2011
Charleston, South Carolina

ATTORNEYS FOR THE DEFENDANT
WINDSWEPT VILLAS III HPR, INC.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

Elaine Devlin Peery a/k/a Elaine D. Peery;
Kiawah Island Community Association, Inc.;
Windswept Villas III Horizontal Property
Regime, Inc.,

Defendant(s).

(511263-02244 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 09-CP-10-5799

NOTICE OF MOTION HEARING

FILED
2011 JUL 29 PM 12:43
JULIE J. ARMSTRONG
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED:

PLEASE TAKE NOTICE that the Motion to Relieve Defendant Elaine Devlin Peery's Counsel and the Motion for Appointment of Receiver and to Exclude Defendant Peery From Use of the Common Areas and Recreational Facilities of Windswept Villas III has been set for a hearing on August 1, 2011, at 4:15 p.m. before the Honorable Judge Scarborough at the following address:

Charleston County Courthouse
100 Broad Street, Courtroom 2A
Charleston, SC 29401



Charles S. Gwynne Jr (SC Bar # 73844)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive – Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF

Dated: July 27, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

Elaine Devlin Peery a/k/a Elaine D. Peery;
Kiawah Island Community Association, Inc.;
Windswept Villas III Horizontal Property
Regime, Inc.,

Defendant(s).

(511263-02244 CSG)

TO THE DEFENDANTS ABOVE NAMED:

PLEASE TAKE NOTICE that a Status Conference has been set on October 7, 2011 at 11:30 a.m. before the Honorable Mikell R. Scarborough at the following address:

Charleston County Courthouse
100 Broad Street, Courtroom 2A
Charleston, SC 29401

Dated September 27, 2011

IN THE COURT OF COMMON PLEAS

DOCKET NO. 09-CP-10-5799

NOTICE OF STATUS CONFERENCE

FILED
2011 SEP 28 AM 11:33
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____



Charles S. Gwynne Jr. (SC Bar # 73844)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive – Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF

2009-CP-10-5799

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 09-CP-10-5799

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing documents upon counsel of record and below parties by U.S. Mail, postage prepaid, on September 27, 2011, at the following address(es):

Document(s) Served:

Notice of Status Conference

Counsel and Parties Served:

Lydia P. Davidson, Esquire
Krawcheck & Davidson, LLC
Nine State Street
Charleston, SC 29401

Elaine Devlin Peery
3053 Pignatelli Crescent
Mt. Pleasant, SC 29466-8507

FILED
2011 SEP 28 AM 11:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____



Charles S. Gwynne Jr (SC Bar # 73844)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

Elaine Devlin Peery a/k/a Elaine D. Peery;
Kiawah Island Community Association, Inc.;
Windswept Villas III Horizontal Property
Regime, Inc.,

Defendant(s).

(511263-02244 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 09-CP-10-5799

**NOTICE OF FINAL FORECLOSURE
HEARING**

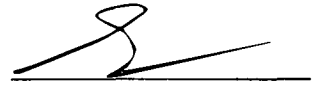
FILED
2011 OCT 13 PM 12:11
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE THAT, by virtue of the Order of Reference issued in the above matter, Mikell R. Scarborough, as Master in Equity of Charleston County, has appointed November 28, 2011 at 2:00 p m , at Charleston County Courthouse, 100 Broad Street, Courtroom 2A, Charleston, SC 29401, as the time and place for holding a hearing on the merits, at which time and place all interested parties will appear



Charles S. Gwynne Jr (SC Bar # 73844)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive – Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF



October 12, 2011

09-5799

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 09-CP-10-5799

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have caused to be served a copy of the foregoing documents upon counsel of record by U S. Mail, postage prepaid, on October 12, 2011, at the following address(es):

Document(s) Served:

Notice of Final Foreclosure Hearing

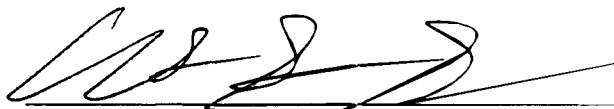
Counsel/Parties Served:

Lydia P. Davidson, Esquire
Krawcheck & Davidson, LLC
Nine State Street
Charleston, SC 29401

Elaine Devlin Peery
3053 Pignatelli Crescent
Mt. Pleasant, SC 29466-8507

Kiawah Island Community Association, Inc.
23 Beachwalker Drive
Johns Island, SC 29455

Kiawah Island Community Association, Inc.
Registered Agent: Tammy McAdory
23 Beachwalker Drive
Kiawah Island, SC 29455


Charles S. Gwynne Jr. (SC Bar # 73844)

2011 OCT 13 PM 12:11
U.S. DISTRICT COURT
SOUTH DISTRICT OF FLORIDA
MIAMI, FL

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs

Elaine Devlin Peery a/k/a Elaine D Peery;
Kiawah Island Community Association, Inc.;
Windswept Villas III Horizontal Property
Regime, Inc.,

Defendants.

(511263 02244 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.. 09-CP-10-5799

**NOTICE OF
CANCELLATION OF FINAL
FORECLOSURE HEARING**



2011 NOV 23 AM 11:31
JULIE J. ARONSON
CLERK OF COURT

FILED

TO THE DEFENDANTS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE THAT the final foreclosure hearing scheduled in this matter before the Honorable Mikell R Scarborough, Master in Equity for Charleston County, on November 28, 2011, at 2:00 p.m., has been cancelled and will be rescheduled at a later date.



Charles S. Gwynne Jr (SC Bar # 73844)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive â Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

November 22, 2011

CERTIFICATE OF SERVICE BY MAIL
Civil Action #09-CP-10-5799

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have caused to be served a copy of the foregoing documents upon the below parties by U.S. Mail, postage prepaid, on November 22, 2011, at the following address(es).

Document(s) Served:

Notice of Cancellation of Final Foreclosure Hearing

Counsel and Parties Served:

Lydia P. Davidson, Esquire
Krawcheck & Davidson, LLC
Nine State Street
Charleston, SC 29401

Elaine Devlin Peery
3053 Pignatelli Crescent
Mt. Pleasant, SC 29466-8507

Kiawah Island Community Association, Inc.
23 Beachwalker Drive
Johns Island, SC 29455

Kiawah Island Community Association, Inc.
Registered Agent. Tammy McAdory
23 Beachwalker Drive
Kiawah Island, SC 29455

FILED
2011 NOV 23 AM 11:31
JULIE J. ARISTON
CLERK OF COURT



Charles S. Gwynne Jr (SC Bar # 73844)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N A.,

Plaintiff,

vs.

Elaine Devlin Peery a/k/a Elaine D. Peery,
Kiawah Island Community Association, Inc.,
Windswept Villas III Horizontal Property
Regime, Inc.,

Defendant(s).

(511263-02244 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 09-CP-10-5799

**NOTICE OF FINAL FORECLOSURE
HEARING**

MB

2011 DEC -2 AM 11:44
JULIE J. ARSINHO
CLERK OF COURT

FILED

TO THE DEFENDANTS ABOVE NAMED.

YOU WILL PLEASE TAKE NOTICE THAT, by virtue of the Order of Reference issued in the above matter, Mikell R Scarborough, as Master in Equity of Charleston County, has appointed January 24, 2012, at 10:00 a.m., at Charleston County Courthouse, 100 Broad Street, Courtroom 2A, Charleston, SC 29401, as the time and place for holding a hearing on the merits, at which time and place all interested parties will appear.



Charles S. Gwynne Jr. (SC Bar # 73844)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive – Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

December 1, 2011

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 09-CP-10-5799

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have caused to be served a copy of the foregoing documents upon counsel of record and below parties by U S. Mail, postage prepaid, on December 1, 2011, at the following address(es).

Document(s) Served:

Notice of Final Foreclosure Hearing

Counsel/Parties Served:

Lydia P. Davidson, Esquire
Krawcheck & Davidson, LLC
Nine State Street
Charleston, SC 29401

Elaine Devlin Peery
3053 Pignatelli Crescent
Mt. Pleasant, SC 29466-8507

Kiawah Island Community Association, Inc.
23 Beachwalker Drive
Johns Island, SC 29455

Kiawah Island Community Association, Inc.
Registered Agent: Tammy McAdory
23 Beachwalker Drive
Kiawah Island, SC 29455

FILED
2011 DEC -2 AM 11:44
JULIE J. ARMS/ROFF
CLERK OF COURT



Charles S. Gwynne Jr. (SC Bar # 73844)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N A ,

Plaintiff,

vs.

Elaine Devlin Peery a/k/a Elaine D. Peery;
Kiawah Island Community Association, Inc ,
Windswept Villas III Horizontal Property
Regime, Inc ,

Defendant(s)

(511263-02244 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 09-CP-10-5799

**NOTICE OF HEARING ON
RECEIVERSHIP FUNDS**

FILED

2012 MAR 15 PM 3:30

JULIE J. ARMSTRONG
CLERK OF COURT

BY 

TO THE DEFENDANTS ABOVE NAMED

PLEASE TAKE NOTICE that a hearing on Receivership Funds has been set for March

27, 2012, at 2:15 p m before the Honorable Judge Scarborough at the following address:

Charleston County Courthouse
100 Broad Street, Courtroom 2A
Charleston, SC 29401



Charles S Gwynne Jr (SC Bar # 73844)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive – Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

March 14, 2012

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 09-CP-10-5799

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have caused to be served a copy of the foregoing documents upon counsel of record and below parties by U S Mail, postage prepaid, on March 14, 2012, at the following address(es):

Document(s) Served:

Notice of Hearing on Receivership Funds

Counsel/Parties Served:

Lydia P. Davidson, Esquire
Krawcheck & Davidson, LLC
Nine State Street
Charleston, SC 29401

Elaine Devlin Peery
3053 Pignatelli Crescent
Mt. Pleasant, SC 29466-8507

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2012 MAR 15 PM 3:30

FILED



Charles S. Gwynne Jr. (SC Bar # 73844)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: ~~10~~CP-10-5799

09

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME

Petitioner/ Judgment Creditor,

vs.

ELAINE DEVLIN PEERY A/K/A
ELAINE D. PEERY,

Respondent/ Judgment Debtor.

ORDER OF REFERENCE

FILED
2013 OCT 31 PM 3:02
JULIE J. ANDERSON
CLERK OF COURT
BY _____

THIS MATTER CAME BEFORE ME upon motion of counsel for the Plaintiff/Petitioner Windswept Villas III Horizontal Property Regime ("Windswept") pursuant to S C Ann. § 15-39-310 *et seq.* for an Order for supplemental proceedings against Defendant Elaine Devlin Peery a/k/a Elaine D. Peery. It appears to the Court that there is just cause for granting the motion and that a judgment has been entered against Defendant Elaine Devlin Peery a/k/a Elaine D. Peery

It appears to me that, in the interest of time and judicial economy and under the authority of South Carolina law and Rule 53 of the South Carolina Rules of Civil Procedure, I may and should refer this matter to the Master-in-Equity for Charleston County to hold the examination of the Respondent Elaine Devlin Peery a/k/a Elaine D. Peery.

NOW, THEREFORE, on motion of the attorney for the Petitioner,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Windswept's Petition for Supplemental Proceedings is granted and that this matter is referred to the Charleston County Master-in-Equity

Rmaji

IT IS FURTHER ORDERED:

1. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to appear before the Honorable Mikell Scarborough on _____, at the Master-in-Equity Courtroom of the Charleston County Courthouse, and to answer questions under oath concerning her assets, savings account books, life insurance policies, stock certificates, deeds, notes, mortgages, bonds, and tax returns through the preceding five (5) years, both for the United States and for the State of South Carolina, and all current records pertaining to her financial status; and to show cause, if any can be shown, why a receiver should not be appointed to take charge of and dispense of Ms. Peery's property for the satisfaction of the aforesaid judgment.
2. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce to Petitioner's attorneys, Pratt-Thomas Walker, P.A., Attn: Katie Fowler Monoc, at 16 Charlotte Street, P.O. Drawer 22247, Charleston, SC 29413-2247 at least seven (7) days prior to the above scheduled hearing, her latest financial statements, including any balance sheets and profit and loss income statements.
3. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted, an inventory of assets owned in whole or in part by her and, if any are under lien, a copy of the lien documents.

Paul/2

4. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted, her latest bank statements for all bank accounts in her name or to which she has access or signatory power. This information should include all personal account numbers (including name and address of the corresponding financial institutions and account numbers) held (in whole or part) by Elaine Devlin Peery a/k/a Elaine D. Peery whether a checking, savings, operating, investment, retirement, trust, deposit, or any other account at any time during the past five years, in addition to all of the other documents requested below.
5. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted, all statements, ledgers, balance statements, cancelled checks, and check books of the accounts identified above, during the past five years.
6. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted all credit card statements for any credit card held (in whole or part) by Elaine Devlin Peery a/k/a Elaine D. Peery for the past five years.
7. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted any life insurance policies, stock certificates, deeds, notes, mortgages (to include the most recent copies of mortgage statements), investment or retirement account statements, bonds or evidence of any other investments, held or owned (in whole or part) by Elaine Devlin Peery a/k/a Elaine D. Peery for the past

hnd/3

five years or whereby Elaine Devlin Peery a/k/a Elaine D. Peery is obligated on such (in whole or part) during the past five years

8. That Elaine Devlin Peery a/k/a Elaine D Peery is directed to produce at the same location and date as above noted all of her tax returns for the past five years, both for the United States and for the State of South Carolina, including all schedules and all documents showing income from any other source, including K-1 forms and the like.
9. That Elaine Devlin Peery a/k/a Elaine D Peery is directed to produce at the same location and date as above noted all other documents evidencing the current assets of Elaine Devlin Peery a/k/a Elaine D. Peery during the past five years, whether held jointly or with another, including but not limited to equipment schedules, deeds, titles, leases, stocks, subscription agreements, receipts of contracts of sale and purchase, vehicle titles, and vehicle loan information, accounts receivables, settlement statements, contracts or agreements to provide services, investments, pay stubs, K-1 distribution forms and to testify under oath as to such property and income.
10. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted all documents and materials showing the sale or disposal of any assets over the past five years This information should include records of any transfer of property, real or personal, made by you from January 1, 2009 to present

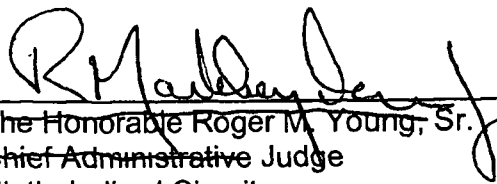
A handwritten signature in black ink, appearing to be 'RMD/4', is located in the bottom left corner of the page.

11. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted a list of all entities, groups, associations, partnerships or the like which Elaine Devlin Peery a/k/a Elaine D. Peery owns any interest in and list the percentage of interest owned and the proper legal name of such.
12. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted documents which evidence all sources of income over the past five years for Elaine Devlin Peery a/k/a Elaine D. Peery.
13. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted all indebtedness and accounts receivable owed to her, in whole or in part.
14. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted all business records, agreements, contracts, invoices, receipts or the like evidencing income to Elaine Devlin Peery a/k/a Elaine D. Peery over the past five years as well as any work scheduled to be performed in the future.
15. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted information relating to the release of settlement proceeds, or pending release of settlement proceeds, or any other money owed to her or held on her behalf in trust by her attorney relating to such settlement proceeds.

16. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to appear in Court at the above date and time to testify, under oath, as to the accuracy of the documents produced and to other matters which Counsel for Petitioner shall question on matters related to the debt and ability to pay the judgments and to show cause, if any can be shown, why a receiver should not be appointed to take charge of and dispense of and assets or receivables or property of each for the satisfaction of the aforesaid judgments.
17. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to appear for a deposition to examine the documents produced, whether before or after the scheduled hearing in this case as noticed by Counsel for the Petitioner
18. That Elaine Devlin Peery a/k/a Elaine D. Peery is restrained and enjoined from changing, altering, destroying, or defacing or omitting any of the instruments above mentioned and all others and from making any transfer or other disposition of the property not exempt by law from execution, except in the regular and ordinary course of business.
19. That should Elaine Devlin Peery a/k/a Elaine D. Peery not produce all of the above requested documents to Counsel for the Petitioner at least seven (7) days prior to the above scheduled hearing or should Elaine Devlin Peery a/k/a Elaine D. Peery not appear at the scheduled hearing, a contempt Order may be ordered by the Court.

IT IS SO ORDERED.

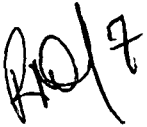



The Honorable Roger M. Young, Sr.
Chief Administrative Judge
Ninth Judicial Circuit

This 28th day of Oct, 2013

Charleston, South Carolina

DATE 10-22-2013
AMOUNT \$ 525.00
By: MIKELL R. SCARBOROUGH
MASTER IN EQUITY



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Windswept Villas III
Horizontal Property Regime

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

C/A NO: 2009-CP-10-5799

Petitioner.

vs.

Elaine Devlin-Peery, and Dunes West
Property Owners Association,

NOTICE OF APPEARANCE

Respondent

FILED
2014 JAN 13 PM 2:28
JULIE C. ARMSTRONG
CLERK OF COURT

The undersigned hereby provides notice of an appearance in this case as attorney of record on behalf of the Defendant Elaine Devlin-Peery, and requests that the undersigned attorney be copied with all notices and pleadings served in this case at the address provided herein

Dated this January 13, 2014



John R. Cantrell, Jr
Attorney for the Defendant Elaine Devlin-Peery
Cantrell Legal, PC
PO Box 1276
Goose Creek, SC 29445-1276
(843) 797-2454 (office)
(309) 213-0922 (fax)
Email lawyer@cantrellclan.com

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
Windswept Villas III Horizontal)
Plaintiff,)

vs.)
Elaine Deskin Peery aka)
Elaine D. Peery)
Defendant.)

IN THE COURT OF COMMON PLEAS
Must JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-5799
MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: <u>Vernice Hancock</u> _____, Bar No. _____ Address: <u>Post Office Box 2276</u> <u>Summerville, SC 29484</u> Phone: <u>X</u> Fax _____ E-mail: <u>X</u> Other: <u>Hancocklawfirm@gmail.com</u>		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/ ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☐ Defendant <u>[Signature]</u> Date submitted <u>4/16/14</u>			
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-5799

WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME,)
PETITIONER/JUDGMENT CREDITOR,)

-VS-

ELAINE DEVLIN PEERY a/k/a)
ELAINE D. PEERY,)
RESPONDENT/JUDGMENT DEBTOR.)

**MOTION TO VACATE
RULE 60 (b) (1), RULE 60 (b) (2)
RULE 60 (b) (3) RELIEF FROM
JUDGMENT OR ORDER**

FILED
2014 APR 16 PM 4:26
JULIE A. LONG
CLERK OF COURT
BY

**TO: G. TRENHOLM WALKER AND KATIE FOWLER MONOC, ATTORNEYS FOR
PETITIONER/JUDGMENT CREDITOR.**

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through her undersigned attorney, will move before the Honorable Mikell R. Scarborough, Master in Equity Judge for the Ninth Judicial Circuit, Charleston County, Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina, on the _____ day of _____, 2014, at _____ o'clock m. for an order pursuant to Rule 60(b)(1), Rule 60(b)(2), and Rule 60(b)(3) of the S.C.R.C.P., for relief from Order of Judgment filed on March 29, 2012 and signed by the Honorable Mikell R. Scarborough on March 17, 2012

The basis of this motion is as follows:

1. That the Defendant never had actual notice of the hearing for Entry of Judgment nor actual notice of the Order of Judgment filed March 29, 2012
2. That it further appears that a Motion hearing was held by the Plaintiff again without actual notice to the Defendant ultimately granting Plaintiff's Petition for Supplemental Proceedings



3. That the entry of the Order of Reference granting Plaintiff's Petition for Supplemental Proceedings is not relevant to the Plaintiff efforts to collect the monies held in trust in the amount of \$27,034.02.

4. That the Plaintiffs have failed to provide any proof or evidence to this Court that would suggest that the Defendant is judgment proof that would warrant a fishing expedition into the Defendant's assets, in the event the judgment stands. That the Plaintiffs effort to move forward with the Supplemental Proceedings is nothing short of a witch hunt to achieve the collection of post judgment relief that is near parallel to the judgment amount of \$27,034.02.

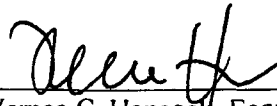
5. That based on all of the above stated, the Defendant is informed and believes that she is entitled to an Order of this Court setting aside the Order of Judgment in favor of Windswept Villas III Horizontal Property Regime, Inc. that was signed by the Honorable Mikell R. Scarborough on March 17, 2012.

6. Further, that based on all of the above stated, the Defendant is informed and believes that she is entitled to an Order of this Court setting aside the Order of Reference filed on October 31, 2013. Further, that there be a stay of these Supplemental Proceedings until such time that this matter can be heard before the Honorable R. Markley Dennis, Jr., to set aside his Order of Reference filed on October 31, 2013.

7. That the Defendant is informed and believes that she is entitled to an Order of this Court requiring the Plaintiffs to pay her attorney's fees and costs for this action.

WHEREFORE, the Defendant prays pursuant to Rule 60(b)(1), Rule 60(b)(2), and Rule 60(b)(3) of the SCRCP on the grounds of mistake, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentation and misconduct, that the Court set aside the Order of Judgment in favor of Windswept Villas III Horizontal Property Regime, Inc. that was signed by the Honorable Mikell R. Scarborough on March 17, 2012, and allow the Defendant a meaningful opportunity to engage in the discovery and mediation process.





Vernee C. Hancock, Esquire
Attorney for Defendant
P.O. Box 2276
Summerville, SC 29484
(843) 851-1476
(843) 851-0183 Fax

Summerville, SC
April 14, 2014



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Windswept Villas III
Horizontal Property Regime

Petitioner,

vs.

Elaine Devlin-Peery a/k/a
Elaine D Peery,

Respondent.

IN THE COURT OF COMMON PLEAS

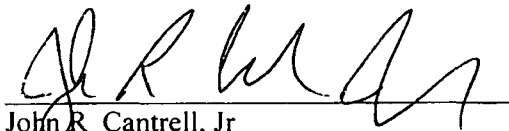
NINTH JUDICIAL CIRCUIT

C/A NO. 2009-CP-10-5799

NOTICE OF MERITS HEARING

The undersigned counsel for the Defendant named above hereby provides notice that a merits hearing will be held on Plaintiff's Supplemental Proceedings Motion, Defendant's Motion to Vacate, attorney John R. Cantrell, Jr.'s Motion to Withdraw as Counsel for the Defendant, and any other timely motions that may be filed before the hearing date. These motions will be heard by the Hon. Mikell R. Scarborough, Master in Equity for Charleston County, on Friday, June 20, 2014 at 9:30 am at Charleston County Courthouse, 100 Broad Street, Courtroom 2A, Charleston, SC 29401, at which time all interested parties should appear if they wish to be heard. The attorneys involved should prepare proposed orders for the judge to sign on their respective motions, if granted.

Dated this May 28, 2014



John R. Cantrell, Jr.
Attorney for the Defendant Elaine Devlin-Peery
Cantrell Legal, PC
PO Box 1276
Goose Creek, SC 29445-1276
(843) 797-2454 (office)
(309) 213-0922 (fax)
Email: lawyer@cantrellclan.com

FILED
2014 MAY 30 AM 11:47
JULIE J. HARRIS
CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Windswept Villas III Horizontal Property
Regime

Plaintiff,)

vs)

Elaine Devlin Peery a/k/a Elaine D. Peery)

Defendant)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

²⁰⁰⁹
CASE NO ~~2010~~-CP-10-5799

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney
Katie F. Monoc, Bar No 78131
Address
Pratt-Thomas Walker, PA
P. O. Drawer 22247
Charleston, SC 29413
Phone 843-727-2244 Fax 843-727-2238
E-mail kfm@p-tw.com Other _____

Defendant's Attorney
Vernee Hancock, Bar No _____
Address.
PO Box 2276
Summerville, SC 29484
Phone 843-851-1476 Fax 843-851-0183
E-mail hancocklawfirm@gmail.com Other _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion for Rule to Show Cause and For an Order of Contempt

Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted _____

SECTION III: Motion Fee

- ☒ **PAID - AMOUNT \$** _____
☐ **EXEMPT**
(check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court, or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order
☐ Other

JUDGE CODE _____

Date _____

CLERK'S VERIFICATION

Collected by _____ Date Filed: _____

- ☐ **MOTION FEE COLLECTED** \$ _____
☐ **CONTESTED - AMOUNT DUE** \$ _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME)
Petitioner/ Judgment Creditor,)
vs)
ELAINE DEVLIN PEERY A/K/A)
ELAINE D. PEERY,)
Respondent/ Judgment Debtor)

2009-CP-10-5799
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 09-CP-10-5799

**NOTICE OF MOTION AND
MOTION FOR
RULE TO SHOW CAUSE AND FOR
AN ORDER OF CONTEMPT**

BY JULIE J. ARMSTRONG
CLERK OF COURT

2014 JUN 10 AM 11:04
FILED
Clocked in date Canceled

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the
Petitioner/Judgment Creditor will move before the Honorable Master in Equity for
Charleston County on June 20, 2014 at 9:30 a.m. for an Order of Contempt based on
the following.

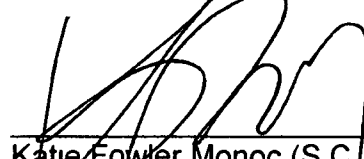
- 1 An Order of Reference was filed on October 31, 2013, a copy of which is
attached hereto as Exhibit A. The Order required Elaine Peery to personally
appear to answer questions under oath on January 13, 2014 Elaine Peery
retained counsel, who appeared on that day and later filed a Notice of
Appearance; however, Elaine Peery did not personally appear.
- 2 The matter was continued and a second hearing on Supplemental
Proceedings was scheduled for April 21, 2014 A Notice of Hearing was
served upon Elaine Peery's attorney in accordance with the South Carolina
Rules of Civil Procedure on or about March 27, 2014 Notwithstanding, Elaine
Peery again failed to appear.

3 To date, Elaine Peery has refused to comply with the Order of Reference filed October 31, 2013. Neither Elaine Peery nor her attorneys have provided the undersigned counsel with the materials required by the Court's October 31, 2013 Order. Nor has she agreed to submit to a deposition in compliance with the Order of Reference.

4 This Motion is supported by the Affidavit of Katie Fowler Monoc, attached hereto as Exhibit B.

WHEREFORE, the Petitioner/Judgment Creditor moves this Honorable Court to enter an Order of Contempt for the numerous failures by the Respondent/Judgment Debtor to comply with a Court Order and to appear at these Supplemental Proceedings. The Petitioner/Judgment Creditor further moves for sanctions in accordance with Rule 37 of the South Carolina Rules of Civil Procedure, an award of costs and attorneys' fees associated with the filing of this Motion, and other relief in favor of the Petitioner/Judgment Creditor as the Court deems just and proper.

PRATT-THOMAS WALKER, P.A.



Katie Fowler Monoc (S.C. Bar No. 78131)
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel. (843) 727-2244
Fax (843) 727-2236
E-mail kfm@p-tw.com
Attorney for Judgment Creditor

June 10, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Windswept Villas III Horizontal)
Property Regime,)
)
Petitioner/Judgment Creditor,)
)
v)
)
Elaine Devlin Peery a/k/a)
Elaine D Peery,)
)
Respondent/Judgment Debtor)

IN THE COURT OF COMMON PLEAS

CASE NO 2009-CP-10-5799

NOTICE OF HEARING

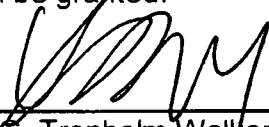
FILED
2014 JUN 10 AM 11:07
JULIE J. ARMSTRONG
CLERK OF COURT

TO JOHN R CANTRELL, JR AND VERNEE HANCOCK, ATTORNEYS FOR
RESPONDENT/JUDGMENT DEBTOR

PLEASE TAKE NOTICE that a hearing on Supplemental Proceedings, pursuant
to and in accordance with the Orders attached hereto, has been scheduled on June 20,
2014 at 9 30 a m before the Honorable Mikell R Scarborough at the following address:

Charleston County Courthouse
100 Broad Street
Charleston, SC 29401

The Court has ordered that no continuances will be granted.



G Trenholm Walker
Katie Fowler Monoc
Pratt-Thomas Walker, P A
P O Drawer 22247
Charleston, S C 29403-2247
(843) 727-2200
gtw@p-tw com
kfm@p-tw com
ATTORNEYS FOR
PETITIONER/JUDGMENT CREDITOR

June 10, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME)
Petitioner/ Judgment Creditor,)
)
vs.)
)
ELAINE DEVLIN PEERY A/K/A)
ELAINE D PEERY,)
)
)
)
Respondent/ Judgment Debtor)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO 09-CP-10-5799

2014 JUN 30 PM 3:14
JULIE A. HARRINGTON
CLERK OF COURT
BY 

**ORDER ON JUDGMENT
CREDITOR'S MOTION FOR A RULE
TO SHOW CAUSE AND ORDER OF
CONTEMPT**

This matter came before me on June 20, 2014. Present were counsel for the Petitioner, Katie Fowler Monoc, Esquire, and counsel for the Respondent, John R. Cantrell, Esquire and Vernee C Hancock, Esquire Also present was Lydia P. Davidson, Esquire, who represented Petitioner in the underlying matter

The Petitioner/Judgment Creditor (hereinafter "Windswept") initiated these Supplemental Proceedings by a Motion to the Court on October 22, 2013 wherein Windswept sought to recover on its judgment against the Respondent/Judgment Debtor (hereinafter "Peery") in the amount of \$27,034 02 plus reasonable attorneys' fees, costs of collection, and interest at the legal rate from March 27, 2012, the date of judgment, until such time that all amounts owed are paid in full An Order of Reference was executed by The Honorable R Markley Dennis, Jr on October 28, 2013 and filed on October 31, 2013 The Order of Reference required Peery to personally appear at the January 13, 2014 hearing on Supplemental Proceedings as well as to provide documents set forth in the Order. Although service had not been effected as of the

January 13, 2014 hearing, Peery's attorney, John Cantrell, Esquire, appeared on her behalf that day.¹ At the hearing, it was determined that the base judgment amount owed by Peery (\$27,034.02) had been identified and was being held in trust for Elaine Peery at the law firm of Thurmond, Kirchner, Timbes & Yelverton, PA. The Court ordered that these Supplemental Proceedings be continued and that those funds held in trust remain in trust subject to this Court's jurisdiction until such further notice and Order from this Court.

Counsel for Windswept then attempted to obtain the discovery ordered in the Court's October 31, 2013 Order to no avail. For this reason, a second hearing on Supplemental Proceedings was held April 21, 2014. Peery was properly noticed yet failed to appear. Because Peery failed to comply with the ordered discovery and failed to appear at Supplemental Proceedings, Windswept filed a Motion for Rule to Show Cause and for an Order of Contempt. Although Counsel for Peery was properly served with Windswept's Motion, Peery was not personally served.

Notwithstanding, this Court has the inherent power to punish for contempt. Such power "is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice." Ex parte Cannon, 385 S.C. 643, 660-61, 685 S.E.2d 814, 824 (Ct. App. 2009).

Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. A willful act is one . . . done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires.

¹ An additional attorney, Vernee Hancock, Esquire, appeared on behalf of Peery on March 20, 2014.

to be done, that is to say, with bad purpose either to disobey or disregard the law

Id. (internal citations omitted). The record demonstrates that Peery failed to comply with the Court-ordered discovery and failed to personally appear at Supplemental Proceedings to answer questions under oath as ordered by the Court. Nor did she or her counsel cooperate with Windswept's counsel to submit to a deposition. Peery and her counsel specifically failed to do what the law required to be done – namely, to participate in discovery and Supplemental Proceedings. I find that Peery has been on notice of these proceedings and the applicable discovery requests set forth in the Court's October 31, 2013 Order since late 2013 yet has failed to comply with the same and has failed to appear at a single hearing. For these reasons, I find that Peery is in contempt of Court and subject to sanctions, specifically, Peery's contempt provides an additional ground for the Judgment Creditor to recover reasonable attorneys' fees and costs (previously awarded in this Court's Order on Supplemental Proceedings on other grounds)

An additional hearing on the matter shall be set for August 29, 2014 at 10 a.m. The Judgment Creditor is to personally serve the Judgment Debtor, Elaine Peery, with notice of the August 29, 2014 hearing wherein Peery must show cause as to why she failed to appear at these Supplemental Proceedings and respond to discovery as required by the Court's October 31, 2013 Order. Should Elaine Peery fail to appear at the August 29, 2014 10 a.m. hearing, she will be subject to arrest and imprisonment. The Court will at that time also rule on additional attorneys' fees and costs that may be owed by Peery



IT IS SO ORDERED!



The Honorable Mikel R. Scarborough
Master-in-Equity

This 26th day of June, 2014
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2009-CP-10-5799

Windswept Villas III
Horizontal Property Regime,

Respondent,

v

Elaine Devlin Peery a/k/a,
Elaine D. Peery,

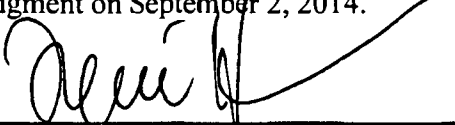
Appellant.

FILED
2014 SEP 26 PM 3:35
JULIE J. FOSTER, CLERK OF COURT

NOTICE OF APPEAL

Elaine D Peery appeals the following written Orders: the Order of Contempt and Sanctions dated August 29, 2014, the Order Denying the Motion to Vacate dated August 29, 2014, and the Order Holding Funds in Trust dated August, 29, 2014. Appellant received written notice of entry of these written orders and judgment on September 2, 2014.

September 25, 2014.


Vernee C. Hancock, Esquire
SC Bar No.: 15174
Post Office Box 2276
Summerville, South Carolina 29484
(843) 851-1476
Attorney for Appellant

Other Counsel of Record:
Katie Fowler Monoc
PO Drawer 22247
Charleston, South Carolina 29413-2247
Attorney for Respondent
(843) 727-2244

1 THE COURT: Have you discussed this with both
2 your client and the opposition as to their position on
3 that?

4 MR. VAUGHAN: Mrs. Peery and her husband are here
5 present in the courtroom today. They are in a very
6 difficult position, and I'm sure that she would like
7 to be heard today regarding this motion. But I have
8 talked to her at length about my need to be relieved
9 in this case.

10 THE COURT: All right. Very good. Let me first
11 turn to counsel and, Ms. Peery, I'll get to you.

12 MR. GWYNNE: Let me first hear from you. What's
13 the position of the Plaintiff, Bank of America, in this
14 case?

15 MR. GWYNNE: Yes, Your Honor. Good afternoon.
16 Charlie Gwynne, representing the Plaintiff.

17 We don't oppose Mr. Vaughan's motion. We would
18 just ask that Mr. Peery be given 30 days to retain new
19 counsel; have the case stayed for 30 days. If she does
20 not when she proceeds pro se.

21 There is some outstanding discovery, so we would
22 like that turned in and completed within 60 days of the
23 order. That gives a 30-day window for the new attorney
24 to plead in. I have a proposed order for the Court.
25 And I'm asking that Mrs. Peery be -- order state that

1 out here this afternoon and was just trying to
 2 familiarize myself with it. I'll be glad to go into
 3 the reasons but, frankly, when somebody asks to be
 4 relieved as counsel it has more to do with you and them
 5 than it has to do with the other side, although the
 6 other side has some interest as whether or not or how
 7 that's going to proceed.

8 I will tell you that it's my usual course of
 9 business to allow the attorney to withdraw, if that's
 10 what they want to do, so I'm glad to hear from you as
 11 to why I should or should not do that. Typically what
 12 I do is what -- Mr. Gwynne already prepared an order
 13 that provides you with some time in which to seek new
 14 counsel and to move forward in the relatively near
 15 future.

16 I know Mr. Vaughan. I've known him since law
 17 school, and I know he's had health issues in the last
 18 year and that's part of what's motivating this. I'm
 19 glad to hear from you. This is your chance to speak.

20 MS. PERRY: I only know he wants to be relieved
 21 as counsel for health problems. I know of no other
 22 reason. [I'm not quite sure why we're here at this
 23 motion today.] q

24 THE COURT: It would severely impact you because
 25 you wouldn't have counsel and you would need to get

1 new counsel. That's the number one issue for you.

2 The other matter, that's what Ms. Davidson wants
3 to go into, would be the need to or her desire to have
4 a receiver appointed to get whatever rents from the
5 property she can and use it to pay her client and/or
6 the Bank of America. As I understand it this is not
7 owner-occupied. This is some rental property on
8 Kilauea, is what I understand.

9 MS. PEERY: Yes, sir.

10 THE COURT: So from the perspective of Mr.
11 Vaughan being relieved, you have no real objection to
12 that?

13 MS. PEERY: No, sir. I just ask the Court if he
14 could please provide me with all the files and filings
15 he's done on this case, because I don't have any
16 documentation at all on this case. I do not know at
17 all what has gone on other than I have a copy of his
18 motion to be relieved. I have a copy of today's
19 motion.

20 THE COURT: I can certainly do that. Do you have
21 any objection -- I'll go to Ms. Davidson. I'll let
22 her make her record. She wants to have a receiver
23 appointed to manage just this unit; is that correct?

24 MS. DAVIDSON: That is correct, Your Honor.

25 THE COURT: Do you have a position on that?

1 THE COURT: I'm with you.

2 MS. DAVIDSON: I was wondering if Ms. Peery had
3 talked with the management company about whether or
4 not they had anything to do with it.

5 MR. PEERY: No, Sir. It was my understanding
6 that I'm in a suit with them as well, and that I
7 wasn't allowed to talk to the management company.

8 THE COURT: I'm with you. That's the
9 crossclaim that you brought.

10 Here's what I'm going to do. We've got a
11 situation that, unfortunately, I've had before and the
12 best thing that's happened so far, frankly, Ms. Peery,
13 is that you've kept the HVAC operating out there. When
14 they aren't operating they turn into mold factories.

15 What I'm going to do is, I'm going to grant the
16 motion to appoint the receiver today, the 1st of
17 August. I'll give ten days to get that done. I'm
18 going to have the service transferred, the HVAC service
19 now transferred into the HOA. So they'll now be
20 responsible for that bill. I don't know why the bill is
21 what it is. I don't know if that's going to present a
22 problem or not, but I'll have Ms. Summers, Mr.
23 Ravenel --

24 MS. DAVIDSON: Marilyn Summers at Ravenel
25 Associates.

1 THE COURT: Title is not going to transfer, but I
2 want Ravenel Associates to be responsible for the
3 maintenance and upkeep of the unit, and they certainly
4 can put it on the market to try and rent it. They'll
5 be responsible for the maintenance issues, as I've
6 said.

7 So I'll grant you that for the purpose of trying
8 to create some type of fund which we'll address at a
9 future date as to where that's going to go, whether it
10 goes back to the owner or whether it goes to the lender
11 or whether or not you all can get it. But anything out
12 of pocket you'll be protected on.

13 MS. DAVIDSON: Yes, sir. So any expenses that
14 come in, any bills to Ravenel in accordance with the
15 maintenance and repair, management, or whatever for
16 the unit, could be paid out of the rents, perhaps.

17 THE COURT: Correct. The receiver will be
18 responsible for the management of the property; should
19 be a provision for some fee. I don't know what their
20 typical fee is over there, but whatever that is that
21 should be paid by any rental. We're still in the
22 middle of the summer so, hopefully, it will get rented
23 depending where we go with this case.

24 MS. PEERY: Your Honor, there are a lot of
25 personal items I have in my unit, as well; things that

1 (Hearing commenced.)

2 THE COURT: This morning we have the case of Bank
3 of America versus Elaine Peery scheduled for trial;
4 foreclosure matter; got a number of pretrial hearings.

5 Yesterday I received a letter from Ms. Peery
6 asking for a continuance citing her difficulty with
7 adult care, I think on her husband. Because I had it
8 set for awhile I did not want to continue the case. I
9 don't see Ms. Peery this morning. Mr Gwynne, have you
10 heard from her?

11 MR. GWYNNE: No, I haven't, Your Honor. I
12 notified the Court of my objection to her continuance.

13 MS. DAVIDSON: Your Honor, I received a fax from
14 her yesterday, I guess after Charlie did. But she
15 never tried to contact me other than just she sent me a
16 copy of the letter that she sent.

17 MR. GWYNNE: I did receive a phone call from her,
18 but it was exactly what she stated in her letter.

19 THE COURT: I want to make sure -- Charlie Gwynne
20 for the Plaintiff, Bank of America, and --

21 MS. DAVIDSON: Lydia Davidson for Windswept Villas
22 Homeowners Association.

23 THE COURT: We instituted a receiver at one point.
24 Is that in effect still?

25 MS. DAVIDSON: It is. Karen Martin is here from

1 Ravenel Associates. She has a partial accounting or
2 interim accounting for the receivership at this time.
3 I didn't know whether we would need it or not. It's
4 negative.

5 THE COURT: Negative balance? Great.

6 What I'm concerned about is making sure she got
7 the message that we were going forward today. Hunter,
8 do you have any communication with her?

9 MS. HIGGISON: No, but Charlie's email -- there
10 was an attorney that was copied.

11 THE COURT: Some lawyer was involved to some
12 degree.

13 MR. GWYNNE: Barry Holden has been communicating
14 with me for Ms. Peery; says he doesn't represent her in
15 this case, but I did not have an email address from
16 Mr. Peery, copied him on it, asked him to convey the
17 message to Ms. Peery. I haven't heard from him whether
18 he actually conveyed the message to her.

19 THE COURT: You had heard from Mr. Holden during
20 the course of your representation?

21 MR. GWYNNE: I have, Your Honor.

22 THE COURT: You informed him that you objected to
23 the continuance?

24 MR. GWYNNE: Yes, Your Honor.

25 THE COURT: As far as you're concerned it's going

1 forward?

2 MR. GWYNNE: Yes, Your Honor.

3 MS. DAVIDSON: I talked to him yesterday morning
4 and -- Barry Holden -- and I think this was before --
5 he didn't know Mrs. Peery was going to ask for a
6 continuance. He said she talked about it. And he
7 sounded like he fully expected us to go forward today.

8 THE COURT: I fully expected to go forward today,
9 too.

10 Mr. Gwynne, you've got live testimony from your
11 client?

12 MR. GWYNNE: Yes, Your Honor. In lieu of an
13 affidavit, Ms. Judith Moore from Bank of America is
14 present in the courtroom and prepared to testify.

15 THE COURT: All right. Go ahead and call her.
16 Ms. Moore.

17 MR. GWYNNE: I have a proposed judgment and some
18 other documents, if I can hand them to the Court.

19 THE COURT: All right.

20 (Hands up document.)

21 (Judith Moore, duly sworn, testifies as follows:)

22 DIRECT EXAMINATION BY MR. GWYNNE:

23 Q Ms. Moore, will you please state your full name
24 for the record?

25 A Judith Moore.

1 THE COURT: Since that time it's not really rented
2 out? It's making some money when it's rented and it is
3 on the market to be rented?

4 A Yes.

5 THE COURT: Fully furnished, I assume?

6 A Yes.

7 THE COURT: Very good. That's all the questions I
8 have. Thank you, Ms. Martin.

9 A Thank you.

10 THE COURT: What we'll do for the HOA, you want to
11 come back later, closer to the sales time?

12 MR. DAVIDSON: Yes, sir. Then we can have the
13 final accounting.

14 THE COURT: We'll update those figures and do a
15 final accounting.

16 MR. GWYNNE: Since Bank of America is not making
17 claim I don't believe we need to attend.

18 THE COURT: Probably not. It's slowly going in
19 the hole. Most of that was up for expenses? I recall
20 there was hoopla about getting in and out. I do recall
21 all that. All right.

22 Mr. Gwynne, what I'll do, I'll set this for sale.
23 (Discussion off the record.)

24 THE COURT: I'll go ahead and set the date for
25 April 3rd. So final sale should come up May 3rd.

Bank of America, N.A.,)
)
 Plaintiff.)
)
 vs.)
)
 Elaine Devlin Peery a/k/a Elaine D. Peery,)
 Kiawah Island Community Association, Inc.;)
 Windswept Villas III Horizontal Property)
 Regime, Inc.,)
)
 Defendants.)
)

CASE NO. 09-CP-10-5799

TRANSCRIPT OF TESTIMONY

BY THE MASTER. Ms Davidson calls attention to the filing of the Summons and Complaint of Bank of America, N A., ("Plaintiff") in the Office of the Clerk of Court for Charleston County on September 14, 2009 and served on September 15, 2009;

Also calls attention to the filing of the Summons and Answer and Crossclaim of Windswept III in the Office of the Clerk of Court for Charleston County on September 24, 2009;

119

Also calls attention to the Order For Appointment of a Receiver filed by Windswept III on August 16, 2011 whereby Ravenel Associates, Inc., by and through the current management agent for Windswept III, was appointed Receiver.

WHEREUPON, LYDIA P. DAVIDSON, BEING DULY SWORN, TESTIFIED AS FOLLOWS:

I am the Attorney for Windswept Villas III Horizontal Property Regime, Inc., a Defendant in this action, and I have been authorized to testify on behalf of Windswept III in this matter.

From the original records in my possession and from the Complaint herein and from examination of the records in the RMC Office for Charleston County, I call attention to the provisions of the Master Deed of Windswept Villas III Horizontal Property Regime and the Exhibits thereto as recorded in the RMC Office for Charleston County in Book F-166, at Page 116, as may be amended from time to time, all of which is in accordance with Section 27-31-10, et seq., South Carolina Code of Laws (1976) (as amended). In accordance with the Master Deed and Bylaws attached thereto as an Exhibit, Defendant Peery is obligated and indebted to Windswept III for regular and special assessments imposed upon Defendant Peery to meet the common expenses of Windswept III, and is further obligated and indebted to Windswept III for interest and service fees from the date the assessments first became due, and is also further obligated to pay the attorney's fees for Windswept III and other costs of collection, and is also further obligated for such other and further charges and assessments as have accrued since January 24, 2012

I offer provisions of the Master Deed which impose such obligations on Defendant Peery

MASTER: Identified and received into evidence as Exhibit "A".

Upon examination of the records in the Charleston County RMC office, Defendant Peery is the record fee simple owner of the property that is the subject matter of this action. This property, which is covered and affected by this lien, is described as follows.

ALL that certain apartment known as Villa Number 5108 in Windswept Villas III Horizontal Property Regime as shown on the plans and specifications attached to that certain Master Deed executed by Kiawah Island Company Limited, dated June 17, 1987, and recorded in Book E-166, Page 116 in the RMC Office for Charleston County, South Carolina.

TMS No.. 209-06-00-352

There is due and owing Windswept III for regular and special assessments, together with late fees and prejudgment interest the sum of Nineteen Thousand Seven Hundred Twenty-six and 89/100ths (\$19,726 89) Dollars, as of March 26, 2012

I offer the account history relevant to the subject property owned by Defendant Peery as prepared for me on behalf of Windswept III by Chad Hammond of Ravenel Associates, the duly appointed and authorized management agent of Windswept III.

MASTER: Identified and received into evidence as Exhibit "B".

From information received from Chad Hammond of Ravenel Associates, Inc., duly appointed Receiver in this matter, expenses for the receivership totaled \$4,566 17, of which \$1,046 82 in fees incident to renting the unit has already been paid from rental income, leaving an expense balance of \$3,519 35. An amount of \$1,950 00 is due and payable to the Receiver and, in addition to past due assessments, late fees and attorneys fees, an amount of \$1,569.35 is due to Windswept III for costs and maintenance of the unit.

Income from the receivership totaled \$1,949.75 of which \$1,046.82 was used to pay expenses incident to rental of the unit leaving \$902 93 in income.

The deficit of \$2,616.42 shall be added to the Judgment amount.

I offer the Accounting for the Receiver as prepared by the current manager of Windswept III, Chad Hammond of Ravenel Associates, the duly appointed Receiver.

MASTER: Identified and received into evidence as Exhibit "C".

There is also due the amount of \$4,690.71 representing the current costs for collection and attorney's fees in this action and broken down as follows:

Krawcheck & Davidson Attorney's Fees	\$4,645.00
Krawcheck & Davidson Costs	\$ 45 71
Total Costs and Attorneys Fees	\$4,690.71

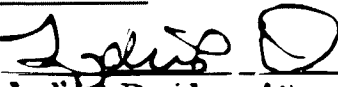
I offer the Krawcheck and Davidson, LLC billing history relevant to the subject property owned by Defendant Peery.

MASTER: Identified and received into evidence as Exhibit "D"

That, Your Honor, completes the case for Defendant Windswept III and this Defendant rests.

REFERENCE ADJOURNED

By: _____


Lydia P. Davidson, Attorney for Defendant,
Windswept III Horizontal Property Regime, Inc.
9 State Street
Charleston, SC 29401

Charleston, South Carolina
3/27, 2012

1 Cantrell as you had suggested and never received a
2 deposition date. And I have a discovery that was ordered
3 pursuant to the Court's October, 2013 order was produced to
4 our office.

5 But not withstanding, based on the last hearing the
6 \$27,034.32 that was the base judgment amount from the
7 underlying action was being held in trust in accordance with
8 your past order. And so I believe that we can request that
9 those amounts be paid at this time, because that's why
10 they're being held in trust was, you know, pending a
11 potential resolution, which never came to fruition.

12 So what we would need additional testimony for are for
13 the underlying, the attorney's fees association with this
14 action and the costs and post judgment interest.

15 MS. HANCOCK: Your Honor, for purposes of Ms.
16 Peery we filed a motion to vacate. And that was done on
17 April the 16th. It's been --

18 THE COURT: To vacate what?

19 MS. HANCOCK: To vacate the judgment. And also
20 the order of reference we'd ask that those proceedings be
21 stayed because the order of reference was heard by Judge
22 Mark Lee Dennis.

23 THE COURT: When was that?

24 MS. HANCOCK: That would have been done in, I
25 think January or February, I believe.

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THE COURT: In this case?

MS. HANCOCK: In this case, Your Honor.

MS. MONROE: Your Honor, that was actually submitted to the Court. There was not a hearing on the matter. It was a motion and a proposed order of reference.

THE COURT: Let me stop you. Mr. Monroe, we're here on your supplemental proceedings. Let me hear from you. Let me make sure I'm looking at the record that's been filed. And what I see, the most recent thing I saw in there was my order, which there is a motion in there to vacate by the defendant. I'm not taking that up. This is a supplemental proceeding. So you'll have to do that in a separate proceeding.

But the master's order for supplemental proceedings from January continued the matter. Mr. Cantrell was going to accept service. Has that been done?

MR. CANTRELL: I did accept service, Your Honor.

THE COURT: Very good. So that's been done. And funds were being held in trust. And then we were going to quantify the amount of interest and attorney's fees and costs. And do we have that?

MS. MONROE: Your Honor, I provided an affidavit of attorney's fees to the Court. I was actually working on it today but I had not completed it before this hearing. I will say it's approximately \$5,000. The costs are \$207.12

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1 THE COURT: All right. You got service of process
2 of the original claim or not?

3 MS. MONOC: In the underlying judgment? Yes, Your
4 Honor. It's on file. I'll hand it up. And that was Bank
5 of America's notice because it was the hearing on the
6 merits.

7 THE COURT: Yeah. Bank of America's notice of
8 hearing. But you had previously filed a cross claim; is
9 that what this is for?

10 MR. CANTRELL: We're here on the cross claim, Your
11 Honor.

12 MS. MONOC: We're here on a judgment that's based
13 on the hearing on the merits.

14 THE COURT: All right. Let me just hear from you,
15 Mr. Cantrell.

16 MR. CANTRELL: Your Honor, we're here on the cross
17 claim. She is correct that there was a foreclosure filed by
18 Bank of America against both her client and my client. Her
19 client filed a cross claim against my client. There is
20 nowhere in the record that I can see any proof that that
21 cross claim was ever served on my client.

22 THE COURT: Let me stop you right there. Ms.
23 Monoc, that's the proof of service I'm looking for. Okay?

24 MS. MONOC: Okay

25 THE COURT: Now, Mr. Cantrell, go ahead.

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1 MR. CANTRELL: I don't think they have it, because
2 if you look later in some of the stuff that's on record they
3 said they didn't allude to -- they didn't say when it was
4 filed. I can't see it in the records, so I don't think it's
5 there. Now, at that time my client had another attorney,
6 retained an attorney named Barney Vaughan to represent her
7 in the foreclosure defense. Now, he was relieved as counsel
8 at a period of time after that. And subsequent to his being
9 relieved there was the merits foreclosure hearing.

10 And what she's referring to, the certificate of service
11 she's referring to is when Bank of America served apparently
12 both her client and my client with a notice of the final
13 foreclosure hearing. We're not here contesting the
14 foreclosure hearing. There was never any proof that her
15 client noticed my client for a hearing on the cross claim.
16 So not only did we not have service originally of the cross
17 claim, proof of that, we also don't have proof of
18 notification of the final hearing on the cross claim, Your
19 Honor.

20 THE COURT: All right. But you acknowledge
21 receiving pleadings from the Bank of America and notice of
22 hearing from the Bank of America; is that right?

23 MR. CANTRELL: We did. We're not contesting the
24 -- is that correct?

25 MS. HANCOCK: Your Honor, we beg the Court's

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1 Indulgence one moment please.

2 THE COURT: Okay. Go ahead.

3 MS. MONOC: I do, Your Honor, have the Certificate
4 of Service that was filed with the cross claim for Windswept
5 back in December of 2009.

6 THE COURT: Filed?

7 MS. MONOC: It was served on Barnwell Vaughan, who
8 was their attorney and the other attorney.

9 THE COURT: He accepted service?

10 MS. MONOC: I believe so.

11 MR. CANTRELL: That's possible, Your Honor. We're
12 not contesting the foreclosure. We haven't researched that
13 as much so we don't want to make representations about that.

14 THE COURT: I'm not even talking about that. I'm
15 only talking about her proof of service.

16 MR. CANTRELL: Okay. She's referring to an
17 acceptance of service, if I remember correctly by Barney
18 Vaughan on the foreclosure complaint from Bank of America.
19 And I think there's a possibility that exists. But I'm not
20 aware of anything regarding the cross claim, Your Honor.

21 MS. MONOC: That was the date of our, of
22 Windswept's reply to defendant Peery's cross claims.

23 THE COURT: Looks like Mr. Vaughan brought the
24 cross claim against Windswept.

25 MR. CANTRELL: Your Honor, he did, but he never

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1 answered the cross claim. In other words, in his answer,
2 Your Honor, you're correct that he did cross claim against
3 them. It was a separate and completely different action
4 than their cross claim against him. There's nowhere that I
5 can see in his answer that acknowledges receipt at all of
6 their cross claim.

7 Now, there was a representation to the contrary to this
8 Court as I understand by a previous attorney for the HOA,
9 which is why we were misled on that point until this
10 morning. But after looking for that very carefully I'm
11 fairly certain that -- doesn't say anything about the HOA's
12 cross claim nor evidence that my client was aware of it or
13 that my client's attorney was aware.

14 MS. MONOC: Your Honor, my understanding is that
15 the hearing on the merits, the final foreclosure hearing and
16 the hearing on the merits were all in one.

17 THE COURT: That's what I would imagine.

18 MS. MONOC: And that the attorneys for Bank of
19 America were the ones who noticed the hearing and that Ms.
20 Peery had notice of the hearing. She had appeared, I guess
21 she had gotten rid of her attorney at that point, but it
22 appears here that she was served with notice by the bank.

23 MS. HANCOCK: Your Honor, I want to make it clear.
24 She didn't get rid of her attorney. I think he requested
25 for medical purposes to be relieved from the case. There's

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1 also extensive discussion via transcript, Your Honor, on the
2 January 24th foreclosure hearing between the Court and Ms.
3 Davidson and the Court and Mr. Holden with Bank of America
4 as to whether or not Ms. Peery had notice or even that
5 hearing. And that was no proof that she had hearing on that
6 particular case. At that point mistakenly indicating or
7 suggesting that she received notice from Attorney Barry
8 Holden.

9 MR. CANTRELL: Who did not represent her in this
10 case. He is her accountant, Your Honor. He did not
11 represent her in this case at any time to the best of my
12 knowledge, and his assertion to me that he never represented
13 her.

14 THE COURT: And it looks like Ms. Peery brought a
15 claim against Windswept Villas.

16 MR. CANTRELL: In her prior attorney's answer
17 there was a claim against Windswept, which also never got to
18 be heard, Your Honor, since she was never properly notified
19 of the hearing on that claim.

20 MS. MONOC: Your Honor, if you'd like the
21 transcript or testimony from the hearing on January 24th,
22 2012 that was noticed by Bank of America and all Lydia
23 Davidson's testimony. I'd be happy to provide them to you.

24 MS. HANCOCK: Your Honor, I also have that
25 transcript of record. And I can't find anything even on

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1 this transcript that indicates that any of these witnesses
2 were put under oath. But I do have the transcript. And the
3 first four or five pages have extensive discussion as to
4 whether or not Ms. Peery was notified of the hearing that
5 went forward. And certainly no proof was given at that
6 point from anyone that indicated that she received proper
7 notice of that particular hearing.

8 THE COURT: There's an order of August, 2011 for
9 relieving Mr. Vaughan as her counsel and says that all
10 future service will be at her last known address in Mount
11 Pleasant. Mr. Vaughan provided a response and that's August
12 of '11. Receiver was appointed thereafter. I'm assuming
13 that's where the money's being held, but again, I don't
14 know.

15 MR. CANTRELL: Your Honor, may it please the
16 Court. As you can see the issues here are substantial.
17 Perhaps Your Honor would reconsider my motion to continue
18 the matter until such time --

19 THE COURT: Well, it's not getting better if I
20 continue -- All this stuff is at least three, four years
21 old. We just need to get this worked out. So y'all's
22 position is she was never served by the cross complaint?

23 MR. CANTRELL: She was never served with the cross
24 claim, and she wasn't properly served related to the hearing
25 that resulted in the judgment. Two basic service issues,

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1 Your Honor.

2 THE COURT: The second one's resolved. This got
3 sent, I believe by Bank of America, right?

4 MR. CANTRELL: Resolved in what fashion, Your
5 Honor? I don't understand.

6 THE COURT: What happened to y'all's counter
7 claim? What happened to y'all's cross claim against them?

8 MR. CANTRELL: I guess it never got heard.

9 THE COURT: Is that your understanding?

10 MS. MONOC: Your Honor, honestly I'm not sure what
11 happened.

12 THE COURT: Ms. Hancock, give me your position.

13 MS. HANCOCK: Your Honor, again, we filed this
14 motion to vacate because there's been just a laundry list of
15 notice issues. And in particular this notice of transcript
16 even as described by opposing counsel of January the 24th,
17 2012 there are at least four to five pages between counsel.
18 Bank of America appeared, there was no notice that Windswept
19 would be here. Lydia Davis was here and the like.

20 There's a conversation going on, and the Court
21 indicates that it was concerned whether or not Ms. Peery had
22 notice of the proceedings. There was some discussing
23 indicating that from the status Lydia Davis saying that she
24 spoke with Mr. Holden, but of course then indicates that
25 they were of the understanding that Mr. Holden did not

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1 that firm continues to hold that money in trust. And I
2 would ask that Your Honor order that it be disbursed to
3 Windswept. And then the only other issue before us is to
4 identify the assets to pay for the attorney's fees, costs,
5 and interest. And I would ask that Your Honor order that
6 that money be paid within 30 days since we're not here to
7 identify assets, since Ms. Peery's not here for us to ask
8 about assets.

9 THE COURT: Those funds are sufficient to satisfy
10 the judgment in whole or in part?

11 MS. MONOC: In whole.

12 THE COURT: And what are y'all's attorney's fees
13 incurred so far in pursuing this matter?

14 MS. MONOC: Attorneys fees are \$23,231. Costs are
15 \$553.12. Post judgment interest is \$4,818.03. The total
16 for interest, attorney's fees, and costs is \$25,602.15. And
17 the grand total money owed by Ms. Peery with a payoff date
18 of 30 days from today is \$52,635.19.

19 THE COURT: How much is being held in Thurman
20 Kirschner Trust?

21 MS. MONOC: 27,034.02.

22 THE COURT: Is that the amount of the underlying
23 judgment then?

24 MS. MONOC: Yes, Your Honor. Because we served
25 them because we knew they were representing her to another

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1 matter. So they were served with the order of reference.
2 And so they were holding the money, I think anyway. And
3 then Your Honor ordered that the money be held.

4 THE COURT: And that's the only amount of funds
5 that are being held; is that right? I thought for some
6 reason I had a larger figure. That's not correct?

7 MS. MONOC: I don't think so.

8 THE COURT: I'm going to order that the funds be
9 paid over directly ASAP. Upon receipt of an order they're
10 to pay those funds over to windswept Villas HBP. Those
11 funds do not include the interest?

12 MS. MONOC: No, Your Honor.

13 THE COURT: Wouldn't include these attorney's fees
14 you're requesting or the costs. And that figure is
15 25,602.17.

16 MS. MONOC: Yes, Your Honor.

17 THE COURT: You want to be heard on that?

18 MR. CANTRELL: It's disgusting. She's doubled in
19 a matter of a few short months. It's ridiculous, Your
20 Honor. It's disgusting. It is pathetic. And she's sitting
21 there with a grin on her face. I ask the Court to take
22 notice of that. That is churning fees. And it is
23 ridiculous.

24 THE COURT: And yet in six months we can't get
25 Ms. Peery to show up in the courtroom to answer questions

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1 THE COURT I understand that. What do we have on
2 that, Ms. Monoc?

3 MS. MONOC: Your Honor, I provided you for in
4 camera review our last attorney's fees. And I have an
5 updated bill that I'll provide for your in cam review. And
6 just so the record's clear the attorney's fees are \$20,231.
7 The costs are a \$553.12. And the interest is \$4,818.05. As
8 I've set forth in the proposed order the attorney's fees and
9 costs were recoverable in the underlying matter, and
10 therefore they're recoverable in supplemental proceedings.
11 And also for the record, any look on my face was a result of
12 being called disgusting and pathetic by counsel.

13 THE COURT: I understand. And I don't approve of
14 that, Mr. Cantrell. I just want you to know. What was the
15 amount on the affidavit attorney's fees previously
16 submitted? I did review those in camera. That was around
17 13,000, was it not?

18 MS. MONOC: Let me find it. And I have a
19 supplemental affidavit for Your Honor to review today, which
20 just added on to that last one. Let me find it.

21 THE COURT: My records reflect it was 15,000.
22 Invoices October 18 through March 27, 2014 were 8,762.50;
23 does that sound right, Ms. Monoc?

24 MS. MONOC: Your Honor, I am not sure. I don't
25 know why I don't have this.

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1 THE COURT: I'm reading it from your filing in
2 May. Invoice April 1 through May 5, 2014 was 5,380. And
3 cost to May 2 were 553.12, the same figure you had here.
4 I'm going to award that sum, 15,195.62. I'm going to award
5 that as additional costs. Those are fees and costs.
6 Interest is whatever interest is.

7 MS. MONOC: Does that include the costs?

8 THE COURT: Yes.

9 MS. MONOC: 15,195.62?

10 THE COURT: Yeah, that's costs. That was based on
11 your filing of May 6th, which I did review in camera. If
12 you'd like to submit this additional amount in camera for
13 review we'll do that and take that up at another time. And
14 clearly you're entitled to interest. The 4,816 figure is
15 interest not through today but... yes?

16 MS. MONOC: ... we could
17 recalculate it.

18 THE COURT: ... that for today,
19 you can put that

20 MS. MONOC:

21 THE COURT: ... 4,000 some
22 odd dollars.

23 MS. MONOC: ... just to
24 hand up my amended

25 THE COURT: Sure. The Court has the authority to

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1 order the additional attorney's fees on the basis that in
2 fact attorney's fee were recoverable in the underlying
3 action. It also has the ability to award fees and costs for
4 findings of contempt.

5 In this particular case the defendant having been
6 noticed since, been on notice, something separate from
7 service, been on notice since, I guess November, December of
8 last year to appear to produce documents. I try to make
9 this easier for people, not harder for people. But in this
10 case it's turned out to be a harder method. So that's an
11 alternative reason to award fees. And in fact, I have
12 reviewed the requested amount in camera, and I found it to
13 be reasonable under the circumstances.

14 I'm not going to award today the additional amount, the
15 additional 5,000. I'll have to look those over. And we may
16 need to come back again one day. So that may be an
17 opportunity. However, before I specifically find Ms. Peery
18 in contempt I'm going to require that she be served
19 personally with a rule to show cause, that rule to show
20 cause order for to appear. And I'll give you a date in a
21 second. And she's to show cause why she has failed to
22 appear at these hearings. And she's to be put on notice in
23 that rule to show cause that should she fail to appear at
24 that next hearing she will be subject to arrest, and that
25 will be through the Charleston County Sheriff's Office.

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1 That service will definitely be through that. You can serve
2 that personally or you can serve that to the sheriff or
3 through a private process server. That matters not to me.
4 I'm going to set that appearance for August the 29th at
5 10:00 a.m. That should provide plenty of time to get her
6 served and notice to be there.

7 Now, Ms. Monoc, does that take care of your motions on
8 your side of the equation?

9 MS. MONOC: Yes, Your Honor.

10 THE COURT: Let me come back to y'all. Now, y'all
11 have motions as well. Ms. Hancock?

12 MS. HANCOCK: May it please the Court, Your Honor.
13 I beg the Court's indulgence one moment.

14 THE COURT: Sure.

15 MS. HANCOCK: Your Honor, lack of notice to our
16 client from the inception of the foreclosure proceedings,
17 the judgment, and the like have really been the illness
18 that's created this entire disease in this case.
19 Particularly with rule 60(b)(4), if there's ever problems with
20 notice, of a lack of notice in a case then the Court doesn't
21 have personal jurisdiction over that litigant. And it raises
22 any judgments that may be entered into void. And we have
23 submitted, the last time that we were present before the
24 Court Your Honor asked opposing counsel as to whether or not
25 Ms. Feery had even been served with the underlying

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1 MR. CANTRELL: I'd ask my co-counsel can address
2 that, Your Honor.

3 MS. HANCOCK: Your Honor, for purpose of
4 clarification she did not have notice of that hearing.

5 THE COURT: How can you say that when she sent
6 this Court a letter asking for a continuance?

7 MS. HANCOCK: And if I will, Your Honor, I'll be
8 glad to explain. Again, someone, another attorney, okay,
9 was contacted Mr. Holden who indicated that she was not her
10 attorney of record.

11 THE COURT: It goes on to talk about Mr. Holden.
12 This statement in this transcript says that Ms. Peary sent a
13 letter.

14 MS. HANCOCK: She did send a letter after -- she
15 found out the day from Mr. Holden is my understanding that
16 there's supposedly, maybe a hearing the very next day and to
17 submit a request for continuance. But she did not have
18 notice of the hearing.

19 THE COURT: All right. I can't buy y'all's
20 argument. I'm going to dismiss the request. I can't buy
21 that she didn't get notice when she, in fact asked for a
22 continuance. By definition this Court finds that's notice.
23 Your question has to do with jurisdiction and service of
24 process. That's what y'all are after. And I find that on
25 multiple occasions she made voluntary appearances in this

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1 court. And under Rule 4 this is sufficient to confer
2 jurisdiction on this court. Your motion is denied. Y'all
3 can take it where you want to go. But we're going to be
4 having a hearing in August, it looks like to continue the
5 supplemental proceedings.

6 MS. HANCOCK: Your Honor, I would like to just
7 preserve the record for an appeal. I just want to preserve
8 the record. Thank you.

9 THE COURT: You're certainly entitled to do it.

10 MR. CANTRELL: Your Honor, am I correct in
11 understanding that you have denied my motion to withdraw?

12 THE COURT: Yes.

13 MR. CANTRELL: And that is a permanent --

14 THE COURT: No, you can renew it back in August.
15 Come on back in August and we'll do it again. Sorry to do
16 that to you.

17 MR. CANTRELL: Will your court issue a final Form
18 4 Order on that point for me so that I can pursue my rights?

19 THE COURT: Ms. Moroc, I'm going to ask you to
20 prepare an order covering the rule that we talked and the
21 judgments, and then I'll ask that you do that in one order.
22 And in a separate order if you'll cover the issue of
23 Mr. Cantrell's request to be relieved, that it was denied
24 for purposes of this hearing today. And I probably need to
25 be clear on the record, that's as to 82(b)(4). And that would

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1 be your motion, correct?

2 MR. CANTRELL: That was correct, Your Honor.

3 THE COURT: And then under 60(b)1, 2, 3, Ms.
4 Hancock, those are your motions?

5 MS. HANCOCK: Yes, Your Honor.

6 THE COURT: I'm denying those as well. And the
7 Court is making a specific finding that the defendant made a
8 voluntary appearance in this court and that therefore
9 jurisdiction is proper under Rule 4. That's going to be my
10 order. If you'd like to renew your motion I'd be glad to
11 hear that again.

12 MR. CANTRELL: It's more than likely, Your Honor,
13 I'll file an appeal of your final order prior to that time
14 on the issue of withdrawal. I'm being forced to serve here
15 without pay as well. I didn't raise that earlier. I was
16 hoping we wouldn't have to go there. But it's, I believe a
17 prohibition against involuntary servitude under the 13th
18 Amendment to the United States Constitution. And so I
19 believe that Your Honor is forcing me to continue this case
20 when my client is represented by co-counsel is
21 unconstitutional.

22 THE COURT: Very good. And I will say for the
23 record if you ask for that relief again it may well be
24 granted.

25 MR. CANTRELL: In the meantime I'm not getting

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1 attorney's fees and costs. An additional
2 hearing was set for today at 10:00 a.m. The
3 judgment/creditor is to personally serve the
4 judgment/debtor with notice of today's
5 hearing wherein appearing must show cause as
6 to why she failed to appear at these
7 supplemental proceedings and respond to
8 discovery as required by this Court's October
9 31, 2013 order. Should she fail to appear
10 she would be subject to arrest and
11 imprisonment.

12 I note she is here today. I will
13 not issue an order for her arrest or
14 imprisonment, but I clearly have the
15 authority, the jurisdiction, and the ability
16 to sanction her for her prior failures to
17 appear and for failure to produce documents.
18 Would you like to be heard on that? Do you
19 want me to hear from her on that? What's
20 your preference on that?

21 MS. HANCOCK: I will be glad to
22 respond, Your Honor. Again, I don't mean to
23 be redundant for the Court. I'm not
24 disputing the Court's ability to make those
25 findings or for the Court's ability to issue

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME

Petitioner/ Judgment Creditor,

vs

ELAINE DEVLIN PEERY A/K/A
ELAINE D. PEERY,

Respondent/ Judgment Debtor

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 09-CP-10-5799

JUDGMENT CREDITOR'S
MEMORANDUM IN OPPOSITION TO
JUDGMENT DEBTOR'S UNTIMELY
MOTION TO VACATE

The Petitioner/Judgment Creditor hereby submits its memorandum in opposition to the Respondent/Judgment Debtor's untimely motion to vacate, which must be denied as a matter of law

The plain language of Rule 60(b)(1), (2), and (3), expressly relied upon by the judgment debtor, states that such "motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken" Rule 60(b), S C R Civ P (emphasis added). "The movant in a rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle her to relief . [the Court must] inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings " BB&T v. Taylor, 369 S C. 548, 552, 633 S E 2d 501, 503 (2006) (citations omitted). "A presumption of proper service exists when the rules governing service are followed." Id (citations omitted) In this case, the underlying Order was entered on March 29, 2012 – more than two years

prior to the judgment debtor's "Motion to Vacate Rule 60(b)(1), Rule 60(b)(2), Rule 60(b)(3) Relief from Judgment or Order" filed April 16, 2014.

Even if the law permitted such an untimely motion, the facts do not support the relief requested by the judgment debtor. As evidenced by the affidavit of Lydia Davidson, Esquire, Windswept's attorney in the underlying matter, attached hereto as Exhibit A and incorporated herein by way of reference, the judgment debtor received notice of the underlying cross-claim; the judgment debtor personally attended the hearing wherein a receiver was appointed on Windswept's motion to recover monies owed to the judgment creditor in accordance with its cross-claim; and the judgment debtor was sent notice of the final hearings on the foreclosure matter. The judgment debtor cannot now seek to set aside a valid judgment under these circumstances

With respect to the judgment debtor's allegations relating to these supplemental proceedings, there seems to be a fundamental misunderstanding as to the nature and purpose of these proceedings. Contrary to the "witch hunt" and "fishing expedition" described by the judgment debtor's counsel in its April 16, 2014 filing with the Court,¹ the purpose of supplemental proceedings is to determine whether the judgment debtor has non-exempt property which may be applied towards payment of the judgment. See S.C. Code Ann. § 15-39-310. Prior to properly instituting these proceedings,² the

¹ It should be noted that such Motion was not served on Windswept at the time of the filing, April 16, 2014 – rather, counsel for the judgment debtor handed the filed motion to counsel for the judgment creditor moments before the April 21, 2014 hearing on supplemental proceedings. This is clearly in contravention of Rule 5(d) which requires that a motion be filed with the court within five days after service thereof.

² Notwithstanding the judgment debtor's allegations that these proceedings were instituted without "any proof or evidence to this Court that would suggest that the Defendant is judgment proof that would warrant a fishing expedition into the Defendant's assets, in the event the judgment stands," the judgment creditor

judgment creditor was informed and believed that the judgment debtor had settled a construction claim and that there were assets that would cover the judgment debtor's underlying judgment being held in trust at the law firm of Thurmond Kirchner Timbes & Yelverton, P.A. At the initial hearing on supplemental proceedings, the Court ordered that such funds remain in trust and continued the matter to allow for discovery and settlement negotiations. See January 15, 2014 Order on Supplemental Proceedings. In addition to the underlying judgment amount, the judgment debtor owes attorneys' fees and the costs of this collection matter – which would require the identification of assets above and beyond those proceeds from judgment debtor's construction lawsuit.

As to the notice issues judgment debtor's counsel has raised relating to the propriety of these proceedings, such issues are addressed in the May 6, 2014 affidavit of Katie Fowler Monoc, Esquire, attached herein as Exhibit B and incorporated herein by way of reference.

Finally, the judgment creditor requests that the Court take judicial notice of the fact that notice of the entry of each of these above-described and contested orders would have been automatically sent to judgment debtor's address on file with the Court by the Clerk of Court, at the time of entry. See Notice of Entry of Judgment, attached hereto as Exhibit C and incorporated herein by reference (stating that Order Discharging Receiver, Order of Judgment, and Order for Final Distribution of Funds was mailed first class on April 3, 2012 to all counsel of record and all parties entitled to receive notice).

respectfully refers the Court to the October 22, 2013 Affidavit of Katie Fowler Monoc, Esquire on file in this matter.

For these reasons, the judgment creditor respectfully requests that the Court deny the judgment debtor's Motion to Vacate and enter an Order requiring that (1) the \$27,034.32 being held in trust at Thurmond Kirchner Timbes & Yelverton, P.A. be disbursed to Windswept to satisfy, in part, Windswept's valid judgment against the judgment debtor; and (2) the judgment debtor comply with all discovery ordered in the Court's October 28, 2013 Order of Reference so that Windswept can identify additional assets to pay all attorneys' fees and costs associated with this collection action in addition to the post-judgment interest owed by the judgment debtor.

PRATT-THOMAS WALKER, P.A.



Katie Fowler Monoc (S.C. Bar No. 78131)
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: (843) 727-2244
Fax (843) 727-2236
E-mail: kfm@p-tw.com
Attorney for Judgment Creditor

Charleston, South Carolina
May 6, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME)
Petitioner/ Judgment Credit br,)
)
vs)
)
ELAINE DEVLIN PEERY A/K/A)
ELAINE D PEERY,)
)
)
)
Respondent/Judgment Debtor)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO 09-CP-10-5799

**JUDGMENT CREDITOR'S REPLY TO
JUDGMENT DEBTOR'S SUBMISSION
IN SUPPORT OF ITS
MOTION TO VACATE**

FILED
JUN 17 PM 1:06
CLERK OF COURT

The Petitioner/Judgment Creditor hereby submits its reply to Respondent/Judgment Debtor's untimely submission¹ in support of its Motion to Vacate dated May 21, 2014

There is no merit to the Respondent/Judgment Debtor's arguments set forth in her May 21, 2014 correspondence to the Court, and the facts sworn to by the affiants are of no consequence to these Supplemental Proceedings. In her letter to the Court dated May 21, 2014, counsel for Ms Peery states. "It is our position that if the Court did not receive a proper affidavit of service on Ms Peery, then it did not have jurisdiction to hear the matter." Peery's position does not comport with the plain language of the South Carolina Rules of Civil Procedure. Rule 4 provides that "[v]oluntary appearance by defendant is equivalent to personal service . . ." S.C. R. Civ. P. 4. Peery's former attorney Vaughn on her behalf, and then Peery personally, appeared in this matter. "An appearance may be expressly made by formal written or oral declaration, or record

¹ Rule 6(d) of the South Carolina Rules of Civil Procedure stipulates that when a motion is to be supported by affidavit, the affidavit shall be served with the motion. Peery's affidavits were served on the Judgment Debtor's Counsel by hand delivery late on May 21, 2014, and Peery's motion to vacate was served on Judgment Debtor's Counsel by hand delivery moments before her hearing on supplemental proceedings on April 21, 2014

entry, or it may be implied from some act done with the intention of appearing and submitting to the court's jurisdiction " Stearns Bank Nat. Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 338, 644 S.E.2d 793, 796 (Ct. App. 2007) "No specific act constitutes an appearance, as 'a defendant may choose to come into court with trumpets, or quietly by the back door '" Id. Because of these actual appearances, no affidavit was required. Even so, as indicated in the affidavit of Lydia Davidson filed with the Court on March 29, 2012, Peery appeared by and through her counsel in the matter and even filed a cross-claim against Windswept. See Exhibit A attached hereto.

As to the claims set forth in Peery's May 16, 2014 affidavit that she did not receive notice of the merits hearing, Rule 5(b)(1) of the South Carolina Rules of Civil Procedure states

"...Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address. Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint."

In accordance with Rule 5(b)(1) of the South Carolina Rules of Civil Procedure, Respondent/Judgment Debtor was served with the Notice of Final Foreclosure Hearing scheduled on January 24, 2012 by Charles S. Gwynne, Jr., attorney for Bank of America, N.A., via United States Mail on December 1, 2011. See Exhibit B attached hereto. Service upon the Respondent/Judgment Debtor was made by mailing the Notice of Final Foreclosure Hearing to the address as shown in the records of the Charleston County Clerk of Court as follows: Elaine Devlin Peery, 3053 Pignatelli Crescent, Mount Pleasant, SC 29466-8057. See Exhibit C attached hereto. In

addition, the Respondent/Judgment Debtor was mailed notice of the hearing on receivership funds as demonstrated by Exhibit D

Communications with Barry Holden, attorney for the judgment debtor in another matter, were in addition to the notices and correspondence served upon the judgment debtor as stated in the Petitioner/Judgment Creditor's Memorandum in Opposition to Judgment Debtor's Untimely Motion to Vacate and Exhibits. Such communications with Holden were not intended to constitute service upon the Respondent/Judgment Debtor. Service was complete upon mailing of the hearing notice to Ms. Peery's home and last known address which was on file with the Court.

Finally, at the hearing on attorney Cantrell's motion to be relieved as counsel for the Respondent/Judgment Debtor on May 22, 2014, attorney Cantrell represented he moved for relief from a judgment or order per Rule 60(b)(4) in open court at the April 21, 2014 hearing on supplemental proceedings.² He stated that his oral motion was in addition to attorney Hancock's separate, written motion pursuant to Rule 60(b)(1), (2), and (3) on behalf of the Respondent/Judgment Debtor.

Rule 60(b)(4) contemplates judgments that should be set aside because they are void. "A void judgment is one that, from its inception, is a complete nullity and is without legal effect and must be distinguished from one which is merely "voidable." Generally, a judgment is void only if a court acts without jurisdiction." Thomas & Howard Co., Inc. v. T.W. Graham & Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). It is unclear as to Peery's basis for such motion. To the extent the "motion" made per Rule 60(b)(4) implies that the Court lacked jurisdiction over Ms. Peery, such implication is baseless.

² The judgment creditor disputes that such a motion is valid and supported by any ground. Without waiving this objection, the judgment creditor will respond.

As explained above and as evidenced by the record in this matter (particularly, the Petitioner/Judgment Creditors' opposition to the judgment debtor's motion to vacate along with its supporting affidavits), the Court had and has personal jurisdiction over Peery. Peery appeared personally in the underlying matter and by her attorneys in supplemental proceedings. With respect to the Court's subject matter jurisdiction, the Master-in-Equity possesses the power to hear and determine cases of foreclosure and supplemental proceedings. See Rule 53, S.C. R. Civ. P. (a foreclosure is proper before the master in equity); S.C. Code Ann. § 14-11-310 (setting forth the fees the master may collect in supplemental proceedings); Ag-Chem Equip. Co., Inc. v. Daggerhart, 281 S.C. 380, 383, 315 S.E.2d 379, 381 (Ct. App. 1984) ("Supplementary proceedings are equitable in nature.") Therefore, even if the Respondent/Judgment Debtor properly moved to vacate the underlying judgment or any other order pursuant to Rule 60(b)(4), which the Petitioner/Judgment Creditor contends she did not, her motion must be denied.

PRATT-THOMAS WALKER, P.A.



Katie Fowler Monoc (S.C. Bar No. 78131)
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: (843) 727-2244
Fax: (843) 727-2236
E-mail: kfm@p-tw.com
Attorney for Judgment Creditor

Charleston, South Carolina
June 17, 2014

Pro Vest, LLC - Tampa (Rome)

202 S. Rome Suite 150 Tampa, FL 33606



SA34190022

Affidavit of Service

DOCKET NUMBER: 09-CP-10-5799

FILE NUMBER: 011263-02244

COURT OF COMMON PLEAS FOR CHARLSTON COUNTY, SC

CASE STYLE:

PLAINTIFF

BANK OF AMERICA, N.A. et seq

vs.

DEFENDANT

ELAINE DEVLIN PEERY AKA/ ELAINE D. PEERY, et al

SERVICE OF PROCESS ON:

ELAINE DEVLIN PEERY AKA/ ELAINE D. PEERY

METHOD OF SERVICE:

A true and correct copy of the above-described papers were served on the below-named party in the following manner:

(a) (SUBSTITUTE) By leaving a copy at dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

PLACE OF SERVICE

W. Barnwell Vaughan, P.A.
182 Wappo Creek Drive, Suite 2-A
Charleston, SC 29412

Is the place of service the dwelling house or usual place of abode for the party being served? () Yes (x) No

DATE OF SERVICE

10/07/2009 TIME OF SERVICE 4:29 PM

TYPE OF DOCUMENTS:

(x) SUMMONS & COMPLAINT (x) LIS PENDENS
() OTHER

DESCRIPTION OF PARTY
RECEIVING DOCUMENTS:

The person receiving the documents is described as follows

Name W. BARNWELL VAUGHN; Relationship/Title ATTORNEY
Sex MALE; Race WHITE; Facial Hair NO;
Age (prox) 46-50; Height (prox) 5'7"; Weight (prox) 210

MARITAL STATUS

() Single () Married () Separated (x) Unknown

MILITARY STATUS:

PER MY INVESTIGATION, SAID PERSON
() WAS () WAS NOT ENGAGED IN THE U.S. MILITARY AT THE TIME OF SERVICE (x) UNKNOWN
MILITARY BRANCH, IF APPLICABLE:

IS THE SUBJECT PROPERTY A () YES (x) NO () MOBILE HOME VIN NOT VISIBLE
MOBILE HOME? VIN #:

COMMENTS:

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: CHRIS BALLARD

Signature of Process Server

Notary Public: Sworn and subscribed before me this

10 day of

OCT

in the year of

2009

Personally known to me or

identified by the following document:

Type:

Number/Reference:

[Signature]
Notary Public (Legal Signature)

Notary Public for SOUTH CAROLINA

Commission Expiration 3/20/2012

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Bank of America, N A)
Plaintiff,)
vs)
Elaine Devlin Peery a/k/a Elaine)
D. Peery; Kiawah Island Com)
Assoc., Inc and Windswept Villas)
III HPR, Inc.)
Defendants)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A NO 2009-CP-10-5799

**AFFIDAVIT OF MARYLIN SUMMERS
IN SUPPORT OF MOTION TO APPOINT
RECEIVER AND EXCLUDE FROM
COMMON AREAS**

FILED
2011 JUL 15 AM 11:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PERSONALLY APPEARED BEFORE ME Marilyn Summers who, being first
duly sworn, avers and states as follows

- 1 I have personal knowledge of the information herein and am competent to testify to the matters described herein
- 2 I am employed by Ravenel Associates, Inc as a regime and association manager For many years I have been the person with Ravenel with primary responsibility for the management Windswept Villas III Horizontal Property Regime, Inc ("Windswept III"), on Kiawah Island
3. I am familiar with Elaine Peery who owns Villa Number 5108 (5108 Sea Forest Drive) in Windswept III, Kiawah Island, South Carolina 29455
- 4 In accordance with the Master Deed and Bylaws of Windswept III, the board has duly imposed annual assessments for the insuring, operation, maintenance, and other essential uses of Windswept III

- 5 Peery has not paid the operating and insurance assessments since March 1, 2008, and she owes the Association \$44,169.80 for these unpaid assessments. The amount owed for 2009 consisted of \$1999.30 in late fees, \$8770.63 in regular assessments, \$4200.00 in insurance assessments, \$370.71 in legal fees and \$235.00 in lien fees. The amount owed for 2010 consisted of \$8,597.76 in regular assessments, \$2,327.80 in late fees and \$4,500.00 in insurance assessments. The amount owed for 2011 consists of \$7350.12 in regular assessments, \$1494.16 in late fees and \$4324.32 in insurance assessments.
6. The Master Deed and the By-Laws authorize the Association to appoint the manager as receiver for rents during the pendency of this action.
- 7 The Association has an apparent right to Villa Number 5108 (5108 Sea Forest Drive) Windswept Villas III, Kiawah Island, South Carolina 29455 under the Master Deed § 6.03.
- 8 Upon information and belief, as late as early 2011, Peery was renting her unit through a local rental agency that terminated its listing when it learned the unit was in foreclosure. None of the rental proceeds were paid by Peery to the Association towards the accrued unpaid annual assessments. Upon information and belief, these rental proceeds were secreted and disposed of by her.
- 9 The best rental seasons are the spring, summer, and fall. The units in Windswept III are desirable rentals and command a good rental rate. The building is the tallest condominium building on the island and is on the

front beach. The building underwent significant repairs and renovations three years ago and is in good condition

10 Rents and profits of Villa Number 5108 are in danger of being lost or materially injured or impaired. If a receiver is not appointed as provided in the Master Deed and Bylaws, the Association likely will never recover any amount on its unpaid assessments. The high rental season is fast passing.

11. There are only 44 units in Windswept III. Peery's failure to pay the two years of assessments coupled with the extended duration of this foreclosure is having a significant adverse effect on the financial condition of the Association. Additionally, in the past several months the Association has incurred the cost of additional expensive repairs, including replacing all the railings in the building, that has put even more strain on the Association's finances.

12 Because Peery is in default in the payment of her assessments, the By-Laws of Windswept III allow the exclusion of Peery from the common areas and recreational facilities of Windswept Villas III.

13 I request that the Court appoint Ravenel Associates as receiver with full authority to rent Peery's unit, collect such rents and apply them to the accumulated assessment debt, and pay any excess proceeds to Peery, and request further that the Court enjoin Peery from using the common elements and recreational facilities of Windswept III until such time as the accrued assessment debt is paid.

FURTHER AFFIANT SAYETH NAUGHT

Marilyn Summers
Marilyn Summers

SWORN to before me
this 14th day of July, 2011

S. Zuchowski
Notary Public for South Carolina
My Commission Expires Sept 11, 2017



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Bank of America, N.A.,)
Plaintiff,)
vs)
Elaine Devlin Peery a/k/a Elaine D Peery;)
Kiawah Island Community Association, Inc;)
Windswept Villas III Horizontal Property)
Regime, Inc.,)
Defendants.)

CASE NO.: 2009-CP-10-5799

AFFIDAVIT OF LYDIA P. DAVIDSON

FILED
2012 MAR 29 PM 2:17
JULIE ARMSTRONG
CLERK OF COURT

PERSONALLY appeared before me Lydia P. Davidson, who being first duly sworn deposes and states as follows:

1. That she is the attorney for the Defendant, Windswept Villas III Horizontal Property Regime, Inc (hereinafter "Windswept III"), in the above captioned action

2 That the Answer and Crossclaim of Windswept III were duly served upon Defendant Elaine Devlin Peery a/k/a Elaine D. Peery (hereinafter "Peery") and Peery appeared, by and through her attorney, and filed a Counterclaim against Windswept III in this matter

3. That attached is the account history of Windswept III, an accounting of the Court appointed Receiver, and a statement of attorney's fees and costs, which total \$27,034.02 said amount comprised of \$19,726 895 in unpaid assessments and late fees, \$2,616 42 in receivership expenses and \$4,690 71 in attorney's fees and costs, which is sought as sum certain damages in this matter


Lydia P. Davidson

Sworn to before me 27
day of March, 2012


Notary Public for South Carolina
My Commission Expires 5/23/13

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Bank of America, N A ,)
Plaintiff,)

vs.)

Elaine Devlin Peery a/k/a Elaine D. Peery,)
Kiawah Island Community Association, Inc ,)
Windswept Villas III Horizontal Property)
Regime, Inc ,)
Defendants.)

CASE NO : 2009-CP-10-5799

AFFIDAVIT OF
ATTORNEYS FEES AND COSTS

BY

2012 MAR 29 PM 2:17
JULIE J ARMSTRONG
CLERK OF COURT

FILED

PERSONALLY appeared before me, the undersigned Attorney for Defendant, Windswept Villas III Horizontal Property Regime, Inc (hereinafter "Windswept III"), who, after being duly sworn, deposes and states as follows:

1. I am an attorney for Windswept III in the above referenced matter.
2. This case is an action in Circuit Court in which Plaintiff is seeking to foreclose its Mortgage and Defendant Windswept III is seeking to collection of past due assessments on property located in Charleston County, South Carolina from Defendant Elaine Devlin Peery a/k/a Elaine D Peery (hereinafter "Peery").
3. That the Master Deed for Windswept III allows, in relevant part, for an award of attorney's fees and costs in this action
4. That Exhibit "A" to this Affidavit which is a listing of my firm's billing in this matter, as well as the costs incurred with all available invoices and raw billing, and reflects the attorney's fees actually incurred through the date of this Affidavit. These fees and costs total \$4,690.71 in connection with this action. Where applicable, the hourly rate charged was \$225 00 - \$300.00 per hour.
- 5 Under Dede v Strickland, 414 S.E.2d 1348, (S C 1992), the Supreme Court has set forth the factors to be considered in an award of attorney's fees in real property actions. These

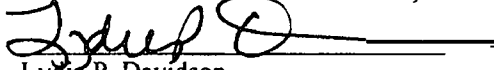
factors include the nature, extent and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fees charged in the locality for similar services, and the beneficial result obtained. These factors, as applied for this case, are as follows

- a. Nature, Extent and Difficulty of Legal Services Rendered. As stated earlier, this is an action to collect past due assessments on real property. This case involved issues of real property and condominium law. Accordingly, the factual and legal issues presented were somewhat complex and detailed in nature, the extent of the work performed was necessary to adequately prepare and try these matters, and the matters decided were of some legal and factual difficulty.
- b. Time and Labor Necessarily Devoted to the Case. As stated above, this case involved issues of both legal and factual natures. Numerous documents were drafted for this case by my firm. This is reflected through the facts stated earlier, as well as from the listing of services performed in Exhibit "A". Accordingly, the time and labor devoted to this case were necessary to properly prepare and try this case.
- c. Professional Standing of Counsel. I am a licensed member of the Board of the State of South Carolina, as well as the United States Court of Appeals for the Fourth Circuit, and United States District Court for the District of South Carolina. I completed law school approximately 30 years ago. For approximately the last 29 years, I have been employed with the firm of Krawcheck & Davidson, LLC in Charleston, South Carolina. I am a member of the Charleston County Bar Association, the American Bar Association, the Real Estate Section of the Charleston County Bar Association, and other professional organizations. Approximately, eighty (80%) percent of my practice involves various aspects of real property law, including representation of developers of Horizontal Property Regimes and Planned Unit Developments, defense of mechanic's liens, foreclosure cases, community association representation including lien and collection cases,

land title questions, and other land related issues I enjoy a position of respect with members of both the local and statewide real estate bar.

- d. Contingency of Compensation. Compensation in this case is based on the hourly rate of \$225.00 - \$300.00 per hour and a flat rate for documents drafted
 - e. Customary Fee Charged in the Locality of Similar services. I am aware from discussions with clients, other attorneys in the Charleston area, and from my general familiarity with the legal profession that the fees charged for services similar to those in this case are, in the Charleston area, from \$150.00 to \$300.00 per hour. As stated earlier, my hourly rate is within this range in this case Accordingly, this hourly rate is the fee customarily charged in this locality for similar services.
 - f. Beneficial Results Obtained This attorney obtained beneficial results for the Plaintiff in this case by securing an Order for awarding a judgment to the Plaintiff Accordingly, it is submitted that beneficial results were obtained by this firm on the client's behalf
6. After the consideration of the nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, I respectfully submit that an award of attorney's fees and costs to the full extent set forth in this Affidavit is appropriate; therefore, my client is entitled to recover **\$4,690.71** in attorney's fees and costs

KRAWCHECK & DAVIDSON, LLC

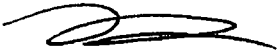


Lydia P Davidson

Attorney for Defendant Windswept III Horizontal
Property Regime, Inc

SWORN TO BEFORE ME THIS

27 day of March, 2012



Notary Public for South Carolina

My Commission Expires 5/23/13

KRAWCHECK & DAVIDSON, L.L.C.
ATTORNEYS AT LAW
9 STATE STREET
CHARLESTON, SOUTH CAROLINA 29401

LEONARD KRAWCHECK
LYDIA P. DAVIDSON
LYDIA P. BROOKS

(843) 577-2577
(843) 723-9951 (FAX)

Invoice submitted to

Windswept Villas III
c/o Ravenel Assoc - Chad Hammond
3690 Bohicket Road, Ste 1-A
Johns Island SC 29455

March 27, 2012

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
9/18/2009 Drafting, review and revision of Answer and Crossclaim regarding Peery (Villia 5108)		350 00
9/29/2009 Preparation of Lien against Peery (Unit 5108)		235 00
3/8/2011 Drafting letter to Barney Vaughn, Esq regarding rent, Email to Trenholm Walker, Esq	1 10 300 00/hr	330 00
7/14/2011 Review and revision of Motion for Receivership in Peery matter, Review of Rules of Civil Procedure and applicable statutes	1 75 300 00/hr	525 00
8/1/2011 Preparation for Motions Hearing on Receivership in Peery Matter, Attendance of hearing	3 60 300 00/hr	1,080 00
8/2/2011 Email correspondence to the Board of Directors, Drafting, review and revision of Proposed Order, review and response to emails regarding Receivership, Telephone conference with John Kinney and Marilyn Summers, Revision to Proposed Order	4 25 300 00/hr	1,275 00
10/6/2011 Telephone conference with Barry Holden, Esq regarding Peery and requests made by Ms Peery	0 20 300 00/hr	60 00
1/23/2012 Telephone conference with Barry Holden, Esq regarding Peery receivership and foreclosure, Telephone conference with Karen Martin	0 30 300 00/hr	90 00
Drafting, review and revision of Order of Judgment in Peery foreclosure		200 00
1/24/2012 Preparation for and attendance of Final Foreclosure hearing regarding Peery		300 00
3/27/2012 Attendance at Hearing before the Master in Equity regarding final receivership accounting in Peery matter		200 00

Please return a copy of this Invoice with your payment

	<u>Hours</u>	<u>Amount</u>
For professional services rendered	11.20	\$4,645.00
Additional Charges		
9/29/2009 Filing and Satisfaction of Lien against Peery (Unit 5108)		15 00
9/30/2009 Service of Process via Registered Mail Return Receipt Requested - Answer and Crossclaim in action against Peery (Unit 5108)		5 71
7/15/2011 Filing Fee - Motion for Receiver (Peery)		25 00
Total additional charges		\$45.71

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO : 09-CP-10-5799

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME
Petitioner/ Judgment Creditor,

vs.

ELAINE DEVLIN PEERY A/K/A
ELAINE D. PEERY,

Respondent/ Judgment Debtor.

AFFIDAVIT OF
LYDIA DAVIDSON, ESQUIRE

PERSONALLY APPEARED BEFORE ME Lydia Davidson, Esquire, who, being first
duly sworn, avers and states as follows:

1. I have personal knowledge of the information herein and am competent to testify to the matters described herein
2. I represented Windswept Villa III, HPR, Inc (hereinafter "Windswept") in the underlying, above-referenced matter. I am familiar with Elaine Peery who owned Villa Number 5108 (5108 Sea Forest Drive) in Windswept III, Kiawah Island, South Carolina 29455. I am also familiar with Ms. Peery's involvement in the underlying matter.
3. In my client's Answer and Cross-Claim filed with the Court on September 24, 2009, Windswept alleged that Ms. Peery was behind on her assessments and that Windswept was owed those assessments along with interest, service fees, and penalties from the date of the assessment first becoming due, along with attorneys' fees, the cost of collection, and any other and further charges and assessments as had accrued since September 15, 2009, all as authorized by the Master Deed.

- 4 On September 30, 2009, Windswept attempted service of its Cross-Claim on Ms Peery via certified mail return receipt requested and received no response.
5. On October 28, 2009, Windswept again attempted service on Ms Peery and, again, such papers were returned unclaimed
6. On November 25, 2009, Barnwell Vaughn, Esquire, filed an Answer and Counterclaim against Bank Of America and included a Cross-Claim as to Windswept. This communicated to me that Ms. Peery was in receipt of our Answer and Cross-Claim notwithstanding the fact that she had evaded service up until that time.
7. On November 30, 2009, my law firm Krawcheck & Davidson L.L.C. accepted service of Ms. Peery's Cross-Claim on behalf of our client, Windswept
8. On December 2, 2009, my office emailed Mr. Vaughn's office to let them know we received neither our registered mail nor the green card from our attempted service of Windswept's Cross-Claim on Ms. Peery
9. On December 3, 2009, Mr Vaughn was served with Windswept's Summons, Answer and Cross-Claim.
10. On December 11, 2009, Windswept filed a Reply to Ms. Peery's Cross-Claim as to it. In its prayer for relief, Windswept requested that the Court dismiss Ms. Peery's Cross-Claim and grant it judgment on the past-due assessment amount together with accrued interest, service fees, penalties, attorneys' fees, collection costs, and other relief deemed proper by the Court. The relief requested in its Reply to Ms. Peery's Cross-Claim was the same relief requested in its Cross-Claim as to Ms. Peery
- 11 Subsequently, various motions were filed including Mr Vaughn's motion to be relieved as counsel and Windswept's Motion to Appoint a Receiver

12 Windswept's Notice of Motion and Motion to Appoint a Receiver was served on Mr. Vaughn as attorney for Ms. Peery by mail on July 15, 2011. Paragraph 1 of that Motion stated: "The Association filed a Cross-Claim against Defendant Peery on September 23, 2009, to recover Peery's accrued unpaid assessments owed to the Association. In its Cross-Claim, the Association showed that it possesses the rights, powers, and duties set forth in the Master Deed of Windswept Villas III Horizontal Property Regime as recorded in the Charleston County RMC Office in Book A128, Page 186, as may have been amended from time to time ("Master Deed")."

13 On August 1, 2011, the hearing on Mr. Vaughn's motion to be relieved as counsel and Windswept's Motion to Appoint a Receiver took place before the Honorable Mikell R. Scarborough. Ms. Peery, as well as her husband, attended that hearing.

14. When the Court heard Mr. Vaughn's request to be relieved as counsel, I objected on behalf of my client because almost \$45,000 in back assessments were owed on the Peery unit, and my client was concerned that having a new attorney appointed would further delay the already protracted proceedings.

15 When the Court granted Mr. Vaughn's motion to be relieved as counsel, Ms. Peery requested that she be provided with all case filings. Judge Scarborough stipulated that Mr. Vaughn provide Ms. Peery with whatever was in the file and noted "[t]here were some motions, some answers, I think some Cross-Claims."

16. With respect to my client's motion to have a receiver appointed, it was acknowledged on the record that the purpose of that motion was to obtain rent proceeds from the property in order to pay Windswept and/or Bank of America. When the Court granted my client's motion to have a receiver appointed, Ms.

Peery seemed to understand the process and requested that she be allowed in to the unit to collect some personal belongings.

17. The Court granted Ms Peery 60 days to retain new counsel or else proceed pro se

18 A status conference took place on October 7, 2011

19 The foreclosure hearing scheduled for November 28, 2011 was cancelled.

20 The foreclosure hearing was again scheduled for January 24, 2012 Such hearing was noticed by Bank of America on December 1, 2011, and the bank's certificate of service reflects that Ms. Peery was notified of such hearing.

21. I spoke to Barry Holden, Ms Peery's attorney, on January 23, 2012 He knew about the hearing and so did Ms. Peery

22 Upon information and belief, Ms Peery requested a continuance of such hearing, and her request was denied as evidenced by a Form 4 Order issued by the Honorable Mikell R Scarborough on January 24, 2012

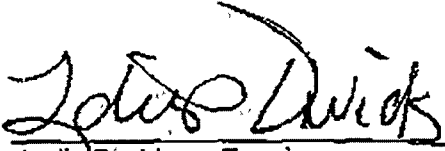
23. At the January 24, 2012 hearing, the Court held that the judgment on Windswept's claims would be entered upon a hearing on the receivership funds. That hearing was set for March 26, 2012 Charles Gwynne, attorney for Bank of America, changed the date to March 27, 2012, and sent notice of the same on March 14, 2012 According to his Certificate of Service, Ms. Peery was served with such notice by mail

24. At the March 27, 2012 hearing on Receivership Funds, the judgment amount owed to Windswept was determined and an Order of Judgment was issued.

25. Following entry of the Court's Orders, I received Notice of Entry of Judgment from the Clerk's office communicating that the Order Discharging Receiver, _____
● Order of Judgment, and Order for Final Distribution of Funds was mailed first

class on April 3, 2012 to all counsel of record and all parties entitled to receive notice, which would have included Ms. Peery.

FURTHER AFFIANT SAYETH NAUGHT


Lydia Davidson, Esquire

SWORN to before me
this 5 day of May, 2014.

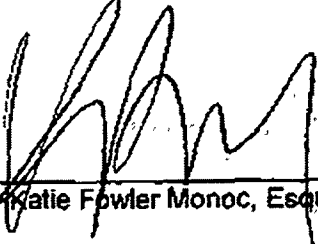

Notary Public for South Carolina
My Commission Expires: 5/16/19

Respondent/ Judgment Debtor

**AFFIDAVIT OF
KATIE FOWLER MONOC, ESQUIRE**

6. Once the matter was referred and a hearing date was obtained, my office attempted twelve times via a process server to personally serve Ms. Peery at 3053 Pignatelli Crescent, Mount Pleasant, SC, 29464 with notice of the hearing.
7. 3053 Pignatelli Crescent, Mount Pleasant, SC, 29464 is the address on file with the Court and the last known address for Ms. Peery.
8. In addition, we sent notice of the hearing via certified mail return receipt requested, restricted delivery to that address and received no response.
9. Ms. Peery's current counsel, John Cantrell, Esquire, contacted me by email on December 31, 2013 to let me know he was "recently retained to represent Elaine D. Peery" in the "Windswept Villas v. Elaine Peery supplemental proceedings." In that email, Mr. Cantrell conveyed awareness of the January 13, 2014 hearing set before Judge Scarborough. Mr. Cantrell further stated awareness of the January 6, 2014 discovery deadline set forth in the Court's Order of Reference dated October 28, 2013. His email to me states, "It is my understanding based on recently reading the supplemental proceedings order in this case that there is an order for my client to appear before the Master on January 13, 2014, and to produce documents to you on January 6, 2014." I interpreted this communication and other communications by telephone to mean that Ms. Peery was aware of the supplemental proceedings that had been instituted by the judgment creditor Windswept to collect on the judgment issued against her on March 29, 2012.
10. On January 13, 2014, John Cantrell, Esquire, appeared at the hearing on Supplemental Proceedings and filed his notice of appearance on that day. Mr. Cantrell also formally accepted service of the Order of Reference and Notice of Supplemental Proceedings on January 13, 2014 as evidenced by his January 24, 2014 filing with the Court.

FURTHER AFFIANT SAYETH NAUGHT


Katie Fowler Monoc, Esquire

SWORN to before me
this 6 day of May, 2014.


Notary Public for South Carolina
My Commission Expires Aug. 21, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME,)
)
PETITIONER/JUDGMENT CREDITOR,)
)
vs.)
)
ELAINE DEVLIN PEERY a/k/a)
ELAINE D PEERY,)
)
RESPONDENT/JUDGMENT DEBTOR)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO . 2009-CP-10-5799

AFFIDAVIT OF ATTORNEY'S FEES

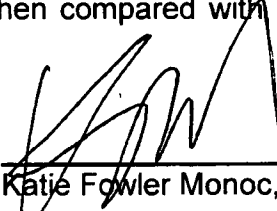
FILED
2014 MAY -6 PM 4:08
JULIE J. ABBOTT
CLERK OF COURT
BY: 

PERSONALLY APPEARED BEFORE ME, the undersigned, who, upon being
duly sworn, deposes and says:

1. I am an attorney with the firm of Pratt-Thomas Walker, P.A. located in Charleston, South Carolina.
2. Our firm has represented Plaintiff Windswept Villas III Horizontal Property Regime ("Windswept") since approximately October 2013 in pursuit of the funds owed to it by Defendant.
3. Windswept obtained a judgment on March 29, 2012, which was not paid, and was forced to pursue supplemental proceedings against the judgment debtor.
4. To date, Windswept has incurred attorneys' fees in the amount of \$14,642.50 since October 2013 in supplemental proceedings
5. To date, Windswept has incurred costs in the amount of \$553.12 since October 2013 for filing fees, service of process fees and other express services arising out of these supplemental proceedings
6. My hourly rate for this matter is \$200.00 per hour.
7. G. Trenholm Walker's rate for this matter is \$325.00 per hour
8. Our paralegal's rate for this matter is \$90.00 per hour
9. We have logged approximately 92.8 hours in this matter since initiating supplemental proceedings, attempting to locate the judgment debtor, preparing

for hearings, etc. Excluded from this figure are the fees relating to the judgment debtor's unrelated, frivolous contentions relating to a supposed "lockout."

- 10 I believe that our hourly fees and our paralegal's hourly fee are fair and reasonable in light of the nature, extent, and difficulty of the case.
- 11 The time devoted to this matter in preparation, filing, research, and appearances is reasonable under the circumstances.
12. Our hourly fee and our paralegal's hourly fee, along with the amount of time logged in this matter are reasonable when compared with the customary legal fees for similar litigation services.


Katie Fowler Monoc, Esquire

Sworn to before me
this 6 day of May, 2014


Notary Public for South Carolina
My Commission Expires: Aug. 21, 2016

PRATT-THOMAS WALKER, P.A

Invoices for *in camera* Review

1.	Invoices: October 18, 2013 through March 27, 2014	\$ 8,762.50
2.	Invoice April 1, 2014 through May 5, 2014	\$ 5,880.00
3.	Costs through May 2, 2014	<u>\$ 553.12</u>
	Total	\$15,195.62

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-5799

WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME,)

PETITIONER/JUDGMENT CREDITOR,)

-VS-)

ELAINE DEVLIN PEERY a/k/a)
ELAINE D. PEERY,)

RESPONDENT/JUDGMENT DEBTOR.)

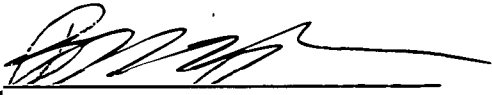
AFFIDAVIT OF
BARRY HOLDEN

FILED
2014 MAY 29 AM 9:03
CLERK OF COURT
JULIE A. RYAN

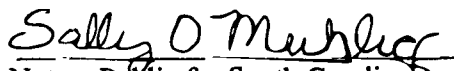
PERSONALLY appeared before me, BARRY HOLDEN, who, being first duly
sworn, deposes and says:

1. I, Barry C. Holden hereby being under oath do state and represent the following:
2. That I am an attorney licensed in the State of South Carolina and in good
standing.
3. That I am acquainted with Elaine Perry having represented business interests of
her and her deceased husband, being primarily tax issues related thereto.
4. That I did not represent her in a matter concerning foreclosure of property known
generally as a unit at Windswept Villas in Kiawah.
5. That I never made appearance in the above matter on Ms. Perry's behalf.
6. That at no time did Elaine Peery have proper notice of any of these proceedings
by or through me.
7. That I did not accept service of process on Elaine Peery' behalf on any pending
matters currently before the Master in Equity.

The Deponent sayeth not more.


Barry C. Norden, Esquire

SWORN to before me this
21st day of May, 2014.


Notary Public for South Carolina
My Commission Expires: Sept 10, 2023



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-5799

WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME,)

PETITIONER/JUDGMENT CREDITOR,)

-VS-

AFFIDAVIT OF RESPONDENT
ELAINE D. PEERY

ELAINE DEVLIN PEERY a/k/a)
ELAINE D. PEERY,)

RESPONDENT/JUDGMENT DEBTOR)

FILED
2014 MAY 29 AM 9:05
JULIE H. HONG
CLERK OF COURT
BY 2

PERSONALLY appeared before me, ELAINE D PEERY, who, being first duly sworn, deposes and says:

1. That I am the Respondent in the above entitled action.

2. That on or about January 23, 2012, I received a phone call from Barry Holden asking me if I knew a hearing was scheduled with Bank of America for the next day. I replied I did not know what he was talking about. He explained to me that he had just received a phone call from Mr. Gwynne the attorney for Bank of America, and that he was moving for a motion to foreclose on 5108 Windswept, Kiawah, SC. Barry explained to me that he told Mr. Gwynne that he did not represent me in this case, that he was only trying to get the bank to not put a deficiency judgment against me.

3. That I explained to Barry Holden that I knew nothing about any hearing from the court on that day or any future time. I also explained that there was no way I would be able to attend due to my husband's failing health and that I was also taking care of my disabled father as well. I also explained that I had no one to help watch my husband or my father and would be unable to attend any hearing.

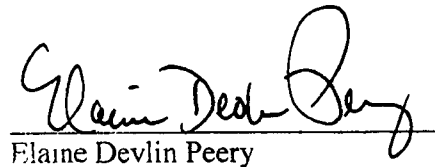
4. That Barry Holden told me I should write on piece of paper asking the Judge for a continuance for this hearing, and he provided me with a fax number for the Master in Equity. He also provided me with a fax number for Mr Gwynne's law firm in Columbia, SC. He then suggested I also fax the continuance request to Ravenell and Assoc. as well.

5. That I hand wrote a letter asking the court for a continuance and explaining my difficulties with my husband and father and that I was unable to attend the hearing the next day. I also faxed this letter to Mr. Gwynne's office and Ravenell & Assoc.

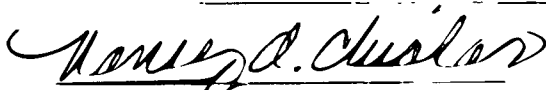
6 The next morning, I phoned Mr. Gwynne's office to make sure he had received my fax asking for a continuance, but there was no answer, so I left a message including my phone number, but never heard from him or the court.

7. That the Petitioner nor anyone else has ever notified me of a foreclosure hearing or notice of entry of judgment that would give me the ability to contest the foreclosure on the entry of judgment. That I certainly was never made aware that Windswept Villas Homeowners Association and Lydia Davidson would be making appearances for the scheduled hearing of January 24, 2012 Upon information and belief I was never notified but I believe my former attorney was receiving these notices

The Deponent sayeth not more


Elaine Devlin Peery

SWORN to before me this
16th day of May, 2014


Notary Public for South Carolina
My Commission Expires: 11/8/20

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO : 09-CP-10-5799

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME

Petitioner/ Judgment Creditor,

vs.

ELAINE DEVLIN PEERY A/K/A
ELAINE D. PEERY,

Respondent/ Judgment Debtor.

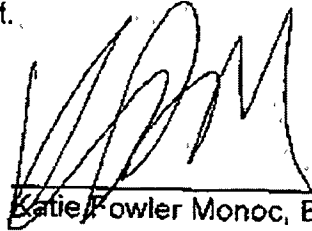
AFFIDAVIT IN SUPPORT OF
PETITIONER'S MOTION FOR RULE
TO SHOW CAUSE

I, Katie Fowler Monoc having been duly sworn, depose and say that:

1. I am over the age of 18 and make this affidavit on personal knowledge and information.
2. I am counsel for the Petitioner/Judgment Creditor Windswept Villas III Horizontal Property Regime ("Windswept") in the above-matter
3. I emailed John Cantrell, counsel for the Respondent/Judgment Debtor, on February 14, 2014 to communicate the need to proceed with discovery to determine whether Elaine Peery has assets to pay my client's legal fees, interest on the judgment, and costs owed by the Respondent Judgment Debtor. I asked that Cantrell provide me with dates he and his client would be available for her deposition and reminded him I needed the materials outlined in the Court's October 31, 2013 Order to prepare for that deposition.
4. I emailed John Cantrell again on March 3, 2014 to remind him to speak with his client about her availability for a deposition over the next three weeks and the discovery owed pursuant to the Order of Reference.
5. Having not received deposition dates or discovery, I emailed Jeff McDaniel, copying John Cantrell, on March 14, 2014 to set the continued hearing on Supplemental Proceedings and to request that the Court order the debtor's timely cooperation with discovery for the identification of assets which may be used to satisfy (in full) the amounts owed per the underlying judgment.
6. As of today, I still have not received any documents owed by the Elaine Peery in accordance with the Court's October 31, 2013 Order. Nor has Counsel for the Judgment Debtor provided me with Elaine Peery's availability for a deposition.

Nor has Elaine Peery personally appeared at any of the noticed hearings on these Supplemental Proceedings.

Further Affiant sayeth naught.



Katie Fowler Monoc, Esquire

SWORN to and subscribed before me this

10 day of June, 2014

[Signature] (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: Aug. 21, 2016

AFFIDAVIT OF SERVICE

09-5799

State of South Carolina

County of Charleston

Common Pleas Court

Case Number ²⁰⁰⁹~~2010~~-CP-10-5799 Court Date 8/29/2014 10 00 am

Plaintiff

Windswept Villas III Horizontal Property Regime

vs

Defendant

Elaine Devlin Peery a/k/a Elaine D. Peery

For

Katie Fowler Monoc

Pratt-Thomas Walker Professional Association

P O Drawer 22247

Charleston, SC 29413

FILED
2014 JUL 18 PM 4:41
JULIE J. ARMSTRONG
CLERK OF COURT

Received by PROCESS SERVICE, INC to be served on **Elaine D. Peery, 3053 Pignatelli Crescent, Mount Pleasant, SC 29466**

I, John Gordon, being duly sworn, depose and say that on the **9th day of July, 2014** at 11 25 am, I

PERSONALLY served by delivering a true copy of the **LETTER, MOTION AND ORDER INFORMATION FORM AND COVERSHEET, NOTICE OF MOTION AND MOTION FOR RULE TO SHOW CAUSE AND FOR AN ORDER OF CONTEMPT, EXHIBITS A-B, ORDER ON JUDGMENT CREDITOR'S MOTION FOR A RULE TO SHOW CAUSE AND ORDER OF CONTEMPT and NOTICE OF HEARING** with the date and hour of service endorsed thereon by me, to **Elaine D. Peery** at the address of **3053 Pignatelli Crescent, Mount Pleasant, SC 29466**, and informed said person of the contents therein

I am over eighteen and have no interest in the above action

Subscribed and Sworn to before me on the 9th day of July, 2014 by the affiant who is personally known to me

Rebecca Sparks

NOTARY PUBLIC

Commission Expires 02/20/23

John Gordon

John Gordon
Process Server

PROCESS SERVICE, INC.
P.O. Box 20097
Charleston, SC 29413
(843) 577-2355

Our Job Serial Number LEX-2014001649

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO : 2009-CP-10-5799

WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME.)

PETITIONER/JUDGMENT CREDITOR)

vs.)

ELAINE DEVLIN PEERY a/k/a)
ELAINE D. PEERY,)

RESPONDENT/JUDGMENT DEBTOR.)
_____)

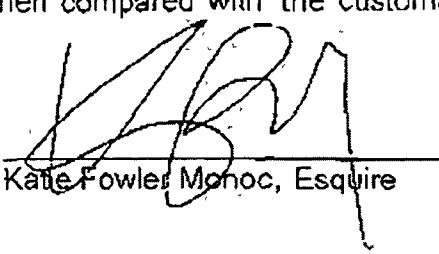
**AMENDED
AFFIDAVIT OF ATTORNEY'S FEES**

PERSONALLY APPEARED BEFORE ME, the undersigned, who, upon being
duly sworn, deposes and says.

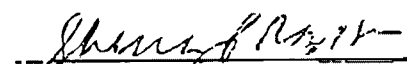
1. I am an attorney with the firm of Pratt-Thomas Walker P.A. located in Charleston, South Carolina
2. Our firm has represented Plaintiff Windswept Villas III Horizontal Property Regime ("Windswept") since approximately October 2013 in pursuit of the funds owed to it by Defendant
3. Windswept obtained a judgment on March 29, 2012, which was not paid, and was forced to pursue supplemental proceedings against the judgment debtor.
4. To date, Windswept has incurred attorneys' fees in the amount of \$27,662.00 since October 2013 in supplemental proceedings
5. To date, Windswept has incurred costs in the amount of \$726.39 since October 2013 for filing fees, service of process fees and other express services arising out of these supplemental proceedings
6. My hourly rate for this matter is \$200.00 per hour
7. G. Trenholm Walker's rate for this matter is \$325.00 per hour.
8. Our paralegal's rate for this matter is \$90.00 per hour.
9. We have logged approximately 170 hours in this matter since initiating supplemental proceedings, attempting to locate the judgment debtor, preparing

for hearings, etc. Excluded from this figure are the fees relating to the judgment debtor's unrelated, frivolous contentions relating to a supposed "lockout." We anticipate that appearance at the hearing on August 29, 2014 will be three hours for my time for a total of 173 hours.

10. Lydia Davidson of Krawcheck & Davidson, L.L.C. previously represented Windswept and has incurred attorneys' fees in the amount of \$480.00 for her assistance in providing documentation for the supplemental proceedings. This amount has been included in our attorneys' fees amount set forth above.
11. I believe that our hourly fees and our paralegal's hourly fee are fair and reasonable in light of the nature, extent, and difficulty of the case.
12. The time devoted to this matter in preparation, filing, research, and appearances is reasonable under the circumstances.
13. Our hourly fee and our paralegal's hourly fee, along with the amount of time logged in this matter are reasonable when compared with the customary legal fees for similar litigation services.


Katie Fowler Monoc, Esquire

Sworn to before me
this 29 day of August, 2014


Notary Public for South Carolina

My Commission Expires. Aug. 21, 2016

RECEIVED

APR 24 2015

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material with the exception of the Transcript dated January 13, 2014, which was included in Respondent's Designation of Matters, but for which no citation or transcript were provided.

Date: April 23, 2015



Vernee C. Hancock
SC Bar No.: 15174
Post Office Box 2276
Summerville SC 29484-2276
(843) 851-1476
(843) 851-0183
ATTORNEY FOR APPELLANT

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2010-CP-10-5799

Windswept Villas III
Horizontal Property Regime,

Respondent,

v.

Elaine Devlin Peery a/k/a,
Elaine D. Peery,

Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Katie Fowler Monoc by depositing a copy of it in the United States Mail, postage prepaid, on April 23, 2015, addressed to their attorney of record, Katie Monoc, PO Drawer 22247, Charleston, South Carolina 29413-2247

April 23, 2015.



Vernee C. Hancock, Esquire
SC Bar No.: 15174
Post Office Box 2276
Summerville, South Carolina 29484
(843) 851-1476
Attorney for Appellant

RECEIVED
APR 24 2015
SC Court of Appeals



Vernee C. Hancock

Attorney at Law

RECEIVED

APR 24 2015

SC Court of Appeals

Post Office Box 2276
Summerville, South Carolina 29484

Telephone: (843) 851-1476
Fax: (834) 851-0183
E-Mail: HVERNEF@aol.com

April 23, 2015

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post office Box 11629
Columbia SC 29211

Re: **Windswept Villas III Horizontal Property Regime v. Elaine Devlin Peery**
Case No.: 2014-00224

Dear Ms. Kitchings:

Please find attached the original and fifteen copies of the Record on Appeal and the original Proof of Service and Certificate of Counsel in the above matter.

Very truly yours,

Vernee C. Hancock

VCH/nac
Enclosures – as stated.

cc: Katie F. Monoc, Esq.



Vernee C. Hancock
Attorney at Law

RECEIVED

APR 24 2015

SC Court of Appeals

Post Office Box 2276
Summerville, South Carolina 29484

Telephone: (843) 851-1476
Fax: (834) 851-0183
E-Mail: HVERNEE@aol.com

April 23, 2015

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post office Box 11629
Columbia SC 29211

Re: **Windswept Villas III Horizontal Property Regime v. Elaine Devlin Peery**
Case No.: 2014-00224

Dear Ms. Kitchings:

Please find attached the original and fifteen copies of the Record on Appeal and the original Proof of Service and Certificate of Counsel in the above matter.

Very truly yours,

Vernee C. Hancock

VCH/nac
Enclosures – as stated.

cc: Katie F. Monoc, Esq.

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2010-CP-10-5799

Windswept Villas III
Horizontal Property Regime,

Respondent,

v.

Elaine Devlin Peery a/k/a,
Elaine D. Peery,

Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Katie Fowler Monoc by depositing a copy of it in the United States Mail, postage prepaid, on April 23, 2015, addressed to their attorney of record, Katie Monoc, PO Drawer 22247, Charleston, South Carolina 29413-2247

April 23, 2015.



Vernee C. Hancock, Esquire
SC Bar No.: 15174
Post Office Box 2276
Summerville, South Carolina 29484
(843) 851-1476
Attorney for Appellant

RECEIVED
APR 24 2015
SC Court of Appeals