

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. Supreme Court

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2009-CP-07-6054
Appellate Case No. 2015-001312

Cynthia Griffis,

Plaintiff,

v.

Cherry Hill Estates, LLC, Eugene
O'Neil and Ronald Faulkner,

Defendants,

Cherry Hill Estates, LLC and
Ronald Faulkner,

Third Party Plaintiffs, Petitioners,

v.

Anthony E. Griffis,

Third Party Defendant, Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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Aiken, SC 29801

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2009-CP-07-6054
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Cynthia Griffis,

Plaintiff,

v.

Cherry Hill Estates, LLC, Eugene
O'Neil and Ronald Faulkner,

Defendants,

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

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

Cynthia Griffis, Plaintiff,

v.

Cherry Hill Estates, LLC, Eugene O'Neil and Ronald
Faulkner, Defendants,

Cherry Hill Estates, LLC and Ronald Faulkner, Third
Party Plaintiffs, Appellants,

v.

Anthony E. Griffis, Third Party Defendant, Respondent.

Appellate Case No. 2013-001407

Appeal From Beaufort County
Marvin H. Dukes, III, Master-in-Equity

Unpublished Opinion No. 2015-UP-167
Heard January 13, 2015 – Filed April 1, 2015

AFFIRMED

Michael W. Mogil, of Michael W. Mogil, P.A., of Hilton
Head Island, for Appellants.

Anthony E. Griffis, of Aiken, Pro Se.

PER CURIAM: Cherry Hill Estates, LLC and Ronald Faulkner (collectively Appellants) appeal the trial court's order granting summary judgment to Anthony E. Griffis on Appellants' causes of action for breach of fiduciary duty and professional negligence, in which the court held the causes of action were barred by the statute of limitations because Appellants failed to timely file an expert affidavit as required by section 15-36-100(B) of the South Carolina Code (Supp. 2014).

1. We find unpreserved Appellants' argument an expert affidavit was not required because the allegations of negligence involved subject matter that was "within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant" pursuant to subsection 15-36-100(C)(2) (Supp. 2014). The trial court did not expressly rule on this argument and Appellants failed to raise the issue in their motion to alter or amend. *See Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (holding appellate court cannot address an issue the circuit court did not explicitly rule on when the appellant did not raise the issue in a motion to alter or amend).
2. We find no error in the trial court's ruling the statute of limitations began to run as of the date of the closing. *See Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 575-76, 593 S.E.2d 624, 627 (Ct. App. 2004) (stating under the discovery rule, "the three-year clock starts ticking on the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct" (internal quotation marks omitted)); *Epstein v. Brown*, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005) (explaining reasonable diligence means "simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist"). It is undisputed Faulkner executed a power of attorney authorizing the closing attorney to act on his behalf concerning the sale, including authorizing him to execute any guaranties. *See Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 497 (1979). ("It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority."). Even if the closing attorney did not have knowledge of the Agreement Regarding Cherry Hill Estates, LLC (Agreement), imputed notice is not necessary as Faulkner had direct knowledge of the

Agreement as he signed it himself. *See Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) ("A person signing a document is responsible for reading the document and making sure of its contents. Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it.").

3. We find no merit to Appellants' argument the relation-back doctrine of Rule 15(c), SCRCP, applies to bring the filing of the expert affidavit within the limitations period. *See* S.C. Code Ann. § 15-36-100(F) (Supp. 2014) ("If a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section and the failure to file the affidavit is the result of a mistake."); S.C. Const. art. V, § 4 ("Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts." (emphasis added)); *Marichris, LLC v. Derrick*, 384 S.C. 345, 353, 682 S.E.2d 301, 305 (Ct. App. 2009) ("A rule of civil procedure may not limit the provisions of a statute."); *see, e.g., Hendricks v. State*, 387 S.C. 221, 223, 692 S.E.2d 892, 893 (2010) ("Where, as here, the General Assembly has provided a specific procedure to be followed in PCR cases, and that method is inconsistent with the more general procedure of the SCRCP, the statutory procedure must be followed.").

4. We find no merit to Appellants' argument Griffis's failure to appeal the trial court's order of October 26, 2010, granting Appellants an extension to re-file the complaint renders the order the "law of the case." As this order was not immediately appealable, it could not establish the law of the case. *See Pruitt v. Bowers*, 330 S.C. 483, 488, 499 S.E.2d 250, 253 (Ct. App. 1998) (stating an appeal of an order granting a motion to amend a complaint is interlocutory and generally not appealable); *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994) ("Like the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue can be raised again at a later stage of the proceedings.").

5. We find unpreserved Appellants' argument that section 15-36-100(C)(1) of the South Carolina Code (Supp. 2014) grants the trial court discretion to permit a plaintiff to amend a pleading to include the expert affidavit if "justice requires" as this argument was not ruled on by the trial court and was not raised in the motion to alter or amend. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal,

but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *Doe v. Roe*, 369 S.C. 351, 376, 631 S.E.2d 317, 330 (Ct. App. 2006) ("An issue is not preserved where the trial court does not explicitly rule on an argument and the appellant does not make a Rule 59(e) motion to alter or amend the judgment.").

6. We disagree with Appellants' assertion the doctrine of equitable tolling precludes application of the limitations period to bar their claims. See *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 116-17, 687 S.E.2d 29, 33 (2009) ("The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong *at the hands of the other.*" (emphasis added)); *id.* at 117, 687 S.E.2d at 33 (cautioning equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use).

7. We find unpreserved Appellants' argument the trial court erred in granting summary judgment on their claims for breach of fiduciary duty because a fiduciary duty apart from the attorney-client relationship may have arisen from Griffis's role as the seller. This argument was not ruled on by the trial court and was not raised in Appellant's motion to alter or amend, in which Appellants only asked permission to re-plead the cause of action. See *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (stating a party must file a motion to alter or amend when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review).

AFFIRMED.

HUFF, SHORT, and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2009-CP-07-6054
Appellate Case No. 2013-001407

Cynthia Griffis,

Plaintiff,

v.

Cherry Hill Estates, LLC, Eugene
O'Neil and and Ronald Faulkner,

Defendants,

Of whom Cherry Hill Estates, LLC
and Ronald Faulkner are

Appellants.

Cherry Hill Estates, LLC and
Ronald Faulkner,

Third Party Plaintiffs,

v.

Anthony E. Griffis,

Respondent.

PETITION FOR REHEARING

Michael W. Mogil (SC Bar #11933)
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Attorney for Appellants

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Agreement and did not provide that document to the lender. These facts, which Faulkner learned of two years later and which Qualey did not know of until his deposition almost four years later, are the basis of the Appellants' claim for professional negligence. Faulkner testified that he learned of these events after receiving demand for payment, and then a lawsuit, from Cynthia Griffiths in 2009 and retaining counsel for that purpose [R. at p. 177 et seq.]. Qualey testified that he was not aware of the use or refunding of Seller proceeds at or after closing, or of the lender's knowledge of these events [R. at p. 168 et seq.]. Faulkner did not know, and could not have known, that his rights had been violated or that he had been damaged on the date he gave Qualey power of attorney, or on the date that Qualey executed the closing and loan package. *See Kimmer v. Wright*, 396 S.C. 53, 719 S.E.2d 265 (SC Ct. App 2011) and the dissenting opinion of Judge Few within. For these reasons, Appellants request that the Court reconsider and rehear its finding that the statute of limitations began to run when Qualey executed the loan documents with power of attorney, and instruct the trial court to employ the discovery rule to determine when the statute of limitations actually commenced to run, and for further findings of fact after that matter is resolved at trial.

In its Finding enumerated as number 5, the Court finds that Appellants argument that Section 15-36-100 (C) grants the trial judge discretion to grant leave to amend a pleading to include the expert affidavit if "justice requires" was not preserved. Appellants respectfully argue that this issue was raised and ruled upon by the trial Court in both its its Order Granting Motion to Dismiss entered October 27, 2010 [R. at p. 10] and also in Appellants Memorandum in Opposition to Motion for Summary Judgment filed March 28, 2011 [R. at p. 45], which resulted initially in the Court entering its Order Denying Summary Judgment as

entered on August 6, 2012 [R. at p. 8].

In its Finding enumerated as number 6, the Court disagrees with Appellants view that equitable tolling precludes application of the statute of limitations bar to their claims. The doctrine of equitable tolling should not only focus on the conduct of the opposing party which was relied on caused the limitations period to lapse. "In our view, the situations described above do not constitute an exclusive list of circumstances that justify the application of equitable tolling." The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." *[citation omitted]*. Equitable tolling may be applied where it is justified under all the circumstances. We agree, however, that equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use". Hooper v. Ebenezer Services and Rehabilitation Center, 386 S.C. 108, , 687 S.E.2d 29, (SC 2009).

In the case sub judice, the interests of justice compel application of equitable tolling. Appellants -aver that they in fact granted the Appellee an extension of time to respond to their Third Party Complaint immediately prior to the expiration of the three year statute of limitations asserted by Appellee, and then further relied on the Order from the trial court which granted Appellants until November 14, 2010 to provide the statutory affidavit. Even the trial court found that there was no real harm to the parties in applying the doctrine of equitable tolling. See Order Denying Summary Judgment entered August 3, 2012, [R. at p. 8]. The procedural history of this case, where Appellants argue that the resulting loan which

should not have been made, resulting in a loss suffered by the Appellants, and a loss potentially suffered by the lender as well, all as stated in the Motion to Reconsider/Amend, compel a result which remands Appellants' negligence claim to the trial court for adjudication on the merits.

In its Finding enumerated as number 7, the Court finds that the Appellants did not preserve their argument that summary judgment on their breach of fiduciary duty claim should be overturned. Appellants respectfully submit that their Motion to Reconsider brought under Rule 59, wherein they requested the trial court for leave to re-plead their claim for breach of fiduciary duty against Appellee as the seller and for public policy reasons, is akin to requesting that denial of summary judgment be reconsidered, and that this issue was properly preserved for appeal.

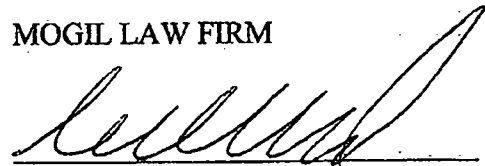
CONCLUSION

WHEREFORE, for the reasons set forth herein, the Appellant, Thaddeus F. Segars, seeks an Order granting rehearing.

Dated: April 15, 2015

Respectfully Submitted,

MOGIL LAW FIRM



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The South Carolina Court of Appeals

Cynthia Griffis, Plaintiff,

v.

Cherry Hill Estates, LLC, Eugene O'Neil and Ronald
Faulkner, Defendants,

Cherry Hill Estates, LLC and Ronald Faulkner, Third
Party Plaintiffs, Appellants,

v.

Anthony E. Griffis, Third Party Defendant, Respondent.

Appellate Case No. 2013-001407

ORDER

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

FILED

May 22, 2015

Thomas C. Huff J.
Paul E. Elbert, Jr. J.
Chloe J.

Columbia, South Carolina

cc:

Michael W. Mogil, Esquire

Anthony E. Griffis

The Honorable Marvin H. Dukes, III

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2009-CP-07-6054
Appellate Case No. 2013-001407

Cynthia Griffis,		Plaintiff,
	v.	
Cherry Hill Estates, LLC, Eugene O'Neil and and Ronald Faulkner,		Defendants,
Of whom Cherry Hill Estates, LLC and Ronald Faulkner are		Appellants.
Cherry Hill Estates, LLC and Ronald Faulkner,		Third Party Plaintiffs,
	v.	
Anthony E. Griffis,		Respondent.

RECORD ON APPEAL

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Case No. 2009-CP-07-6054
Appellate Case No. 2013-001407

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-07 06051

CYNTHIS GRIFFITH

CHERRY HILL ESTATES, LLC, ET AL.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY 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 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:

THIS CASE BEFORE ME ON DEFENDANT'S MOTION FOR RECONSIDERATION,
FILED 3/18/2012. I HEREBY DENY THE MOTION.

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)
		\$
		\$
		\$

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.

3069

0003

Circuit Court Judge

Judge Code

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:

REBECCA H. HALE

MICHAEL W. MOGIL

ANTHONY E. GRIFFIS (PRO-SE)

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

0004

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Cynthia Griffis

Plaintiff

v.

Cherry Hill Estates, LLC, Eugene O'Neil
and Ronald Faulkner

Defendant(s)

Cherry Hill Estates, LLC and Ronald
Faulkner.

Third Party Plaintiffs

v.

Anthony E. Griffis

Third Party Defendant

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT

) CIVIL ACTION NO.: 2009-CP-07-06054

) ORDER ON MOTION
) FOR RECONSIDERATION
) AND ORDER GRANTING
) THIRD PARTY DEFENDANT'S
) SUMMARY JUDGMENT MOTION

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This matter came before the Court on August 14, 2012 upon Motion for Reconsideration by Third Party Defendant ("Mr. Griffis") of this Court's Order rendered on August 3, 2012 in which the Court applied "equitable tolling" to allow Third Party Plaintiffs additional time, outside the applicable statute of limitations, to obtain the expert affidavit required by S.C. Code Section 15-36-100(F) in support of its legal malpractice claims. Upon reconsideration, this Court finds that "equitable tolling" should not be applied to this case, and therefore grants Third Party Defendant's Motion for Summary Judgment as to the Third Party Plaintiffs' First, Second and Third Causes of Action.

Mr. Griffis seeks summary judgment on the Third Party Plaintiffs First, Second and Third Causes of Action which assert claims for breach of fiduciary duty and professional negligence.

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all arising out of a duty created by the attorney-client relationship. Mr. Griffis invokes South Carolina Code of Laws Section 15-30-100 which requires that an affidavit from an expert be filed with a Complaint asserting such causes of action, and that the within causes of action are barred by the applicable statute of limitations. This Court finds:

1. The applicable period of limitations for Third Party Plaintiffs' complaint expired on or before October 9, 2010 – three years after Third Party Plaintiffs' attorney and attorney-in-fact (John P. Qualey, Esq.) had actual notice of the personal guarantees on the loan obligations.

Dorman v. Campbell, 500 S.E.2d 786 at p 789 (S.C App. 1998); *Crystal Ice Co. v. First Colonial Corp.*, 273 S.C. 306 (1979); *Faulkner v. Millar*, 319 S.C. 216 (1995).

2. Third-Party Plaintiffs did not “have” the required expert affidavit until after expiration of the period of limitations, as evidenced by the notary date of November 11, 2010, on the expert affidavit. South Carolina Code section 15-36-100(F) provides, in pertinent part:

[I]f a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time pursuant to this section...” (emphasis added)

When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).

Although this Court on August 3, 2012, denied the subject Motion for Summary Judgment, based upon the doctrine of “equitable tolling”, this Court now recognizes that equitable tolling should not be invoked by the Court of its own Motion, and should only be used

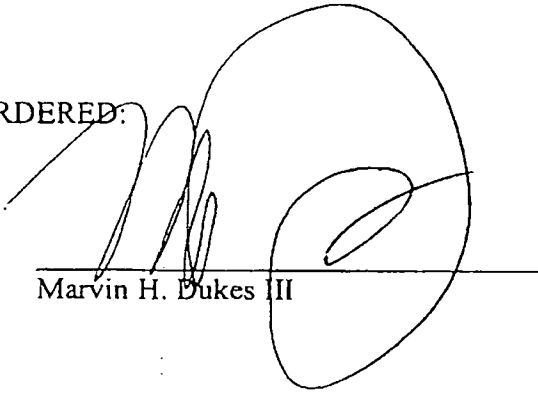
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sparingly. *Hooper v. Ebenezer Senior Services and Rehabilitation Services*, 368 S.C.108 (SC 2009); *Kimmer v. Wright*, 719 S.E.2d 265 (S.C. App. 2011); *Holmes v. Marion School District*, 093011 SCDC (US District Court, Florence Division, September 30, 2011). Accordingly, equitable tolling does not apply to the instant case, and therefore Third Party Plaintiffs' First, Second, and Third Causes of Action are hereby dismissed with prejudice pursuant to S.C. Code Section 15-36-100(F).

IT IS SO ORDERED:

Beaufort, South Carolina
February 20, 2013


Marvin H. Dukes III

3932

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
Cynthia Griffis	)	CIVIL ACTION NO.: 2009-CP-07-06054
	)	
Plaintiff	)	
	)	
v.	)	ORDER DENYING MOTION FOR
	)	SUMMARY JUDGMENT
	)	
Cherry Hill Estates, LLC, Eugene O'Neil	)	
and Ronald Faulkner	)	
Defendant(s)	)	
	)	
Cherry Hill Estates, LLC and Ronald	)	
Faulkner,	)	
Third Party Plaintiffs	)	
	)	
v.	)	
	)	
Anthony E. Griffis	)	
Third Party Defendant	)	

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 CLERK OF COURT
 JUDICIAL CIRCUIT

This matter came before the Court on March 28, 2011 upon the Motion for Summary Judgment filed by the Third Party Defendant Anthony Griffis. Present were Mr. Griffis, James O. Hale, representing the Plaintiff, and Michael W. Mogil representing Defendants Cherry Hill Estates, LLC and Ronald Faulkner. A supplemental hearing was held by telephone on May 5, 2011.

Mr. Griffis seeks summary judgment on the Third Party Plaintiffs First, Second and Third Causes of action which assert claims for breach of fiduciary duty and professional negligence. Mr. Griffis invokes South Carolina Code of Laws Section 15-30-100 which requires that an affidavit from an expert be filed with a Complaint asserting such causes of action, and that the within causes of action are barred by the applicable statute of limitations which he argues expired October 9, 2010. The expert affidavit in this case was filed on November 14, 2010

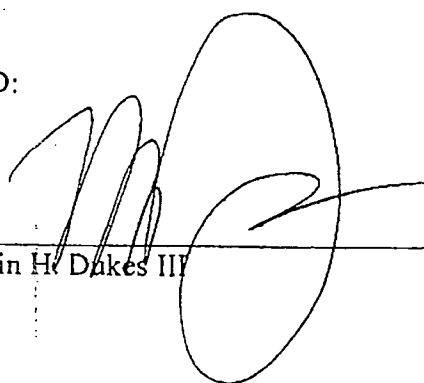
together with an Amended Complaint which followed this Court's Order entered October 27, 2010. That Order allowed the Third Party Plaintiffs thirty days to file an Amended Complaint with the necessary expert affidavit. The Amended Complaint was filed with an expert affidavit within the time set forth in the Order.

Although there was certainly no deception or allegations of deception by the Defendant, the Order entered October 27, 2010 itself misleads the Plaintiff on the issue of deadlines. As our Supreme Court has stated the "...equitable power of a court is not bound by cast-iron rules but exists to do fairness...", Hooper v. Ebenezer Senior Services and Rehabilitation Center, 368 S.C. 108, 687 S.E. 2d 129 (SC 2009) citing Hausman v. Hausman, 199 S.W. 3rd 38 (Texas App. 2006) and no real prejudice would occur by the application of equitable tolling, I will allow the First, Second and Third Causes of Action to stand as plead, and deny the motions related to this issue.

The Sixth Cause of Action in the Amended Complaint attempted to assert a cause of action for fraud in the inducement. The parties acknowledge that the cause of action, as plead, did not plead the essential elements of a cause of action for fraud with sufficient particularity. Accordingly, the sixth cause of action is hereby dismissed, without prejudice, and the Third Party Plaintiffs shall have leave for thirty days here from to amend their Complaint to plead the cause of action with particularly, or the cause of action shall be barred.

IT IS SO ORDERED:

Beaufort, South Carolina
August 5, 2012


Marvin H. Dukes III

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Cynthia Griffis

Plaintiff

v.

Cherry Hill Estates, LLC, Eugene O'Neil
and Ronald Faulkner

Defendant(s)

Cherry Hill Estates, LLC and Ronald
Faulkner,

Third Party Plaintiffs

v.

Anthony E. Griffis

Third Party Defendant

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2009-CP-07-06054

ORDER ON MOTION TO DISMISS

10 OCT 27 AM 10:44
CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter came before the Court on October 14, 2010 upon the Motion of Third Party Defendant Anthony Griffis seeking an Order pursuant to SCRCF 12(b)(6) dismissing the claims of Third Party Plaintiffs. Present were Mr. Griffis, representing himself, Michael W. Mogil for the Third Party Plaintiffs, and James O. Hale representing the Plaintiff, Cynthia Griffis. After hearing argument by all parties, I find as follows:

- 1) The Third Cause of Action of the Third Party Complaint, alleging professional negligence, is dismissed without prejudice provided that the Third Party Plaintiffs have thirty (30) days, or until November 14, to serve an Amended Complaint alleging this cause of action, supported by the affidavit of an expert witness as required by S.C. Code Ann. Section 15-36-100.
- 2) The First and Second Causes of Action, alleging breach of fiduciary duty, are dismissed without

prejudice to the extent that as pled they may require the same affidavit, and the Third Party Plaintiffs have thirty (30) days, or until November 14, to serve an Amended Complaint alleging this cause of action, supported by the affidavit of an expert witness as required by S.C. Code Ann. Section 15-36-100 or to re-plead these matters so as not to require an expert affidavit.

3) The Fourth Cause of Action for Civil Conspiracy is dismissed, without prejudice, provided Plaintiff serves an Amended Complaint pleading special damages caused by or flowing from the civil conspiracy claim, as required by Todd v. S.C. Farm Bureau, 276 S.C.284, 278 S.E. 2d 607 (1985).

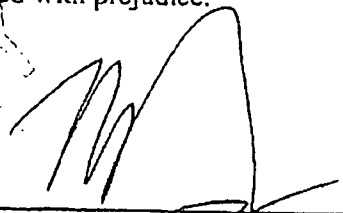
If Third Party Plaintiffs fail to serve an Amended Complaint on or before November 14, 2010, the above referenced causes of action shall be dismissed with prejudice.

It is SO ORDERED:

Beaufort, South Carolina

October 26 2010

Beaufort


Marvin H. Dukes III, Master In Equity

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
Cynthia Griffis	)	CIVIL ACTION NO.: 2009-CP-07-06054
	)	
	)	
Plaintiff	)	
	)	
v.	)	MEMORANDUM ASSERTING
	)	ADDITIONAL FACTS IN RECORD
	)	IN SUPPORT OF MOTION FOR
	)	RECONSIDERATION OF
	)	ORDER GRANTING SUMMARY
Cherry Hill Estates, LLC, Eugene O'Neil	)	JUDGMENT
and Ronald Faulkner	)	
Defendant(s)	)	
	)	
Cherry Hill Estates, LLC and Ronald	)	
Faulkner,	)	
Third Party Plaintiffs	)	
	)	
v.	)	
	)	
Anthony E. Griffis	)	
Third Party Defendants	)	

2013 APR 11 PM 1:42
 EUGENE O'NEIL
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

In support of their Motion for Reconsideration filed pursuant to SCRCP Rule 59, the Third Party Plaintiffs submit to the Honorable Court and serve upon Third Party Defendant Anthony Griffis the following documents intended to be incorporated into argument on April 18, 2013 which Third Party Plaintiffs aver should be included in the record upon which Defendant's Motion for Summary Judgment on the causes of action for breach of duty and professional negligence is based and adjudicated:

- A. Email correspondence between Michael Mogil and counsel for Tony Griffis granting enlargement of time to respond to Third Party Complaint.
- B. Email correspondence between Mogil, counsel for Griffis and Griffis reflecting request to continue depositions pending his retaining of counsel.

Third Party Plaintiffs argue that these events--that prior to the Motion to Dismiss and prior to the expiration of the statute of limitations imposed by the Court in its last Order, the Third Party Plaintiffs graciously accommodated Mr. Griffis' requests to continue his deposition and more significantly, to enlarge his time to respond to the Third Party Complaint. As a result, they did not learn of Mr. Griffis' claim relating to the timing of the expert affidavit until approximately September 17, 2010, after which time the Court, after hearing on October 14, 2010, extended the Third Party Plaintiff's time to obtain the expert affidavit until thirty days after its October, 2010 order. The Third Party Plaintiffs thus complied with both Mr. Griffis' requests, and also the Court's order, it is simply inequitable to retroactively punish them for their own compliance.

C. Excerpts from transcript of deposition of John (Jack) P. Qualey which demonstrate:

i) that Mr. Qualey, the settlement agent for the transaction in question, is not certain he ever met with or talked to Mr. Faulkner before the closing (pp 33-34);

ii) that Mr. Qualey is not certain he spoke with Mr. Faulkner after the transaction, and if he did, does not recall the substance of the conversation (pp 34-37);

iii) that the standard procedure for explaining the Power of Attorney would have been delegated to a paralegal named Brooke (pp 38-40);

iv) that Brooke Brown would have been the party communicating with Mr. Faulkner relating to the closing and Power of Attorney (pp 59-60); and

v) that Mr. Qualey's file did not have the Agreement Regarding Cherry Hill Estates dated October 8, 2007, and that he had not "heard" of the document prior to the deposition (pp 70-72).

The attached excerpts are taken from a copy transcript provided by Coastal Court

Reporting while the original is being retrieved from files. They are represented to be a true and exact copy of the original.

The testimony set forth above reflects that Mr. Qualey's knowledge, if any, of the events and documents at closing should not be imputed to Mr. Ronald Faulkner for the purpose of triggering a statute of limitations as found by the Court. Without communication, knowledge could not be adequately conveyed, or imputed to Mr. Faulkner. Further, and most importantly, the Third Party Plaintiffs argue that a central element of their claims relating to professional negligence is that a transaction was structured by their attorney which also involved refund of Sellers proceeds back to the Purchaser entity, Cherry Hill Estates, LLC, which is an entity in which Mr. Griffis at the time claimed a one third ownership interest, as reflected in the document known as "Agreement for Cherry Hill Estates", which document Mr. Qualey testified he had no knowledge of. Thus, it is not possible that Mr. Qualey knew of this document such that he could impart to Mr. Faulkner knowledge of its contents and their legal meaning. Moreover, Mr. Qualey did not sign this document. Thus, what Mr. Faulkner knew or understood of this document, its meaning, and legal consequence is a fact issue that must be determined by the Court prior to ruling on whether the statute of limitations was triggered on October 10, 2007, as the Court implicitly found in its Order Granting Summary Judgment, or at a later date. In fact, Mr. Faulkner has testified in the record of the case, and at trial on the first party claims, that he did not agree that the Agreement reflected his understanding of the transaction as it was supposed to play out and that he was not aware that he was, inter alia, signing a personal guarantee in favor of Mr. Griffis ex-wife, Cynthia Griffis and that Mr. Faulkner first learned that he was responsible for the same guarantee only after demand was made in or around December 2009.

D. Excerpts from the deposition of Ronald T. Faulkner from July 27, 2010 which demonstrate:

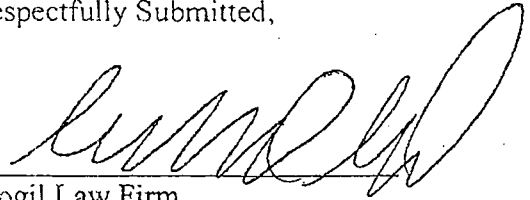
i) That Mr. Faulkner was not aware that Mr. Griffis was not being required to guarantee the first mortgage loan to Woodlands Bank in exchange for his membership interest (p 59);

ii) That Mr. Faulkner did not understand at the time he allegedly executed the Agreement for Cherry Hill Estates and other documents in connection with the settlement and transaction that the transaction involved Mr. Faulkner giving personal guarantee to Ms. Griffis (p.111).

The deposition of Mr. Faulkner, as well as the testimony of this testimony at trial on Ms. Griffis' first party claim, are part of the record in this case and address Mr. Faulkner's knowledge and action. Although the overall testimony is subject to interpretation by the finder of fact, for the purpose of the subject motion for summary judgment, which rests solely on the issue of statute of limitations, Mr. Faulkner's testimony is unequivocal and consistent with the summary response set forth on p. 111 attached. To wit, as of October 2007, Mr. Faulkner did not understand, and thus could not have known of, the events that form the basis for the Third Party Plaintiff's causes of action for professional negligence. beign the fact that Mr. Faulkner was being bound to guarantee a second loan to Ms. Griffis, and aslo that Mr. Griffis was also obtaining an ownership interest in Cherry Hill Estates without being also required to guarantee the loan(s) taken to enable the transaction, and finally, that structure of the transaction, which involved the refund of Seller proceeds at closing to the purchaser entities, and third parties, without disclosure to the first mortgage lender, which rendered the transaction in contravention of existing lending and legal protocols.

Thus, as argued herein, the statute of limitations for the Third Party negligence claims did not trigger until Mr. Faulkner and/or the Cherry Hill Estates entity discovered these matters, presumably in 2009.

Respectfully Submitted,



April 8, 2013

Mogil Law Firm
Michael W. Mogil
2 Corpus Christie Place, Ste. 303
Hilton Head Island, SC 29928
Tel: 843-785-8110
Email: mmogil@mogillaw.com

---Original Message---

From: "Danny Henderson" <DHenderson@pmped.com>

Sent: Thursday, August 19, 2010 1:48pm

To: "Danny Henderson" <DHenderson@pmped.com>, "Michael Mogil" <mmogil@mogillaw.com>, "Tony Griffis" <griffis@hargray.com>, "Bert Utsey" <BUtsey@pmped.com>

Cc: JHALE@HALEANDBOLCHOZ.COM

Subject: RE: GRIFFIS VS CHERRY HILL ET.A. VS ANTHONY GRIFFIS 2009 CP 07 6054

TALKED TO JIM HALE. HE WILL AGREE TO GIVE 10 DAYS NOTICE BEFORE HE FILES HIS SJ MOTION. WE ARE MOVING AS FAST AS POSSIBLE TO GET TONY ADEQUATE REP. I CALCULATE THAT TONY'S RESPONSE IS DUE 8/27. WILL YOU AGREE TO AN EXTENSION TO RESPOND UNTILL 9/17? WE WILL AGREE TO WAIVE 10 DAY NOTICE ON TONY'S DEPO. NEED TO GET HIM SET UP W/ COUNSEL BEFORE HE IS DEPOSED.

From: Danny Henderson

Sent: Wednesday, August 18, 2010 5:01 PM

To: Michael Mogil

Cc: Danny Henderson

Subject: GRIFFIS VS CHERRY HILL ET.A. VS ANTHONY GRIFFIS 2009 CP 07 6054
MIKE, CAN YOU ALLOW A 30 DAY EXTENSION FOR MR. GRIFFIS TO ANSWER AND/OR OTHERWISE PLEAD THE THIRD PARTY COMPLAINT? I THINK HE WAS SERVED 7/27/10. MR GRIFFIS RESPONSE WOULD BE DUE BY 9/24/10. THANKS DANNY

Daniel E. Henderson
Peters, Murdaugh, Parker
Eltzroth, & Detrick P.A.

690 North Green Street

P.O. Box 2500

Ridgeland, SC 29936

Phone: (843) 726-6131

Fax: (843) 726-6057

=====

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=====

-----Original Message-----

From: "Tony Griffis" <griffis@hargray.com>
Sent: Tuesday, August 24, 2010 3:09pm
To: "Michael Mogil" <mmogil@mogillaw.com>, "Danny Henderson" <DHenderson@pmped.com>, BUtsey@pmped.com, "Jim Hale" <jhale@haleandbolchoz.com>, "Meredith Lazarski" <mlazarski@haleandbolchoz.com>
Subject: RE: Griffis v Cherry Hill et al depositions

I would prefer to wait until I have counsel.

Tony Griffis

From: Michael Mogil [<mailto:mmogil@mogillaw.com>]

Sent: Tuesday, August 24, 2010 2:55 PM

To: 'Danny Henderson'; griffis@hargray.com; BUtsey@pmped.com; 'Jim Hale'; 'Meredith Lazarski'

Subject: Griffis v Cherry Hill et al depositions

Danny, Tony, Jim, Skip, Meridith,

The deposition of Tony Griffis I noticed for the 26h (Thursday) has been continued at Tony Griffis' request pending retainment of counsel. I also have noticed Cynthia for that date. I would like to substitute Gene Oneill into Tony's time slot. Jim Hale is Ok with this.

Tony and counsel, do you object to the deposition of Cynthia and/or Gene on Thursday. If so, we would have to continue them all to a later date. Please advise ASAP. MWM

Michael W. Mogil

Law Office of Michael W. Mogil PA

2 Corpus Christie Place, Ste. 303

303 Professional Building

Hilton Head Island, SC 29928

Tel 843-785-8110

Fax 843-785-9676

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HALE - QUALEY (DIRECT EXAMINATION)
 figures. But it does not bear the signatures of
 Ronald Faulkner, which I signed as his attorney
 in fact, or Tony and Cindy Griffiths.

Q And do you have a copy that was signed
 by all those parties?

A I do.

Q If I can make a copy, we'll introduce
 that as an exhibit.

A The closing statement is in
 counterparts. The top one is signed by the
 buyers, and the bottom one is signed by the
 sellers.

Q We'll make a copy of that.

Now, if I recall your previous
 testimony, you said that in this matter you
 represented the buyer, Cherry Hill Estates, LLC?

A Yes.

Q Eugene O'Neil and Ronald Faulkner;
 correct?

A Correct.

Q Did you represent anyone else?

A No, I did not.

Q Were you familiar with the entity
 Cherry Hill Estates, LLC?

HALE - QUALEY (DIRECT EXAMINATION)

A No.

Q -- and Mr. Faulkner?

A No.

Q Prior to this transaction or prior to
 having the transaction referred to you to
 operate as closing attorney, were you
 knowledgeable of Mr. O'Neil?

A I think I may have been involved in a
 transaction with him many years ago, 20 plus
 years ago, but I don't remember the nature of
 the transaction or whether -- you know, what my
 involvement was. But I did have some
 involvement with him. I just don't remember
 what it was.

Q Do you have any knowledge of his
 activities in the area and what he was employed
 previously as or any of his business dealings?

A I just knew him to be a real estate
 agent.

Q At least at the time of the
 transaction?

A Not necessarily then. I assumed he was
 then. But the transaction that I dealt with him
 many years ago, as I recall, he was a real

HALE - QUALEY (DIRECT EXAMINATION)

A Was I familiar with them?

Q Prior to this transaction had you been
 familiar with them?

A No.

Q Did you aid in establishing the LLC in
 any format?

A No.

Q How did you become knowledgeable that
 the LLC existed and that it was to be involved
 in this transaction?

A I believe it was named as the
 purchaser. It was named as the purchaser in the
 contract.

Q So Plaintiff's Exhibit 3 is the way
 that you became aware of that particular LLC,
 and you had no prior recollections of it prior
 to that time?

A Correct.

Q Other than this transaction have you
 done any other business or representations of
 that LLC?

A No.

Q How about after this transaction, have
 you done any other business with Mr. O'Neil --

HALE - QUALEY (DIRECT EXAMINATION)

estate agent. He wasn't acting as a real estate
 agent in this transaction, so I didn't -- I
 didn't really look at him as acting in that
 capacity.

Q As the next Plaintiff's Exhibit, we
 will introduce your copy of the closing
 statement, in counterparts as you have
 described; correct?

A That's correct.

(Whereupon, Plaintiff's Exhibit
 Number 7 was marked for
 identification.)

BY MR. HALE:

Q Prior to this transaction, did you have
 any knowledge or had you ever met Mr. Ronald
 Faulkner?

A No.

Q In conjunction with this transaction,
 did you meet Mr. Faulkner?

A I don't recall whether I did or not.

Q Did you ever speak with Mr. Faulkner,
 telephonically or otherwise?

A I don't recall whether I did or not. I
 may have talked with him by phone, but I just

1 HALE - QUALEY (DIRECT EXAMINATION)
2 don't recall exactly, you know, whether I did or
3 not.

4 Q During or following this transaction,
5 have you conducted or represented Mr. Faulkner
6 in any venture or in any other way?

7 A No.

8 Q So this was a single transaction for
9 purposes of Mr. Faulkner and to your knowledge
10 was the first time that you had to become
11 familiar with him one way or the other?

12 A Correct.

13 Q Now, Mr. Faulkner has testified that he
14 spoke with you while in a restaurant somewhere
15 in -- I believe he said he was in Hilton Head
16 and spoke with you over the telephone. Do you
17 recall that?

18 A I don't recall that. But, like I said,
19 I mean, we could have had a phone conversation,
20 If we did, I just don't remember it. I've had a
21 lot of phone conversations since 2007.

22 Q And with respect to Mr. O'Neil, do you
23 recall any specific phone conversations or any
24 conversations you had with him?

25 A I do remember having conversations with

1 HALE - QUALEY (DIRECT EXAMINATION)

2 Q And do you recall who prepared this
3 document?

4 A I prepared that.

5 Q And was that part of the additional fee
6 that you charged the purchaser \$200 for that you
7 referenced previously?

8 A Yes.

9 Q Referring to Bate stamp 22, the
10 document was signed by the borrower Cherry Hill
11 Estates, Mr. O'Neil, and yourself as attorney in
12 fact for Mr. Faulkner?

13 A Correct.

14 Q Who were the witnesses on those
15 documents? Do you recognize the names of the
16 witnesses?

17 A Brooke Brown and I witnessed
18 Mr. O'Neil's signature on behalf of Cherry Hill
19 Estates. There were no separate witnesses for
20 the signing of the guarantee.

21 Q And how did you come to hold
22 Mr. Faulkner's Power of Attorney?

23 A We prepared a Power of Attorney and
24 sent it to him for him to sign, and he signed
25 and returned it to us.

1 HALE - QUALEY (DIRECT EXAMINATION)
2 him by phone and in the office. I met and
3 talked with him in the office.

4 Q What was the content of those
5 conversations?

6 A It would have just been routine aspects
7 of the closing.

8 Q Do you recall any specific things
9 discussed during those discussions of routine
10 aspects of the closing?

11 A No, I don't.

12 Q Do you recall Mr. O'Neil discussing the
13 value of this property at all?

14 A No.

15 Q Do you recall Mr. O'Neil discussing the
16 contracts that had been entered into by the
17 parties?

18 A No, we never had any discussions like
19 that.

20 Q I'm now going to hand you what has been
21 Bate stamped Number 20 through 22 and ask if you
22 recognize that document?

23 A Yes. I recognize this as the
24 promissory note from Cherry Hill Estates to
25 Cynthia Griffiths.

1 HALE - QUALEY (DIRECT EXAMINATION)

2 Q And I'm referring to -- I just handed
3 you a document Bate stamped 23 and 24. Is that
4 the Power of Attorney that you're speaking of.

5 A Yes.

6 Q And you're saying you prepared the
7 Power of Attorney, sent it to Mr. Faulkner?

8 A Yes. And then he signed it and
9 returned -- or he obviously signed it here.

10 Q And how do you know that he signed it
11 here?

12 A Because two of my employees witnessed
13 his signature, Brooke Brown and Monica Chandler.

14 Q Now, Monica Chandler had not been
15 involved in this transaction?

16 A No. She was our receptionist. So if
17 she signed it, that means that somebody came to
18 the front desk, and she signed as a witness when
19 he signed it. She and Brooke Brown acted as the
20 witnesses. Brooke was the paralegal on the
21 transaction.

22 Q Now, this was a Specific Power of
23 Attorney.

24 A Right.

25 Q How would you explain the difference

1 HALE - QUALEY (DIRECT EXAMINATION)
2 between a Specific Power of Attorney and just a
3 General Power of Attorney?

4 A That document specifies the limitations
5 on my authority to act on his behalf as opposed
6 to a General Power of Attorney which doesn't
7 place specific limitations on the agent's
8 authority.

9 Q Do you have any standard practices or
10 explanations that you typically give individuals
11 when they appoint you as a Specific Power of
12 Attorney?

13 A Well, our typical practice is that
14 prior to signing any documents on behalf of the
15 principal, the paralegal e-mails the documents
16 to the principal and gets authorization for me
17 to sign on behalf of the principal. So our
18 standard procedure would have been for Brooke to
19 e-mail Mr. Faulkner a copy of the guarantee to
20 be signed in favor of Woodlands Bank and the
21 guarantee to be signed in favor of Cynthia
22 Griffis in accordance with the Power of
23 Attorney.

24 Q Do you have any evidence in your file
25 that that procedure was followed in this case?

1 HALE - QUALEY (DIRECT EXAMINATION)

2 A I don't see an e-mail, a copy of an
3 e-mail from Brooke confirming that, but that's
4 what they were required to do, so I assume she
5 did that.

6 Q Would you require to see such an e-mail
7 prior to exercising the rights under the Power
8 of Attorney?

9 A I would require that she confirm to me
10 verbally, more often than not, just verbally,
11 that she had gotten the client's approval.

12 Q Based on your practice, is it your
13 belief that that was done in this case, that she
14 did make such confirmation to you?

15 A Yes.

16 Q Do you have her backup records as far
17 as e-mail transmittals?

18 A Probably. I would just have to look
19 for them.

20 Q Is that something that you're willing
21 to commit to look for, this specific e-mail?

22 A Sure.

23 Q And we're looking for an e-mail that
24 would have occurred sometime around --

25 A Either October 9th or the 10th.

1 HALE - QUALEY (DIRECT EXAMINATION)

2 Q -- October 9th or October 10th from
3 Brooke.

4 A And a reply.

5 Q And a reply from Mr. Faulkner; correct?

6 A Correct. I mean, the paralegals know
7 they're subject to being dismissed from their
8 employment here if they don't do that, so they
9 tend to do that.

10 Q So that is a grounds for dismissal if
11 they fail to do that?

12 A Correct.

13 Q So it's a very strict policy in your
14 office.

15 A Yes.

16 MR. HALE: Off the record a
17 second.

18 (Whereupon, an off-the-record
19 discussion was held.)

20 MR. HALE: I will consult with the
21 other counsel once that e-mail is
22 produced, and I may ask them at that
23 time whether -- in the production of
24 the e-mail, either under the business
25 records rule or otherwise, I may seek

1 HALE - QUALEY (DIRECT EXAMINATION)

2 to reconvene this deposition for that
3 reason, or we will all stipulate as to
4 what Mr. Qualey's position is relative
5 to such e-mail. Is that acceptable?

6 MR. MOGIL: That's acceptable.

7 THE WITNESS: That's fine. But
8 you're saying he was in transit at the
9 time?

10 MR. MOGIL: He testified that he
11 came in, and he believes he flew back
12 to Maryland the day of the transaction,
13 and that's -- he testified that that's
14 why he thinks he gave you Power of
15 Attorney, because he wasn't able to
16 stay.

17 MR. HALE: Now, is that acceptable
18 to you, Tony?

19 MR. GRIFFIS: Yes, that's fine.

20 BY MR. HALE:

21 Q Now, I will mention that on the
22 Specific Power of Attorney, just as a point of
23 interest, the acknowledgment is dated the 10th
24 day of October 2007.

25 A And what date should it be?

1 HALE - QUALEY (DIRECT EXAMINATION)

2 Q Well, I'm not saying the date should
3 have been any different, but it was the same
4 date of the closing, which is, I would think, in
5 these type of transactions, as I do them myself,
6 Jack, as you know, that's just a little
7 peculiar. Would you not agree that's just --

8 A Well, unless he came in that morning --

9 Q And then the transaction was that
10 afternoon.

11 A -- and then the transaction happened
12 that afternoon.

13 Q And he was not available for the
14 afternoon.

15 A Right.

16 Q And then I will hand you what has been
17 Bate stamped 25 through 27. And I will mention
18 there are two Bate stamps on this, but I'm
19 referring to the smaller one, and ask you if you
20 recognize that document?

21 A Yes. It's a guarantee signed by Eugene
22 O'Neil and Ronald Faulkner.

23 Q And would that further evidence the
24 guarantee that they were giving relative to this
25 transaction?

1 HALE - QUALEY (DIRECT EXAMINATION)

2 A It would. I'm not sure why it was
3 needed. I'm not sure if I prepared it. But
4 obviously it would be an additional guarantee to
5 the guarantee that was endorsed on the note
6 itself.

7 I do have a copy of it here. I'm not
8 sure if I prepared that or not, but I'm not sure
9 that that's really an issue. It may have been
10 prepared by someone else.

11 Q But at least on Bate stamp Page 27, it
12 was signed by Mr. O'Neil and signed by you as
13 the Power of Attorney for Mr. Faulkner?

14 A Correct.

15 Q And was that within the gamut of the
16 authorities granted to you by the Specific Power
17 of Attorney?

18 A Yes.

19 Okay.

20 Q I saw you looking through your file, so
21 I was giving you the courtesy of the time to
22 refresh whatever recollection you sought to
23 refresh.

24 I will now hand you what has been Bate
25 stamped 28 through 32 and ask if you recognize

1 HALE - QUALEY (DIRECT EXAMINATION)
2 that document?

3 A Yes. That is a mortgage that we
4 prepared for signature by Cherry Hill Estates.
5 This is a recorded copy of it.

6 Q And that was signed on behalf of Cherry
7 Hill Estates, referring to Bate stamp 31, by
8 Mr. O'Neil --

9 A Correct.

10 Q -- with Brooke and yourself as
11 witnesses and you as the notary public?

12 A Correct.

13 Q And then I will refer you to what has
14 been Bate stamped Numbers 33 through 35 and ask
15 if you recognize that particular document?

16 A Yes. This is the Deed signed by Tony
17 and Cindy Griffis transferring the property to
18 Cherry Hill Estates.

19 Q Did Cherry Hill Estates receive any
20 other conveyance documents relative to this
21 transaction?

22 A Not to my knowledge.

23 Q I'll hand you a document that has been
24 Bate stamped 36 and ask if you recognize that
25 particular document?

1 HALE - QUALEY (DIRECT EXAMINATION)

2 A I don't recognize this document.

3 Q Now, do you recall any discussions of
4 any arrangement of Mr. Griffis being involved or
5 subsequently to be involved in Cherry Hill
6 Estates?

7 A No.

8 Q With respect to this transaction and
9 your duties in the transaction, would that have
10 mattered to you one way or the other?

11 A If he was going to be involved post
12 closing?

13 Q Yes.

14 A After the transaction was over?

15 Q Yes.

16 A Unless the client asked me to review
17 it, it wouldn't have affected the transaction.

18 Q And by virtue of saying you do not
19 recall the document, were you asked to review
20 anything of that nature?

21 A No.

22 Q Was anything asked of you relative to
23 that arrangement?

24 A No.

25 Q And so that really was of no concern of

1 GRIFFIS - QUALEY (CROSS EXAMINATION)

2 MR. HALE: Well, I'm assuming
3 though, for purposes of the record --

4 THE WITNESS: Okay, I'll refer to
5 the Bate stamp. Bate stamps Number 23
6 and 24, this is the Power of Attorney
7 signed by Mr. Faulkner.

8 BY MR. GRIFFIS:

9 Q Is there any doubt in your mind from
10 that Power of Attorney that was executed by
11 Ronald Faulkner that you had express authority
12 to execute the guarantees to Cynthia Griffis and
13 to Woodlands Bank on his behalf, you acting as
14 his attorney in fact?

15 A No, there is no question in my mind
16 that I had that authorization.

17 Q Now, the document that's referenced
18 Bate stamp 87, which is the memo from me to
19 Brooke dated October 9th, '07, there's a fax
20 memo that we just had a minute ago, Exhibit Bate
21 stamp 87 and 88, I think 88 was the e-mail she
22 sent to you, is there any doubt in your mind
23 that as of October 9, 2007, you as the attorney
24 and later as the attorney in fact had notice
25 that there were personal guarantees required for

1 MOGIL - QUALEY (CROSS EXAMINATION)

2 and what that Power of Attorney meant?

3 MR. HALE: I object to the form.

4 THE WITNESS: My paralegal Brooke
5 Brown would have discussed it with him
6 when she was making arrangements for
7 him to sign the Power of Attorney.

8 BY MR. MOGIL:

9 Q Do you recall how you came to have
10 Cherry Hill Estates, O'Neil, and Faulkner as
11 clients? Were they referred to you by somebody?

12 A I assume that they were referred to me,
13 but I honestly can't tell you who would have
14 referred them to me.

15 Q You have no personal recollection of
16 how they came to your office?

17 A No.

18 Q Does the file reflect how they came to
19 the office?

20 A No.

21 Q You don't recall doing any work for
22 Mr. O'Neil in the immediate future prior to
23 this?

24 A No.

25 Q You testified a few minutes ago that

1 MOGIL - QUALEY (CROSS EXAMINATION)
2 the \$200,000 note given to Cynthia Griffis?

3 A You put me on notice of that
4 requirement.

5 Q On October 9, 2007?

6 A Correct.

7 MR. GRIFFIS: Thanks. I don't
8 have any more questions.

9 MR. MOGIL: Michael Mogil for
10 Defendant Faulkner and Cherry Hill
11 Estates, not for Mr. O'Neil.

12 CROSS EXAMINATION

13 BY MR. MOGIL:

14 Q Mr. Griffis just asked you about when
15 you became on notice that there was a personal
16 guarantee required on the secondary financing
17 and the implication. And your answer was that
18 it was on October 9th, which was the day before
19 closing.

20 You've also testified that you don't
21 recall any specific conversations with
22 Mr. Faulkner.

23 In your mind, whom else might have or
24 would have been the person that explained to
25 Mr. Faulkner about the change in circumstances

1 MOGIL - QUALEY (CROSS EXAMINATION)

2 Woodlands Bank would have approved the Power of
3 Attorney and had approved the secondary
4 financing, which is actually referenced on the
5 contract itself. Did you have any personal
6 communications with Woodlands Bank?

7 A No. Brooke would have had all those
8 communications.

9 Q So when you say that they approved it,
10 is that based on the transmissions that are
11 going back and forth from Brooke to Woodlands?

12 A Yes.

13 Q When you looked at your file a minute
14 ago, is there any transmission that involves the
15 personal guarantee on the second mortgage
16 financing that you could see that went to
17 Woodlands?

18 A No. I just answered Jim saying that
19 they never asked us to see any information about
20 the second mortgage.

21 Q Do you have any knowledge of any
22 requests made by Woodlands relating to this
23 transaction, any personal knowledge, meaning
24 anything that was made to you directly?

25 A In what regard? What are you --

HALE - QUALEY (REDIRECT EXAMINATION)

Q Earlier, Mr. Hale showed you and I believe introduced, by reference to Bate stamp, a series of exhibits, one of which was an agreement regarding Cherry Hill Estates, Bate stamped 16, dated October 8th. You testified that you had never seen that document. Is that document in your file anywhere?

A Not that I know of, no.

Q Prior to today, had you ever heard of that document?

A No.

MR. MOGIL: That's it.

REDIRECT EXAMINATION

BY MR. HALE:

Q Now, one question, again, subject to the right to reconvene, as previously made a record of. Were you present when all the closing documents for this transaction were signed by Mr. O'Neil?

A Yes.

MR. HALE: Thank you. I have no further questions.

MR. MOGIL: And just for the record, and I'll probably say it on

CERTIFICATE

STATE OF SOUTH CAROLINA:
BEAUFORT COUNTY:

I, Theresa D. Saxon, Certified Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein-before set forth; that the witness was by me first duly sworn to testify to the truth, that thereupon the foregoing testimony was transcribed by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Theresa D. Saxon
Certified Court Reporter
Notary Public
Beaufort, South Carolina
My commission expires
10.4.2015

HALE - QUALEY (REDIRECT EXAMINATION)

behalf of Mr. Griffis as well because there's ongoing third-party litigation, we want to reserve the same right to reconvene as you are.

MR. HALE: I have no objection to that.

(Whereupon, the deposition of Jack P. Qualey, Jr., was recessed at 4:00 p.m.)

(The witness waived the right to read and sign the deposition transcript.)

1 developed the property, that, here, Tony would
2 be part of the investment. And that's basically
3 what I meant. I figured that was -- Cherry Hill
4 Estates was basically the three of us were
5 responsible for the development as much as the
6 loan.
7

8 Q In Paragraph 3 of the agreement, it
9 says "Anthony Griffis shall receive a one-third
10 interest in Cherry Hill Estates, LLC, for his
11 investment." Did you understand that he was
12 receiving a one-third interest when you signed
13 this?

14 A Yes, I did.

15 Q Did you think he was personally
16 obligated on the loan just as you were?

17 A Yes.

18 Q When did you first learn he was not
19 personally obligated on the loan?

20 A Well, when this here lawsuit started, I
21 realized it at that time.

22 Q Who directed you to go to Mr. Qualey's
23 office?

24 A It was the Griffis law firm, Tony. I
25 did not set up going to that office.

2 MR. HALE: I don't have any
3 further questions.

4 RE CROSS-EXAMINATION

5 BY MR. MOGIL:

6 Q Mr. Hale just asked you if you executed
7 these three agreements. Did you execute them?
8 Third Party Defense Exhibit 1, Plaintiff's
9 Exhibits 6 and 9, and the Specific Power of
10 Attorney, did you execute those documents?

11 A Yes.

12 Q Did you understand that you were
13 agreeing to anything?

14 A I didn't understand that I was going to
15 be personally guaranteeing them, no.

16 Q But you executed them?

17 A Yes.

18 MR. MOGIL: Nothing further.

19 (Whereupon, the deposition of
20 Ronald Thomas Faulkner
21 was suspended at 1:25 p.m.)
22
23
24
25

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Cynthia Griffis

Plaintiff

v.

Cherry Hill Estates, LLC, Eugene O'Neil
and Ronald Faulkner

Defendant(s)

Cherry Hill Estates, LLC and Ronald
Faulkner,

Third Party Plaintiffs

v.

Anthony E. Griffis

Third Party Defendant

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT

2013 MAR 18 PM 3:11

FILED CIVIL ACTION NO.: 2009-CP-07-06054
BEAUFORT COUNTY, S.C.
CLERK OF COURT

NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION
SCRCP RULE 59

PLEASE TAKE NOTICE that on the tenth (10th) day after service hereof or on such other day as the Honorable Court shall hear the matter, Third Party Plaintiffs Cherry Hill Estates, LLC and Ronald T. Faulkner will move and do move the Court for reconsideration of, or to alter or amend, its Order entered March 5, 2013 granting summary judgment in favor Third Party Defendant Anthony E. Griffis.

This Motion shall be based on the matters set forth below and in the Court file for case 2009-CP-07-6054, and may be supplemented by affidavit(s) and/or memorandum of law, within the time permitted by the Court.

Procedurally, the underlying Motion for Summary Judgment matter first came before the Court at hearing on March 28, 2011 upon the Motion filed by the Third Party Defendant Anthony E. Griffis (hereinafter "Griffis"). Present at that initial hearing Mr. Griffis, the late

James O. Hale, then representing Cynthia Griffis, and Michael W. Mogil representing Defendants and Third Party Plaintiffs Cherry Hill Estates, LLC and Ronald Faulkner (hereinafter "Third Party Plaintiffs" or "Plaintiffs", as Ms. Griffis is no longer a party to the proceedings). A supplemental hearing was held by telephone on May 5, 2011. Ultimately, later that summer the Court asked Mr. Mogil to prepare an Order denying Summary Judgment, which was done and sent to the Court by email in August, 2011. During the interim summer months, the first party action between Cynthia Griffis and these Plaintiffs was tried as a non jury trial before the Honorable Marvin H. Dukes, III. Mr. Anthony Griffis was a witness in that proceeding, but the within Third Party Claims and Counterclaims were not tried before the Court.

When the Plaintiffs attempted to proceed with discovery in 2012, they (or possibly both parties) learned or realized that for reasons unknown, the 2011 Order denying Summary Judgment had not been entered of record. Thereafter, after communication between the Court Mr. Griffis, and Mr. Mogil, the undersigned was instructed to re-submit an Order denying Summary Judgment, which was against transmitted by email and entered by the Court on August 6, 2012. Thereafter, Mr. Griffis moved to reconsider the August 6, 2012 Order, and a hearing was held before the Court in October, 2012. On March 5, 2013, the Court granted Mr. Griffis' Motion to Reconsider and entered Summary Judgment on the Third Party Plaintiffs First, Second and Third Causes of action which assert claims for breach of fiduciary duty and professional negligence. The August 6, 2012 Order, which was held in abeyance pending the most recent Rule 59 Motion to Reconsider, also granted Summary Judgment on Count Six of the Amended Complaint, which is a cause of action alleging fraud. This Motion follows.

The primary issue raised by Defendant Griffis to defeat the causes of action sounding in professional negligence against him is his contention that those claims are barred by the statute

of limitations. Specifically, he argues that the South Carolina Code of Laws Section 15-30-100, which requires that an affidavit from an expert be filed with a Complaint asserting a cause of action for professional negligence, bars the Plaintiffs causes of action for negligence and breach of fiduciary duty. Mr. Griffis argues that the applicable statute of limitations, being three years, expired October 9, 2010, which is the date three years from the real estate transaction closing and settlement date of October 10, 2007, which is the date when the final documents that Cherry Hill Estates, LLC and Ronald Faulkner were party to and which give rise to damages and liabilities suffered by those parties were executed by their power of attorney, Jack Qualey.

The narrow holding of the March 5, 2013 Order granting Summary Judgment rests on this Court's finding that the doctrine of equitable tolling cannot be raised upon motion of the Court, but rather must be raised by the parties, and thus, in the Court's determination, equitable tolling is not applicable to toll the applicable statute of limitations herein. Third Party Plaintiff's move to reconsider, alter or amend, the March 5, 2013 Order on that point and on a number of additional points set forth herein.

First, the Plaintiffs argue that the Court's finding in its Order of March 5, 2013 ignored the central element of Plaintiffs' claims and causes of action—that Plaintiffs were induced to enter into a transaction by their attorney, Mr. Griffis, who was also the Seller of the undeveloped land being sold to them, the most central document of which was not the final closing documents executed by Mr. Qualey, but a side "Agreement Regarding Cherry Hill Estates" prepared by Mr. Griffis and executed October 8, 2007 by Mr. Griffis, Mr. O'Neill, Mrs. Griffis, and apparently by Mr. Faulkner, either in person or by fax, and an earlier version executed September 30, 2007, which establishes the framework for the following events: a) the Sellers (the Griffis') were to refund a portion of the Sellers' sales proceeds generated at closing of the

sale of the 27 acre Cherry Hill Estate tract, to purchaser Cherry Hill Estates, LLC, and/or Faulkner and/or O'Neil at closing; and b) Mr. Griffis was to obtain a 1/3 interest in Cherry Hill Estates, LLC, but would not be required to guarantee any of its loan liabilities which were to be approximately

\$ 1,050,000 at closing and c) Mr. Faulkner was designated to personally guarantee a \$ 200,000 Note to Mrs. Griffis, a fact that Mr. Faulkner later testified both at trial and at deposition that was contrary to his understanding of the transaction and that he never agreed to that guarantee.

No party [has] testified that the Agreement Regarding Cherry Hill Estates was presented to the first mortgage lender, Woodlands Bank, or to the settlement agent, Mr. Qualey prior to, at, or after closing on the purchase of Cherry Hill Estates. Indeed, the document was not in Mr. Qualey's file, and Mr. Qualey testified that had he known about the document, he would have been compelled to present it to the lender for their approval before closing.

Mr. Faulkner has testified that he never agreed to or understood he was guaranteeing a second mortgage and note to Mrs. Griffis, and thus gave Power of Attorney to Mr. Qualey to execute whatever was necessary for the underlying first mortgage loan. However, it is this Agreement for Cherry Hill Estates, and the events that flowed from it, that resulted in Mr. Faulkner first incurring liability on the \$ 200,000 Note to Mrs. Griffis, and ultimately to suffering a judgment on the first mortgage loan.

As set forth in the underlying trial and depositions, not only did Mr. Qualey not have knowledge of either of the side "Agreement(s) Regarding Cherry Hill Estates", but Mr. Faulkner also did not have knowledge of the latter Agreement until he was served with a demand on the Griffis Note through the within lawsuit, which was filed in December, 2009. Thus, it is impossible and unjust that that the statute of limitations for professional negligence would

commence on October 10, 2007 by applying a doctrine which imputes Mr. Qualey's knowledge to Mr. Faulkner and Cherry Hill Estates, LLC, due to Mr. Qualey's role as agent and power of attorney, when Mr. Qualey testified that he did not have any knowledge of the Agreement Regarding Cherry Hill Estates, its terms or the proceeds refund(s) which followed the same day of closing. An agent cannot impute knowledge which he does not possess.

Second, the within Third Party Complaint was first filed with a Motion for Leave to Amend on May 25, 2010, well within any applicable statute of limitations, including the statute of limitations applied by the Court by imputing Mr. Qualey's knowledge to his principal(s). That filing put Mr. Griffis on notice of all causes of action alleged against him, including but not limited to the professional negligence causes of action, and tolled the statute of limitations on all causes of action. The Motion for Leave was ultimately granted, and the Third Party Complaint was mailed for filing June 18, 2010 and docketed on or about June 23, 2010, and again July 30, 2010 and served during that period. The filing in November 10, 2010 of the expert affidavit in this matter was responsive to an Order of this Court granting the Plaintiffs thirty days, or until November 14, 2010, to perfect their Complaint by obtaining such an affidavit, which they did, and that filing relates back to the date of the filing of the Third Party Complaint in June, 2010, within even the Court's view of the statute or limitations, or possibly back to May 25, 2010 when the Motion for Leave to Amend and Assert a Third Party Complaint was filed. Section 15-36-100 does not abrogate the relation back doctrine.

In addition to the two primary arguments against summary judgment set forth above, Plaintiffs argue there are a number of equitable arguments specific to this case and against summary judgment, all of which were raised either in Plaintiffs' Memorandum in Opposition to Motion for Summary Judgment filed March 28, 2011 and at/during the March and May 2011 and

the August and October 2012 hearings and telephone conferences with the Court in this matter. Thus, the Court's finding that Plaintiffs' did not raise "equitable tolling" is in error—Plaintiffs raised the issue of the Court's equitable authority and duty to toll in this case at each turn. The Plaintiffs raise in this motion the following additionally specific matters which they assert were previously properly raised the issue properly before the Court, and whether directly asserted or indirectly asserted, compel reconsideration of this Court's Order of March 5, 2013:

A. The law of the case. The expert affidavit in this case was executed on November 11, 2010 and served and filed by mail on or about November 12, 2010, together with an Amended Complaint which followed to the letter the deadline established by this Court's Order entered October 27, 2010. That Order expressly allowed the Third Party Plaintiffs until November 14, 2010 to file an Amended Complaint with the necessary expert affidavit. The Amended Complaint was filed with an expert affidavit within the time set forth in the Order. Although there was certainly no deception or allegations of deception by the Defendant, the Order entered October 27, 2010 itself misleads the Plaintiff on the issue of deadlines. As the South Carolina Supreme Court has stated, the "...equitable power of a court is not bound by cast-iron rules but exists to do fairness...", Hooper v. Ebenezer Senior Services and Rehabilitation Center, 368 S.C. 108, 687 S.E. 2d 129 (SC 2009) citing Hausman v. Hausman, 199 S.W. 3rd 38 (Texas App. 2006).

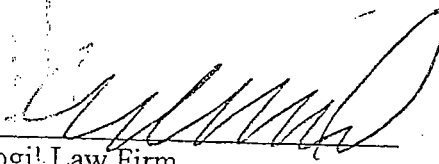
B. This Court's Order entered October 27, 2010 followed a hearing on Defendant's Motion to Dismiss on October 14, 2010. The underlying Motion was filed by Griffis in September, 2010. Griffis has argued that Plaintiffs could have supplemented their Complaint during the interim period between when they filed their Third Party Complaint and the ultimate date of the October hearing. At one hearing, the Court heard argument that there was a lengthy

period between when Griffis filed his Motion to Dismiss, represented to be in or around June, 2010 (neither party referred to a copy of the original motion with clocked date at the hearing, so the argument proceeded on that basis), but checking the Clerk of Court docket, it appears that the Motion to Dismiss was not actually filed until September 20, 2010, less than a month before the first hearing on Motion to Dismiss. Plaintiffs argue now, and argued during the Motion(s), that they had no reason to obtain the affidavit on an expedited basis prior to the October 14 2010 hearing because under the relation back doctrine, Plaintiffs had already tolled the statute of limitations in the matter with their Complaint, per above, and the fact that the hearing was delayed to October, 2010 was not the fault of the Plaintiffs—it was simply due to the Court's scheduling calendar, and as set forth above, Plaintiffs never considered that the statute of limitations triggered on October 10, 2007, as the case involved matters that were not disclosed at closing. Thus, less than a one month expired between the date Plaintiffs had actual notice of Mr. Griffis Section 15-100 defense, when he filed his Motion, and the hearing. Additionally, during the period between June, 2010 and October, 2010, and even prior to June, 2010, the Plaintiffs engaged Mr. Griffis and Mr. Hale in discussions towards resolution of the overall dispute(s), in good faith and in consideration of the historical relationship between the parties. Indeed, Plaintiffs attempted to schedule Mr. Griffis deposition during this interim period and deferred to his request to delay his deposition until he sought counsel, and after they filed their lawsuit, it appears that Plaintiffs granted any requested extension for Mr. Griffis to enlarge time to file responsive pleadings to their lawsuit, which pleadings were ultimately filed by Mr. Griffis on September 20, 2010, more than ninety days after the Third Party Complaint was first filed. In sum, Plaintiffs delayed the procurement of an expert affidavit in hope that the matter would resolve, without the need to

further document such unfortunate events, and in firm belief that they had already tolled the statute of limitations through the timely filing of their lawsuit. Nonetheless, once the issue was raised by Mr. Griffis by Motion, the Plaintiffs immediately responded and secured the necessary affidavit. It is incongruous and unjust that the Plaintiffs, who voluntarily enlarged Mr. Griffis time to respond to their own pleadings, be punished due to their good faith reliance on both their filings, the negotiation process between the parties, and ultimately this Court's order of October 27, 2010. The March 5, 2013 Order Granting Summary Judgment results in an injustice which denies Plaintiffs their day in Court to seek redress for the damages they suffered, to the benefit of their former counsel.

Finally, the Order grants Summary Judgment on the Plaintiffs' Cause of Action for Breach of Fiduciary Duty. In addition to the reasons and arguments presented above as to why Plaintiffs' assert their should be no summary judgment based on the statute of limitations, Plaintiffs further assert and request that the Order be amended to grant Plaintiffs' leave to re-plead their cause of action for breach of fiduciary duty separate and apart from Mr. Griffis' role as their counsel, but as a party to the transaction that both participated benefited in the transaction and structured it in a way that was against public policy and which resulted in significant losses to Plaintiffs.

Respectfully Submitted,



Mogil Law Firm
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March 18, 2013

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT 2012 AUG 14 PM 12:02) SEVENTEENTH JUDICIAL CIRCUIT

Cynthia Griffis

JENNIFER ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

ACTION NO.: 2009-CP-07-06054

Plaintiff

v.

NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION
SCRCP Rule 59(c)

Cherry Hill Estates, LLC, Eugene O'Neil
and Ronald Faulkner

Defendant(s)

Cherry Hill Estates, LLC and Ronald
Faulkner,

Third Party Plaintiffs

v.

Anthony E. Griffis

Third Party Defendant

TO: THE HONORABLE MARVIN H. DUKES, III AND THIRD PARTY
PLAINTIFFS (Cherry Hill Estates, LLC and Ronald Faulkner) AND THEIR COUNSEL,
MICHAEL W. MOGIL, ESQ.;

YOU WILL PLEASE TAKE NOTICE that on the tenth (10th) day after service
hereof or on such other day as the court shall hear the matter, Third Party Defendant
Anthony E. Griffis will move for reconsideration of the Order rendered on August 3,
2012 (Exhibit 1) on the ground that it is error to apply "equitable tolling" to allow Third
Party Plaintiffs additional time, outside the applicable statute of limitations, to obtain the
expert affidavit required by S.C. Code Section 15-36-100(F).

Attached and incorporated herein is Third-Party Defendant's Memorandum, dated March 28, 2011, in Support of his Motion for Summary Judgment, containing the procedural and factual background and legal arguments in support thereof (Exhibit 3).

ARGUMENT FOR SUMMARY JUDGMENT:

1. The applicable period of limitations for Third Party Plaintiffs' complaint expired on or before October 9, 2010 – three years after Plaintiffs' attorney and attorney-in-fact (John P. Qualey, Esq.) had actual notice of the personal guarantees on the loan obligations. *Dorman v. Campbell*, 500 S.E.2d 786 at p 789 (S.C App. 1998); *Crystal Ice Co. v. First Colonial Corp.*, 273 S.C. 306 (1979); *Faulkner v. Millar*, 319 S.C. 216 (1995).
2. Third-Party Plaintiff did not "have" the required expert affidavit until after expiration of the period of limitations, as evidenced by the notary date of November 11, 2010, on the expert affidavit. South Carolina Code section 15-36-100(F) provides, in pertinent part:

[I]f a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, **the complaint is not subject to renewal after the expiration of the applicable period of limitation** unless a court determines that the plaintiff had the requisite affidavit within the time pursuant to this section..." (emphasis added)

When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).

ARGUMENTS AGAINST EQUITABLE TOLLING

1. As acknowledged in the Order dated August 3, 2012, "there was certainly no deception or allegations of deception by the Defendant".
2. The sole basis for invoking equitable tolling is that the Order itself "misleads the Plaintiff on the issue of deadlines". This is error because:

(a) Plaintiff's attorney, Michael Mogil, actually prepared the proposed Order which was adopted by the Court on October 27, 2010, (Exhibit 2) without change. It is hard to conclude that the Order itself "misleads the Plaintiff" when it was prepared by the Plaintiff, with no objections from Defendant or changes by the Court.

(b) The Order of October 27, 2010, did not expressly grant Plaintiff an extension to obtain the required expert affidavit by November 14, 2010 – but rather an extension to file an Amended Complaint supported by the expert affidavit "as *required* by S.C. Code Section 15-36-100". The *requirement* of the statute is that the expert affidavit must be *obtained* within the period of limitations. Arguably, the requirement of the statute would have been met if the amended Complaint was filed (after the period of limitations) with an expert affidavit obtained/dated before October 10, 2010 – but the expert affidavit was not timely obtained and Plaintiffs' claims must be dismissed.

(c) There can be no "detrimental reliance", by the Plaintiff on the Order or any arguments that the Order misleads Plaintiff on the issue of deadlines (which is an issue of law from which (i.e. the ignorance thereof) there should not be an excuse, because the "deadline" had already lapsed on the date of the hearing (October 14, 2010) and the resulting Order dated October 26, 2010. Further, at the hearing on October 14, 2010, Defendant had no knowledge whether Plaintiff actually had obtained the expert

affidavit prior to October 9, 2010, and was under no obligation to inquire of such matter at that time. However, if Plaintiff had admitted that the expert affidavit had not been obtained at that hearing, the Court should have dismissed the Plaintiffs' claims at that time pursuant to S.C. Code Ann. Section 15-30-100(F).

(d) "Ignorance of the law" is no excuse for Plaintiff to be allowed an extension to obtain the expert affidavit outside the expiration of the period of limitations, contrary to the requirements of S.C. Code Section 15-36-100(F). The "issue of deadlines" is expressly set out in the statute and there is no one to blame except Plaintiff for his failure to read and understand the statute. Plaintiff filed its original Complaint in June, 2010, and had from then until October 9, 2010, to comply with the statute by obtaining an expert affidavit. It is rarely that a mistake in point of law can afford ground for relief, *Colburn v. Holland*, 35 S.C. Eq. 176 (S.C. App. Eq. 1868). A court of equity will not, in the absence of fraud or undue influence, grant relief from the consequence of a mistake of law. "Relief will not be granted where the complaining party took measure to secure knowledge as to the state of the law and, being misinformed, placed himself in the prejudicial situation of which he later complains. Everyone is presumed to have knowledge of the law and must exercise reasonable care to protect his interests." 27A Am.Jur.2d *Equity* § 7 (1996); *Smothers v. U.S. Fidelity and Guar. Co.*, 322 S.C. 207, 470 S.E.2d 858 (Ct.App.1996) *Id.*, 322 S.C. at 210-211, 470 S.E.2d at 860. *Estate of Holden*, 539 S.E.2d 703, 343 S.C. 267 (S.C. 2000).

(e) The Court should not, of its own motion, invoke equitable tolling. In *Hooper v. Ebenezer Senior Services and Rehabilitation Services*, 368 S.C.108 (SC 2009) (Exhibit 4), the Court stated that "the party claiming the statute of limitations should be

tolled bears the burden of establishing sufficient facts to justify its use". The Court further stated that the "party who seeks to invoke equitable tolling bears the devoir of persuasion and must, therefore, establish a compelling basis for awarding such relief". In this case, Plaintiff has never filed any Motion or otherwise argued in any way for the application of equitable tolling. Further, there are no "compelling" grounds for equitable tolling, such as deceptive acts of Defendant. As stated in *Hooper*, "equitable tolling applies where the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering facts essential to the filing of a timely lawsuit". In this case, there are no compelling reasons to apply equitable tolling, and Plaintiff has never made any request or Motion for such equitable tolling relief, much less established any compelling reason for such relief.

(f) As stated in *Hooper*, equitable tolling is a doctrine that should be used sparingly and only when there are compelling equitable considerations. In the instant case, there are no "compelling equitable considerations", other than the Plaintiffs' ignorance of the statutory requirement that the expert affidavit be obtained within the period of limitations. Recent cases (Exhibit 5) have refused to apply equitable tolling based upon *Hooper*, even upon Motion of the Plaintiff and with arguably some equitable grounds (which are totally absent here). In *Kimmer v. Wright*, 719 S.E.2d 265 (S.C. App. 2011), the Court stated "we are mindful the supreme court cautioned the doctrine of equitable tolling was to be used sparingly. We find application of the doctrine is not justified under the circumstances of this case". In *Kimmer*, there was a tolling agreement between the parties, to allow a workman's compensation claim to be pursued – but the court rejected this as a ground to apply equitable tolling. In *Holmes v. Marion School*

District, 093011 SCDC (US District Court, Florence Division, September 30, 2011) the court stated that "*Hooper* is inapposite to the facts here because *Hooper* involved the question of whether equitable tolling should be applied in limited circumstances such as when a defendant fails to properly list its registered agent for service with the South Carolina Secretary of State, as required by state law. *Hooper*, 687 S.E.2d at 32-34. The South Carolina Supreme Court noted equitable tolling 'should be used sparingly'. *Id* at 33."

Based upon the above arguments, I respectfully request that the Court reconsider its Order dated August 3, 2012, and grant my Motion for Summary Judgment on Plaintiffs' first three (3) causes of action because of failure to comply with S.C. Code Section 15-30-100.



Anthony E. Griffis, Pro Se
355 Park Ave SW
Aiken, SC 29801
Email: tonygriffis@gmail.com
(843) 368-5013

August 13, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Cynthia Griffis)

Plaintiff)

v.)

Cherry Hill Estates, LLC, Eugene O'Neil)
and Ronald Faulkner)

Defendant(s))

Cherry Hill Estates, LLC and Ronald)
Faulkner,)

Third Party Plaintiffs)

v.)

Anthony E. Griffis)

Third Party Defendant)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
JAN 28 AM 9:47

CIVIL ACTION NO. 2009-CP-07-06054
JERRI ANN ROBERTSON
CLERK OF COURT

MEMORANDUM IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE COURT AND THIRD PARTY DEFENDANT ANTHONY E.

GRIFFIS:

Defendants and Third Party Plaintiffs Ronald Faulkner and Cherry Hill Estates, LLC submit this memorandum in opposition to the Third Party Defendant Anthony E. Griffis' Motion to Dismiss and Motion for Summary Judgment.

In October, 2007, attorney Anthony E. Griffis and his estranged wife and employee Cynthia Griffis sold their family property, being 27 acres in Ridgeland, South Carolina, to a limited liability company formed by Mr. Griffis and intended to be owned by Mr. Griffis and his clients Eugene O'Neil and Ronald Faulkner. Ultimately, the property was purchased by the entity, Cherry Hill Estates, LLC, for the sum of \$ 1,00,013.00 and financed by a loan from Woodlands Bank in amount of \$ 850,000 and a second mortgage note given to Cynthia Griffis in

amount of \$ 200,000. (HUD 1, Exhibit 1). The second mortgage note term expired in 2009. The transaction, as structured by Mr. Griffis, required that Mr. O'Neil and Mr. Faulkner guarantee both promissory notes. Although Mr. Griffis structured the transaction to grant himself a one third owner in the company acquiring title to the real property, Mr. Griffis did not personally guarantee either purchase money note. Both Mr. Faulkner and Mr. O'Neil have testified at deposition that they did not understand that they were being asked to personally guarantee Ms. Griffis' second mortgage note, but rather that they thought she would be paid if and when the land was sold or developed. (Faulkner deposition at pp 124, 128, 10, 23, 37-39, 40, 41, 57-59, 66, Exh 2), (Deposition of O'Neil at 14, 17, 46-49, Exh 3). Neither Mr. Faulkner, Mr. O'Neil nor Cherry Hill Estates, LLC were represented by separate counsel during the negotiation phase of the transaction, or prior to or during the event when they executed a number of sales contracts and separate side agreements, in Mr. Griffis office. (Depositions of Faulkner, O'Neil, Exhibits 2 and 3 hereto). Ultimately, nine days before closing, Cherry Hill Estates, LLC was referred to another attorney to handle the loan transaction (as Mr. Griffis could not act as settlement agent where he was the seller) and the transaction was closed by Jack Qualey, Esq. The note(s) required to be guaranteed by Mr. Faulkner were executed by Mr. Qualey with Specific Power of Attorney.

In December, 2009 Cynthia Griffis sued Cherry Hill Estates, LLC, Ronald Faulkner and Eugene O'Neil for breach of contract, seeking collection of \$ 200,000 allegedly owed under the second mortgage promissory note, plus interest and fees. Defendants filed a motion for leave to amend their Answer and to assert Third Party Complaint against Mr. Griffis on May 25, 2010, and the motion for leave was granted by the Court on June 18, 2010. The Third Party Complaint was filed by Cherry Hill Estates, LLC and Ronald Faulkner on June 22, 2010. The Third Party

Complaint alleged, inter alia, causes of action for breach of fiduciary duty, professional negligence and indemnification against Mr. Griffis, claiming that he failed to properly refer his clients to separate counsel prior to engaging in personal business transactions with them, and that he unfairly took advantage of his clients to his benefit and their detriment. Pertinent to the within motion for summary judgment, Mr. Griffis filed a motion to dismiss the breach of fiduciary duty and negligence claims arguing that South Carolina Code of Laws Section 15-36-100 required that an affidavit from an expert be filed with the causes of action sounding in professional negligence. The Court, by Order entered October 27, 2010, dismissed the professional negligence causes of action without prejudice and granted leave to file an amended complaint within 30 days supported by an expert affidavit on those causes of action. The Third Party Plaintiffs herein complied with the Order by timely serving an Amended Third Party Complaint before November 14, 2010, supported by the Affidavit of their expert, Thomas Pendarvis, Esq., whom opined in his affidavit that Anthony Griffis' actions in the course of his dealings with these clients constituted professional negligence. (Affidavit of Pendarvis, Exh 4). The within motions to dismiss, converted to a motion for summary judgment, followed.

Defendant Griffis argues that because the expert affidavit filed and served with the Amended Third Party Complaint was executed November 9, 2010, three years and one month from the closing date of the underlying transaction in 2007 which gave rise to the allegedly liabilities and damages accruing to Cherry Hill Estates and Faulkner, the Amended Third Party Complaint should be dismissed pursuant Section 15-36-100.

As argued below, Third Party Plaintiffs respectfully show that Mr. Griffis' motion should be denied for a number of reasons: 1) the "relation back" doctrine codified by S.C.R.C.P. Rule 15 (c), 2) the discovery rule, and 3) South Carolina Code Section 15-36-100.

I. Legal Analysis

A. The "Relation Back" Doctrine.

South Carolina Rule of Civil Procedure 15 (c) codifies the common law "relation back" doctrine. The test to be used in determining whether or not an amendment should be allowed to relate back under Rule 15 (c) to the date of the original pleading to avoid statute of limitations, is found in the language of the Rule; specifically, whether the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth in the original pleading. Thomas v. Grayson, 318 S.C. 82, 456 S.E. 2d 377 (1995). Applied to the instant case, Rule 15 (c) and the relation back doctrine require that the date for tolling of the statute of limitations relate back to the filing date for the first Third Party Complaint, being June 22, 2010, since that Third Party Complaint put Mr. Griffis on specific notice of the breach of duty and professional negligence claims against him.

B. The Discovery Rule

Under the relation back doctrine, the subject Amended Third Party Complaint with supporting expert affidavit was filed within the three year period after the earliest conceivable date for triggering the statute of limitations, being the date of closing, October 10, 2007. South Carolina also follows the discovery rule, which states that the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist. Thus, even if the Court were interpret Section 15-36-100 as somehow superceding Rule 15 (c) and the relation back doctrine, the discovery would trigger the statute of limitations on or after January 11, 2010, when Ronald Faulkner was served with the lawsuit by Cynthia Griffis which demanded recovery on the \$ 200,000 second mortgage promissory note. The Amended Third Party Complaint, accompanied by Mr. Pendarvis affidavit,

was served less than eleven months thereafter.

C. No Actual or Constructive Notice in 2007.

Mr. Griffis contention that Mr. Faulkner (and Cherry Hill Estates, LLC) were put on constructive notice by Mr. Griffis fax transmission on October 9, 2007 to settlement agent Jack Qualey regarding the existence of the personal guarantees on the second mortgage note, and thus trumping the discovery rule, does not support summary judgment because Mr. Faulkner has testified that he did not believe Mr. Qualey was his attorney, that Mr. Faulkner had never hired him before the closing, does not recall the substance of any conversation with Mr. Qualey, and has not spoken to him or retained him for any purpose after the closing, and that in Mr. Faulkner's view, Mr. Qualey was simply acting as his attorney in fact to sign documents. (Deposition excerpts at Exhibit 2). Mr. Faulkner's sworn testimony in this regard creates a genuine fact issue that cannot be resolved at the summary judgment level in this jury demand case.

Equally significant, the alleged professional negligence and breach of duty alleged in this matter transcend the existence of the personal guarantees on the second mortgage note. As Mr. Pendarvis' affidavit states Mr. Griffis breached the standard of care when he failed to inform his clients, in writing, to obtain separate counsel, and of the potential conflicts of interest, prior to entering into the separate side agreements of September 13, 2007 and October 8, 2007. These side agreements, which formed the basis of the transaction and Ms. Griffis and Mr. Griffis and Mr. O'Neil's willingness to proceed, and which involved significant deviations from the transaction as represented to Mr. Qualey and Woodlands Bank, i.e. the refund of Sellers's proceeds to Mr. O'Neil and Cherry Hill Estates, LLC which is not depicted on the HUD 1 settlement statement at Exh 1, were not shown to Mr. Qualey, were not in Mr. Qualey's file, and

prior to his deposition were unknown to Mr. Qualey. (Deposition of Jack Qualey at pp 44-46,70). Thus, there is no possibility that Mr. Qualey in a capacity as agent for Mr. Faulkner could have had actual or constructive notice of the acts that are being alleged as professional negligence--those acts were concealed from him.

D. S.C. Code Section 15-36-100.

The undersigned could not locate reported cases or legislative history suggesting that Section 15-36-100 was intended to abrogate the relation back doctrine for amended pleadings or the discovery rule. Reviewing the plain language of the statute, Section 15-36-100 (C) grants the trial judge discretion to grant leave to amend a pleading to include the expert affidavit if "justice requires". After lengthy argument at motion hearing, this Court did grant the Third Party Plaintiffs leave to refile their Third Party Complaint as reflected in the October 26,2010 Order. The Third Party Plaintiffs complied with the Order and filed their Amended Complaint, with supporting affidavit, within 30 days.

Section 15-36-100 (D) plainly states that " if the affidavit is filed within the period specified in this section, the filing of the affidavit after the expiration of the statute of limitations is considered timely and provides no basis for the statute of limitations defense." In the instant case, the Court properly exercised its discretion to extend the time for Third Party Plaintiffs to obtain and file a timely expert affidavit , and the parties complied with the Order. If this Court were to accept Mr. Griffis' arguments herein, and both ignore the Rule 15 (c), and Section 15-36-100 (D), it would also render its October 26 Order ineffective.

E. An Expert Affidavit May Not Have Been Necessary to Support the Breach of Duty Claims asserted.

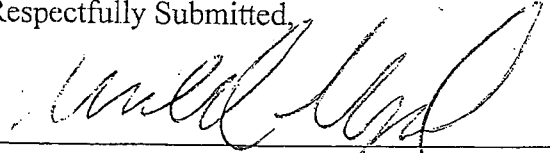
Third Party Plaintiffs note that Section 15-36-100(C)(2) appears to eliminate the contemporaneous filing requirement where "the subject matter lies within the ambit of common knowledge and experience, such that no special learning is needed to evaluate the conduct of the defendant." The Amended Third Party Complaint alleges facts which are generally understood rules requiring professionals to disclose conflicts of interest to their clients, and also alleges facts that Cherry Hill Estates, LLC and Mr. Faulkner were advised by Mr. Griffis to enter into a transaction involving refunding of seller proceeds to the buyer entity. Third Party Plaintiffs assert that if these Seller refunds, using essentially lender money, were disclosed to the lender the lender would have canceled the transaction, and as it relates to parties whom benefitted from the non disclosure, does void the transaction. Mr. Griffis structured and drafted the agreement(s) that created this event and had the parties execute those agreement(s) in his office, unknown to the settlement agent or bank according to the fact record as developed thus far. This element of the Third Party Complaint alleges errors within the ambit of common knowledge and experience, such that no professional affidavit would be needed to support those claims of breach of duty and care.

II. Conclusion

Wherefore, for the reasons argued above, Third Party Plaintiffs Ronald Faulkner and Cherry Hill Estates, LLC respectfully request that the Court deny the Motion to Dismiss and Motion for Summary Judgment and permit the case to proceed to trial. should be denied.

March 26, 2011
Hilton Head Island, SC

Respectfully Submitted,



Law Office of Michael W. Mogil, P.A.
Michael W. Mogil, SC Bar No. 11933
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Hilton Head Island, SC 29928
(843) 785-8110
Email mmogil@mogillaw.com
Attorney for Ronald Faulkner
And Cherry Hill Estates, LLC

EXHIBIT 1



A. Settlement Statement

U.S. Department of Housing
and Urban Development

OMB No. 2502-0265

B. Type of Loan				6. File Number CHERRYHI		7. Loan Number		8. Mortgage Insurance Case Number BB	
1. ☐ FHA 2. ☐ FmHA 3. ☒ Conv. Unins. 4. ☐ VA 5. ☐ Conv. Ins.									
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for information purposes and are not included in the totals.									
D. Name and Address of Borrower Cherry Hill Estates, LLC 5 Big Oak Street Hilton Head Island, SC 29926				E. Name and Address of Seller Anthony E. Griffiths Cynthia Griffiths 1721 Cherry Hill Road Ridgeland, SC 29936			F. Name and Address of Lender Woodlands Bank 135 Canal Street Pooler, GA 31322		
G. Property Location 1721 Cherry Hill Road Ridgeland, SC 29936 27.098 Acres Jasper County, SC						H. Settlement Agent QUALEY LAW FIRM, P.A. Place of Settlement 32 Office Park Rd., Sta. 100 P.O. BOX 10 HILTON HEAD ISL, SC 29936			I. Settlement Date 10/10/07
J. SUMMARY OF BORROWER'S TRANSACTION:					K. SUMMARY OF SELLER'S TRANSACTION:				
100. GROSS AMOUNT DUE FROM BORROWER					400. GROSS AMOUNT DUE TO SELLER				
101. Contract sales price 1,013,000.00					401. Contract sales price 1,013,000.00				
102. Personal property					402. Personal property				
103. Settlement charges to borrower (line 1400) 17,449.06					403.				
104.					404.				
105.					405.				
Adjustments for items paid by seller in advance					Adjustments for items paid by seller in advance				
106. Rental Taxes to					406. Rental Taxes to				
107. County taxes to					407. County taxes to				
108. Assessments to					408. Assessments to				
109.					409.				
110.					410.				
111.					411.				
112.					412.				
120. GROSS AMOUNT DUE FROM BORROWER 1,030,449.06					420. GROSS AMOUNT DUE TO SELLER 1,013,000.00				
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER					500. REDUCTIONS IN AMOUNT TO SELLER				
201. Deposit or earnest money					501. Earnest Deposit (see instructions)				
202. Principal amount of new loan(s) 850,000.00					502. Settlement charges to seller (line 1400) 2,280.00				
203. Existing loan(s) taken subject to					503. Existing loans taken subject to				
204.					504. Payoff of first mortgage loan 287,090.73				
					SunTrust Bank				
205.					505. Payoff of second mortgage loan				
206. Second Mortgage 200,000.00					506. Second Mortgage 200,000.00				
207.					507.				
208.					508.				
209.					509.				
Adjustments for items unpaid by seller					Adjustments for items unpaid by seller				
210. Rental Taxes to					510. Rental Taxes to				
211. County taxes 01/01 to 10/10 169.92					511. County taxes 01/01 to 10/10 169.92				
212. Assessments to					512. Assessments to				
213.					513.				
214. Mobil Home Taxes 295.27					514. Mobil Home Taxes 295.27				
215.					515.				
216.					516.				
217.					517.				
218.					518.				
219.					519.				
220. TOTAL PAID BY / FOR BORROWER 1,050,465.19					520. TOTAL REDUCTION AMOUNT DUE SELLER 489,835.92				
300. CASH AT SETTLEMENT FROM OR TO BORROWER					600. CASH AT SETTLEMENT TO OR FROM SELLER				
301. Gross amount due from borrower (line 120) 1,030,449.06					601. Gross amount due to seller (line 420) 1,013,000.00				
302. Less amounts paid by/bor borrower (line 220) 1,050,465.19					602. Less reduction amount due to seller (line 520) 489,835.92				
303. CASH TO BORROWER 20,016.13					603. CASH TO SELLER 523,164.08				

In the event a re-proration of the taxes is necessary when the tax bills for 2007 are prepared, the parties agree to handle said re-proration between themselves. SUBSTITUTE FORM 1099 SELLER STATEMENT: The information contained herein is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this form is required to be reported and the IRS determines that it has not been reported. The Contract Sales Price described on Line 401 above constitutes the Gross Proceeds of this transaction.

0049

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SETTLEMENT STATEMENT
PAGE 2

File Number: CHERRYHI

L. SETTLEMENT CHARGES:		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700.	TOTAL SALES/BROKER'S COMMISSION based on price \$		
Division of commission (line 700) as follows:			
701.	\$ to		
702.	\$ to		
703.	Commission paid at Settlement		
704.			
800.	ITEMS PAYABLE IN CONNECTION WITH LOAN	P.O.C.	
801.	Loan Origination Fee % Woodlands Bank	8,500.00	
802.	Loan Discount %		
803.	Appraisal Fee to Lowcountry Appraisals 2100.00S		
804.	Credit Report to Woodlands Bank	17.00	
805.	Lender's Inspection Fee to		
806.	Administrative Fee to		
807.	Underwriting Fee to		
808.	Flood Certification CBCInnovis	13.00	
809.	Processing Fee		
810.	Lender Doc. Prep. Fee Woodlands Bank	125.00	
811.			
812.			
813.			
814.			
815.			
900.	ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE		
901.	Interest from to @ \$ /day		
902.	Mortgage Insurance Premium to		
903.	Hazard Insurance Premium 1 yrs. to BB&T Carswell Insurance Services	2,110.46	
904.			
905.			
1000.	RESERVES DEPOSITED WITH LENDER FOR		
1001.	Hazard Insurance mo. @ \$ / mo.		
1002.	Mortgage Insurance mo. @ \$ / mo.		
1003.	City property taxes mo. @ \$ / mo.		
1004.	County property taxes mo. @ \$ / mo.		
1005.	Annual Assessments mo. @ \$ / mo.		
1006.	mo. @ \$ / mo.		
1007.	mo. @ \$ / mo.		
1008.	Aggregate Reserve for Hazard/Flood Ins, City/County Prop Taxes, Mortgage Ins & Annual Assessments		
1100.	TITLE CHARGES		
1101.	Settlement or closing fee to		
1102.	Abstract or title search to Freelance Abstracting	175.00	
1103.	Title examination final update to Freelance Abstracting	45.00	
1104.	Title insurance binder to Plantation Title Agency, Inc.	75.00	
1105.	Document preparation to		
1106.	Notary fees to		
1107.	Attorney's fees to Quayley Law Firm, P.A.	500.00	
(includes above item No.)			
1108.	Title Insurance to Plantation Title Agency, Inc.	1,819.50	
(includes above item No. Due to CTCIC: \$727.80)			
1109.	Lender's coverage 850,000.00 -- 75.00		
1110.	Owner's coverage 1,013,000.00 -- 1,744.50		
1111.	Doc. Prep. For Second Mortgage Quayley Law Firm, P.A.	200.00	
1112.			
1113.			
1200.	GOVERNMENT RECORDING AND TRANSFER CHARGES		
1201.	Recording fees Deed \$ 10.00 ; Mortgage \$ 25.00 ; Releases \$ 5.00	35.00	5.00
1202.	City/county/stamps Deed \$; Mortgage \$		
1203.	State tax/stamps Deed \$ 3,748.10 ; Mortgage \$	3,748.10	
1204.			
1205.			
1300.	ADDITIONAL SETTLEMENT CHARGES		
1301.	Survey to		
1302.	Termite Inspection to		
1303.	Courier, Copy, Phone, Fax Quayley Law Firm, P.A.	50.00	
1304.	Overnight Loan Pkg. & Payoff Quayley Law Firm, P.A.	25.00	25.00
1305.	Survey Sea Island Land Survey, LLC		2,250.00
1306.	Record Second Mortgage Jasper County ROD	11.00	
1307.			
1308.			
1400.	TOTAL SETTLEMENT CHARGES (enter on lines 103 and 502, Sections J and K)	17,449.06	2,280.00

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of the amounts and disbursements made on my account or by the in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Eugene Ornel, Managing Member

Ronald T. Feustner, Member

Anthony E. Galt

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

QUALEY LAW FIRM, P.A.

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment. For details see Title 18 U.S. Code Section 1001 and Section 1010.

EXHIBIT 2

1 HALE - FAULKNER (DIRECT EXAMINATION)

124

2 Q You do have a problem comprehending
3 what you read, okay. Did you have a problem
4 comprehending this particular document?

5 A Well, what I entrusted at the time was
6 that my judgment on Anthony Griffis and Gene
7 O'Neil, and myself, to put my trust in their
8 judgment, and to the point that, number one, I
9 would not agree to a two-year note if I knew
10 that was in there and it wasn't part of a real
11 estate transaction.

12 And I would think under the
13 circumstances that Anthony Griffis, who was
14 involved in the LLC with us also, would have me
15 seek advice from another attorney.

16 Q Why would you think that he would have
17 you seek advice from another attorney?

18 A Well, number one, he was involved in a
19 transaction with me; and also being an attorney
20 that I have used many times over, that I just
21 feel it would have been appropriate to advise me
22 better rather than being so involved in getting
23 his divorce resolved to lock me into something
24 that I would not agree to, even though I did
25 sign it.

1 HALE - FAULKNER (DIRECT EXAMINATION)

128

2 Q Well, let's ask that question. Was
3 Mr. Qualey your attorney?

4 A Was he my attorney?

5 Q Yes.

6 A He was the closing attorney, but he was
7 not somebody that I picked.

8 Q So he was the closing attorney. Who
9 did Mr. Qualey represent?

10 A He -- most likely -- I recall that he
11 was picked by Anthony Griffis.

12 Q But who did Mr. Qualey represent?

13 A As a closing attorney?

14 Q Yes.

15 A I don't recall him representing me. I
16 had to leave town.

17 Q But you appointed him as your attorney
18 in fact; correct?

19 A Yes, by -- by recommendation, yes.

20 Q And you spoke with Mr. Qualey?

21 A Correct.

22 Q And you say that Mr. Qualey was the
23 closing attorney; correct?

24 A Correct.

25 MR. HALE: Enter this as an

1 HALE - FAULKNER (DIRECT EXAMINATION)

10

2 meeting?

3 A I wasn't dealing with a problem during
4 the meeting.

5 Q So at the time of the meeting, you
6 really didn't have any problem with that
7 situation or condition?

8 A At the time of the meeting, correct.

9 Q Now, at the time of the meeting, was
10 there any solution negotiated?

11 A I don't recall any solution at that
12 time. At that time it was a general -- just a
13 general meeting. Nothing was -- basically, we
14 were just talking about the LLC and how Tony
15 Griffis and O'Neil and I were going to be
16 involved in the LLC. And there was no talk
17 about guarantees or personal guarantees or
18 how -- it was actually just a real estate
19 transaction.

20 Q You're saying there was no talk of
21 guarantees?

22 A No.

23 Q Are you firm in that memory?

24 A Yes.

25 Q Would it surprise you to learn that

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0053

1 HALE - FAULKNER (DIRECT EXAMINATION)

23

2 Q Now, did John Qualey represent you, was
3 he your attorney?

4 A Was he my attorney, no.

5 Q He was not your attorney in this
6 transaction?

7 A Well, on the transaction with the Power
8 of Attorney, yes.

9 Q He had a Power of Attorney, but was he
10 your attorney at law?

11 MR. MOGIL: I'm objecting to the
12 form.

13 THE WITNESS: No. No. No.

14 BY MR. HALE:

15 Q He was not your attorney at law?

16 A No.

17 Q He did not represent you in a capacity
18 as a lawyer --

19 A No.

20 Q -- in this transaction?

21 A No.

22 Q So you would have no basis to assert
23 that attorney-client privilege would apply to
24 Mr. Qualey with respect to your involvement in
25 this transaction?

1 HALE - FAULKNER (DIRECT EXAMINATION)

37

2 A Number one, I thought I was
3 guaranteeing a mortgage, that promissory note
4 that would be taken care of if the property got
5 sold or developed, and that everybody was going
6 to take their share of one-third, and to me this
7 was a real estate mortgage transaction, not to
8 the point that it was going to be beared by any
9 one person.

10 Q Are there any other things?

11 A It gets back to the fact that I feel I
12 should have been advised to have somebody
13 besides the Griffis law firm just looking at
14 this transaction.

15 Q Anything else?

16 A I feel if -- under the -- what I see is
17 that Tony Griffis also had been part of Cherry
18 Hill Estates as much as one of the guarantors.

19 Q Are you saying you feel he should have
20 been a guarantor there?

21 A Yes.

22 Q Anything else?

23 A I can't think of any right now.

24 Q Now, Paragraph 1 says Cindy Griffis
25 shall receive a promissory note guaranteed by

1 HALE - FAULKNER (DIRECT EXAMINATION)

38

2 Ron Faulkner and Eugene O'Neil. So is it safe
3 to say when you saw that on October 8th, 2007
4 and signed that, that you agreed to guarantee a
5 promissory note?

6 A I did not know that I was signing a
7 note. I thought I was signing a guarantee, when
8 the property was sold or developed, that they
9 would receive a note.

10 Q I'm sorry.

11 A I lost you, huh?

12 Q I don't understand that response. Can
13 you elaborate what your thought was on
14 October 8th, 2007.

15 Are you familiar with the concept of a
16 guarantee?

17 A I think I do.

18 Q Have you ever guaranteed obligations
19 before?

20 A In a real estate transaction, I can't
21 recall.

22 Q You can't recall. Have you ever
23 guaranteed anything before?

24 A If you asked me, I probably couldn't
25 tell you one.

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1 HALE - FAULKNER (DIRECT EXAMINATION)

39

2 Q You can't recall one at this time?

3 A Right.

4 Q Other than this obligation?

5 A Correct.

6 Q But you did guarantee this obligation,
7 because you agreed to, didn't you?

8 A It was agreed by Cherry Hill Estates as
9 much as -- which included me, O'Neil, and
10 Mr. Griffis.

11 Q So it's your belief that Mr. O'Neil and
12 Mr. Griffis should share in this obligation?

13 A Yes.

14 Q Have you sued them to get them to share
15 in this obligation?

16 A I probably can't speak on that, but
17 that's a possibility.

18 Q So it's a possibility that you could
19 pursue them for that; correct?

20 A A possibility.

21 Q Now, you did have or Mr. Qualey did act
22 as your Power of Attorney in this matter, did he
23 not?

24 A Yes.

25 Q What discussions did you have with

1 HALE - FAULKNER (DIRECT EXAMINATION)

40

2 Mr. Qualey?

3 A I don't recall.

4 Q Do you recall having had any
5 discussions with him?

6 A I recall him calling me and the fact
7 that it was -- I was in a noisy place, had a bad
8 connection. I don't recall everything that was
9 discussed when he did call me.

10 Q What place were you in?

11 A I don't even remember.

12 Q But you do remember it was noisy?

13 A I remember it was not a good connection
14 with everything on the phone.

15 Q I believe you testified earlier that it
16 was a restaurant?

17 A A restaurant/lounge area, yes.

18 Q And at this point, you have no
19 recollection what that discussion was about?

20 A Not at all, any detail at all.

21 Q Do you have any objections as to what
22 Mr. Qualey did?

23 A Probably under the setting of the
24 discussion and understanding and not having a
25 copy of what was going to be signed, I probably

1 HALE - FAULKNER (DIRECT EXAMINATION)

41

2 have some objections, yes, because I

3 Q Well, what in particular would you
4 object to with respect to what was signed?

5 A That I -- number one, I probably would
6 have had documents in front of me in an area
7 like my office where I could go over the
8 documents rather than the way it was done.

9 Q It was done without you having
10 documents in front of you?

11 A Right.

12 Q Did you tell him not to proceed until
13 you had the documents in front of you?

14 A At that time, I don't recall, but most
15 likely not, because, as I said, it wasn't a good
16 connection or it was noisy, and I just -- to me,
17 it was very confusing.

18 Q But you did give him a Power of
19 Attorney to proceed in your behalf; correct?

20 A Correct.

21 Q And he was to proceed in your behalf in
22 accordance with the agreement that you had
23 signed and negotiated, I believe we're talking
24 about Plaintiff's Exhibit 6; correct?

25 A You want to know

2 Q So is it fair to say these documents
3 are not photocopies of one another, but they are
4 separated executed documents?

5 A That's correct.

6 Q And even looking at the number "8" at
7 the top of the page, is that number "8" written
8 differently on both of them?

9 A Yes.

10 Q At the time you executed whichever of
11 these you executed, did you understand that you
12 were guaranteeing a \$200,000 promissory note
13 secured by a second mortgage on the subject
14 property for two years, as stated in Paragraph
15 1?

16 A No, I didn't.

17 Q Did you read it before you signed it?

18 A I don't recall if I read it completely.

19 Q Whose advice were you relying on when
20 you agreed to sign this?

21 A I was relying on Tony Griffis and
22 Eugene O'Neil.

23 Q Were you relying on Cynthia Griffis?

24 A Well, she was part of the law office,
25 so, yes, I was relying on the team there.

2 Q At the time you entered into this
3 agreement, which was sometime in October of 2007
4 but dated October 8th, did you consider Cynthia
5 Griffis to be working for your law firm?

6 A Yes.

7 Q When you were speaking to her, did you
8 feel like it was in confidence, that you could
9 tell Tony, or what was your expectation?

10 A Yes, I figured that they were a team in
11 the law firm, her being a notary and paralegal,
12 and normally they can speak for each other at
13 that time.

14 Q You testified you didn't understand
15 that you were signing a guarantee on a second
16 mortgage, as it states here?

17 A I didn't understand it completely, no.

18 Q You testified earlier in response to
19 Mr. Hale's questions that you thought that you
20 were going to be paying a third, a third, a
21 third when property was sold or developed. Can
22 you explain what you meant by that.

23 A Well, O'Neil and Griffis and I, as is
24 stated here, were one-third of Cherry Hill
25 Estates, and the idea was to -- when we

2 developed the property, that, here, Tony would
3 be part of the investment. And that's basically
4 what I meant. I figured that was -- Cherry Hill
5 Estates was basically the three of us were
6 responsible for the development as much as the
7 loan.

8 Q In Paragraph 3 of the agreement, it
9 says "Anthony Griffis shall receive a one-third
10 interest in Cherry Hill Estates, LLC, for his
11 investment." Did you understand that he was
12 receiving a one-third interest when you signed
13 this?

14 A Yes, I did.

15 Q Did you think he was personally
16 obligated on the loan just as you were?

17 A Yes.

18 Q When did you first learn he was not
19 personally obligated on the loan?

20 A Well, when this here lawsuit started, I
21 realized it at that time.

22 Q Who directed you to go to Mr. Qualey's
23 office?

24 A It was the Griffis law firm, Tony. I
25 did not set up going to that office.

2 understand that you were unconditionally
3 guaranteeing a promissory note?

4 A No. No.

5 Q If you understood that, if that had
6 been explained to you, would you have agreed to
7 do this transaction?

8 A No.

9 Q Why not?

10 A Like I testified, that this was a -- I
11 thought this was a real estate transaction, that
12 there'll be a second for Cindy that was put in
13 there, and I was not -- it was not discussed in
14 our meetings with all parties about a personal
15 guarantee, and I should have been advised more
16 that -- from those discussions that it should
17 not have been in there.

18 Q Going back, did Cynthia Griffis ever
19 encourage you or request that you participate in
20 this transaction?

21 A Say that again now.

22 Q Did Cynthia Griffis encourage you to
23 participate in this transaction?

24 A I would say by my talks with her and
25 meeting with her, that she did encourage.

EXHIBIT 3

1 MOGIL - O'NEIL (DIRECT EXAMINATION)

14

2 specifically.

3 What is your recollection of the
4 circumstances in which you just testified Mr.
5 Griffis referred, recommended you bring Ron in?

6 A May I use my notes?

7 Q I guess you have to. If you use your
8 notes --

9 A This is just stuff you already have
10 copies of, but that is fine.

11 Q Whatever you refer to we can examine
12 you on and make a part of the record of this
13 deposition.

14 A When Tony and I first started talking
15 about it, it was primarily those two want to
16 split. It was their last asset. They were
17 fighting like cats and dogs. Tony told me that
18 basically it is either they are going to loose
19 the property or whatever.

20 Him and I talked about it initially,
21 myself when it was just a matter of just taking
22 out the loan. That wasn't good enough for
23 Cindy. There were so many different things
24 drawn up and went back and forth, and half of
25 them I don't even have and they are probably in

1 MOGIL - O'NEIL (DIRECT EXAMINATION)

17

2 designated for this transaction?

3 A It was suggested by either Cindy or
4 Tony, and I knew Jim so it was no big deal.

5 Q So why didn't Mr. Hale's office close
6 it?

7 A That I don't know.

8 Q And then Mr. Qualey, you didn't contact
9 Mr. Qualey?

10 A No.

11 Q Would it have been Cynthia Griffis who
12 referred him or Tony Griffis?

13 A I don't know that. Tony Griffis is who
14 informed me that it was going to be there.

15 Q Do you recall entering into an
16 engagement letter with Mr. Qualey?

17 A No, I did not.

18 Q I looked at his file and I did not see
19 one.

20 Who informed Woodlands Bank that Qualey
21 was the law firm?

22 A That I do not know.

23 Q Did you?

24 A I did not.

25 Q Are you sure?

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2 until Woodlands needed stronger financial's.

3 Q If Woodlands had not asked for stronger
4 financial's does Ron get brought in?

5 A No.

6 Q Did Cynthia require Ron to be brought
7 in?

8 A No.

9 Q Did Tony?

10 A Tony asked me to approach him.

11 Q How about -- did you believe Ron was
12 giving a personal guarantee on this?

13 A No, I was actually -- I was pissed and
14 I had part blame for it.

15 Q Why were you pissed?

16 A Because it was made real clear to both
17 of them there was no personal -- you all call it
18 personal guarantee down here. In Maryland it is
19 a promissory note. We talk different lingo, but
20 anyway -- but just as I said before, the intent
21 was if the property sold for or more whatever
22 the contract was for, that she would receive the
23 funds. That she also understood the risks, that
24 if it sold for less for whatever reason she may
25 not see any of it. She is getting her 150 now.

1 MOGIL - O'NEIL (DIRECT EXAMINATION)

47

2 And I mean that was over and over again.

3 Q Is that how Ron understood it, if --

4 A No -- this is how Ron understood it,
5 because that is how I conveyed it to him.

6 Q You just testified that on October 8
7 right before closing you had a meeting in
8 Griffis' office, and you told Mr. Griffis to
9 leave so you could make sure that Cynthia
10 Griffis understood what was going on; and that
11 the agreement that you signed was different than
12 what you thought your conversation with her was?

13 A That is not exactly what I said, but
14 close.

15 Q Okay.

16 A What I said was is we all four of us
17 met. We went over it. These two were going at
18 it like cats and dogs. I finally said Tony,
19 please leave the office. I went over the
20 agreement with Tony of what was supposed to be
21 in the contract -- not with Tony, with Cynthia.
22 I explained to her how it was going to work.
23 Her only request is that we handle her money
24 because she didn't want him getting his hands on
25 it.

2 And from there I expected that to be
3 turned into a regular contract and gone forward.

4 Q I am going to show you a document which
5 you signed ostensibly. I am going to ask you if
6 this is your signature dated September 13, 2007,
7 which has been introduced as an exhibit in
8 several depositions; but we will reintroduce it
9 here as Defendant's Exhibit 1.

10 (Whereupon, Defendant's Exhibit
11 Number 1 was marked for
12 identification.)

13 BY MR. MOGIL:

14 Q Mr. O'Neil, can you take a look at that
15 and then also let me know if that is your
16 signature at the bottom.

17 A Uh-huh. It is just one of those -- as
18 I mentioned before that there were so many of
19 them that it would be drawn up whenever somebody
20 changed their mind, but at that point that is
21 correct.

22 Q So this is a document -- where do you
23 think this document was entered into?

24 A Where do I think what?

25 Q Where was this document signed?

2 A I presume at Tony's office.

3 Q Would you have met with Tony on or
4 around September 13, 2007?

5 A I probably met with Tony at least once
6 or twice a month. Just if nothing else to say
7 hi, so probably yes.

8 Q So this document signed now three weeks
9 before the closing also says that Ron Faulkner
10 and Eugene O'Neil guarantee a \$200,000
11 promissory note secured by a second mortgage.

12 A Then that would have been -- again, it
13 goes back to the same thing. It got to the
14 point where they were all intent and agreements
15 that changed every time until we get a final
16 agreement.

17 Q Why did you sign it?

18 A Because of my conversations with Tony.
19 I trusted that there was no personal guarantee.
20 And again I go back to a background of real
21 estate in Maryland. A promissory note is a
22 promissory note held against the property.
23 There is no recourse to that.

24 Q So what did you believe this agreement
25 was going to be used for?

EXHIBIT 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2009-CP-07-6054

Cynthia Griffis,

Plaintiff,

vs.

CHERRY HILL ESTATES, L.L.C.; Eugene
O'Neil; and Ronald Faulkner,

Defendants.

CHERRY HILL ESTATES, L.L.C. and
Ronald Faulkner,

Third Party Plaintiffs,

v.

Anthony E. Griffis,

Third Party Defendant.

**AFFIDAVIT OF
THOMAS A. PENDARVIS, J.D.**

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

SS:

PERSONALLY APPEARED before me, Thomas A. Pendarvis, J.D., who, first being duly sworn, and says that:

1. Assuming that the Third-Party Plaintiffs in this action prove the facts alleged in their Third-Party Complaint, it is my expert opinion, held to a reasonable degree of professional certainty, that Anthony E. Griffis, J.D. (GRIFFIS) committed malpractice – violating the standard of care of South Carolina lawyers by failing to render services and provide legal advice to his clients, CHERRY HILL ESTATES, L.L.C. and Ronald Faulkner (“the CLIENTS”), with the degree of skill, care, knowledge, and

judgment usually possessed and exercised by members of the legal profession in South Carolina – that proximately caused damages to them:

- a. In failing to represent the CLIENTS with undivided loyalty, to preserve the CLIENTS' confidences, and to disclose to the CLIENTS any material matters infringing upon those obligations.
- b. In entering into a business transaction with the CLIENTS.
- c. In entering into a business transaction with the CLIENTS on terms that were not fair and reasonable to the CLIENTS.
- d. In entering into a business transaction with the CLIENTS without advising the Clients in writing of the desirability of seeking and being given a reasonable opportunity to seek the advice of independent counsel concerning "side contracts" dated September 13, 2007 and October 8, 2007.
- e. In failing to obtain from the CLIENTS informed consent for a waiver of the conflicts of interest inherent in the "side contracts" dated September 13, 2007 and October 8, 2007.
- f. In failing to advise CLIENTS that the disbursements and side agreements must be disclosed to the settlement agent and lender prior to the subject closing, and seeing to it that such disclosures were accomplished.

2. It is my expert opinion, held to a reasonable degree of professional certainty, that GRIFFIS committed violations of the South Carolina Rules of Professional Conduct (Rule 407, SCACR), including those listed below, and that this professional misconduct constitutes further evidence of GRIFFIS' violations of the standard of care and his duties to the CLIENTS:

- a. GRIFFIS violated Rule 1.7 of the South Carolina Rules of Professional Conduct, failing to obtain from the CLIENTS informed consent for a waiver of the conflict of interest inherent in the "side contract" dated October 8, 2007, in which GRIFFIS entered into a business transaction with his clients. GRIFFIS' interests were clearly in conflict with those of the CLIENTS. By representing the CLIENTS with regard to the "side contracts" dated September 13, 2007 and October 8, 2007, and failing to obtain informed consent, GRIFFIS was involved in an impermissible conflict of interest. As a result, GRIFFIS breached his duty of care and duty of conduct to the CLIENTS thereby violating his fiduciary duties to the CLIENTS. See Rule 1.8, RPC, Rule 407, SCACR.
 - b. Violations of this provision of the South Carolina Rules of Professional Conduct that were intended to protect clients in the position of the CLIENTS at the time of GRIFFIS' violation of that Rule;
 - c. This violation was a violation of the South Carolina Rules of Professional Conduct that were in effect at the time of the violative conduct by GRIFFIS;
 - d. This violation of the Rules of Professional Conduct by GRIFFIS was also a violation of the standard of care of a South Carolina lawyer – failures to render legal services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession.
3. GRIFFIS' history of legal services performed on behalf of the CLIENTS and, if the finder of fact were to accept Mr. Faulkner's testimony that he communicated in a confidence with GRIFFIS for the purpose of obtaining such advice regarding the

subject transaction, establishes that GRIFFIS had an attorney-client relationship with the CLIENTS. It is my expert opinion, held to a reasonable degree of professional certainty, that his breaches of duty outlined above occurred within the scope of and grew out of the attorney-client relationship between GRIFFIS and the CLIENTS, as did the damages they suffered as a proximate result of those breaches.

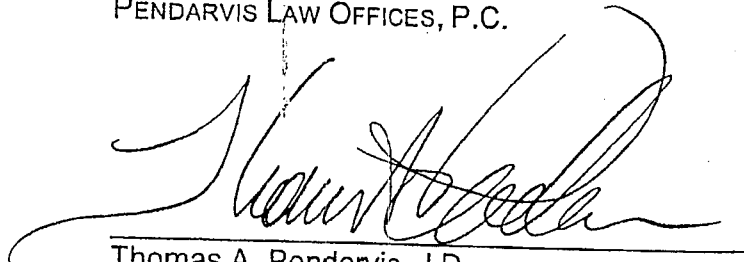
4. I have reviewed documentary evidence from the foregoing lawsuit, which includes the kinds of factual sources and legal authorities customarily relied upon by experts in the field of legal ethics, attorney malpractice, and the liability of lawyers and law firms, all of which, taken together, support the allegations of the Third-Party Complaint, and the expert opinions I express in this affidavit.
5. My resume is attached as Exhibit A to this Affidavit, and sets forth my experience in the practice of law in South Carolina, including:
 - a. I am an attorney licensed to practice law in the State of South Carolina and in the State of Georgia since 1992.
 - b. I am the sole shareholder of PENDARVIS LAW OFFICES, P.C., located at 500 Carteret Street, Ste. A, Beaufort, South Carolina.
 - c. My areas of practice and expertise are litigation matters, including litigation of legal malpractice claims, other professional malpractice claims, breach of fiduciary duty claims, business tort claims, commercial claims, toxic tort claims, and personal injury claims, and I have been regularly engaged in these areas of practice since 1992.
 - d. I have been retained by Michael W. Mogil, J.D. with offices on Hilton Head Island, South Carolina, as an Expert Witness in this matter on behalf of

Third-Party Plaintiffs, CHERRY HILL ESTATES, L.L.C. and Ronald Faulkner.

- e. My expert opinions are based upon the evidence available to me at this time and are subject to expansion and modification as further evidence or issues develop.

The affiant sayeth further not.

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis, J.D.
Affiant

SWORN to before me this 11th day of November, 2010

Jennifer A. Clark (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires July 8, 2015.

EXHIBIT 5

HALE - QUALEY (DIRECT EXAMINATION)

44

that document?

A Yes. That is a mortgage that we prepared for signature by Cherry Hill Estates. This is a recorded copy of it.

Q And that was signed on behalf of Cherry Hill Estates, referring to Bate stamp 31, by Mr. O'Neil --

A Correct.

Q -- with Brooke and yourself as witnesses and you as the notary public?

A Correct.

Q And then I will refer you to what has been Bate stamped Numbers 33 through 35 and ask if you recognize that particular document?

A Yes. This is the Deed signed by Tony and Cindy Griffis transferring the property to Cherry Hill Estates.

Q Did Cherry Hill Estates receive any other conveyance documents relative to this transaction?

A Not to my knowledge.

Q I'll hand you a document that has been Bate stamped 36 and ask if you recognize that particular document?

1 HALE - QUALEY (DIRECT EXAMINATION)

45

2 A I don't recognize this document.

3 Q Now, do you recall any discussions of
4 any arrangement of Mr. Griffis being involved or
5 subsequently to be involved in Cherry Hill
6 Estates?

7 A No.

8 Q With respect to this transaction and
9 your duties in the transaction, would that have
10 mattered to you one way or the other?

11 A If he was going to be involved post
12 closing?

13 Q Yes.

14 A After the transaction was over?

15 Q Yes.

16 A Unless the client asked me to review
17 it, it wouldn't have affected the transaction.

18 Q And by virtue of saying you do not
19 recall the document, were you asked to review
20 anything of that nature?

21 A No.

22 Q Was anything asked of you relative to
23 that arrangement?

24 A No.

25 Q And so that really was of no concern of

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1 HALE - QUALEY (DIRECT EXAMINATION)

46

2 yours?

3 A I didn't know anything about it.

4 Q Well, I mean, had you known about it,
5 would you have acted or operated any differently
6 than the way you did relative to this
7 transaction?

8 A If I had known that Tony Griffis was
9 going to become a member of Cherry Hill Estates
10 at some point in the future, after the
11 transaction?

12 Q Yes.

13 A I don't think it would have affected my
14 handling of the transaction any differently, no.

15 Q If there had been a commitment made
16 prior to the transaction for that particular
17 type arrangement, would that have impacted the
18 manner in which you handled the transaction in
19 any fashion?

20 A Not if the commitment was for something
21 to be implemented post closing.

22 Q Do you have any knowledge as to whether
23 this bill of sale, one-third membership, was
24 post closing or pre closing?

25 A I've never seen it, so I don't know

1 HALE - QUALEY (REDIRECT EXAMINATION)

70

2 Q Earlier, Mr. Hale showed you and I
3 believe introduced, by reference to Bate stamp,
4 a series of exhibits, one of which was an
5 agreement regarding Cherry Hill Estates, Bate
6 stamped 16, dated October 8th. You testified
7 that you had never seen that document. Is that
8 document in your file anywhere?

9 A Not that I know of, no.

10 Q Prior to today, had you ever heard of
11 that document?

12 A No.

13 MR. MOGIL: That's it.

14 REDIRECT EXAMINATION

15 BY MR. HALE:

16 Q Now, one question, again, subject to
17 the right to reconvene, as previously made a
18 record of. Were you present when all the
19 closing documents for this transaction were
20 signed by Mr. O'Neil?

21 A Yes.

22 MR. HALE: Thank you. I have no
23 further questions.

24 MR. MOGIL: And just for the
25 record, and I'll probably say it on

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 09-CP-07-6054

CYNTHIA GRIFFIS,

Plaintiff,

vs.

CHERRY HILL ESTATES, LLC, EUGENE
O'NEIL, and RONALD FAULKNER,

Defendants,

of whom

CHERRY HILL ESTATES, LLC and
RONALD FAULKNER, are

Third-Party Plaintiffs,

vs.

ANTHONY E. GRIFFIS,

Third-Party Defendant.

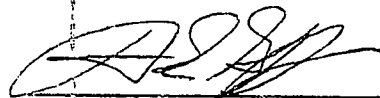
THIRD-PARTY DEFENDANT'S
NOTICE AND MOTION TO DISMISS

TO: Cherry Hill Estates, LLC, and Roland Faulkner as Third Party Plaintiffs
C/O Michael W. Mogil, Esq.

PLEASE TAKE NOTICE THAT the Third-Party Defendant Anthony E. Griffis will move before the Beaufort County Court of Common Pleas, at the Beaufort County Courthouse in Beaufort, South Carolina, to be heard on the tenth (10th) day after service hereof, or as soon thereafter as the undersigned may be heard, pursuant to South Carolina Rule of Civil Procedure Rules 56 and 12(b)(6), S.C. Code Ann. §15-36-100 (Supp. 2008), and S.C. Code Ann. §15-3-530 (Supp. 2008), for an Order dismissing the Amended Third-Party Complaint (First, Second, Third, and Sixth Causes of Action) against him because the applicable period of limitations for such claims has expired. Further, the Sixth Cause of Action fails to state facts sufficient to constitute a cause of action pursuant to SCRPC Rule 12(b)(6)

and is filed in violation of SCRCP Rule 15(a), and the Third-Party Plaintiffs lack standing to bring said Sixth Cause of Action.

WHEREFORE, I would respectfully request an Order dismissing with prejudice the Amended Third-Party Complaint (First, Second, Third, and Sixth Causes of Action), and awarding me any such other and further relief as this Court deems just and proper.



Anthony E. Griffis, Pro Se
10 Fording Island Road Extension
Hilton Head Island, SC 29926
(843) 837-3777
Email: griffis@hargray.com

December 23, 2010
Hilton Head Island, SC

0080

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Cynthia Griffis)

Plaintiff)

v.)

Cherry Hill Estates, LLC, Eugene O'Neil
and Ronald Faulkner)

Defendant(s))

Cherry Hill Estates, LLC and Ronald
Faulkner,)

Third Party Plaintiffs)

v.)

Anthony E. Griffis)

Third Party Defendant)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2009-CP-07-06054

ANSWER AND
REPLY OF RONALD FAULKNER AND
CHERRY HILL ESTATES TO ANSWER
AND COUNTERCLAIM

NOV 15 PM 1:54
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO: ANTHONY GRIFFIS:

Defendants and Third Party Plaintiffs Cherry Hill Estates, LLC and Ronald Faulkner (hereinafter "Defendants"), through their undersigned counsel, respectfully answer and reply to the Answer and Counterclaim served by Anthony E. Griffis in this matter as follows:

As to the First Counterclaim:

1. Defendants admit the allegations of paragraph 1.
2. Defendants are without information presently to recall specifically whether Defendant O'Neil made the statement as alleged in paragraph 2 and as such deny same and demand proof thereof. Defendant Faulkner denies the statement as alleged in paragraph 2.

Answer Griffis v. Cherry Hill Estates, LLC , et al 2009-CP-07-06054

1

0081

3. Defendants deny Plaintiff's characterization of the September 13 document as alleged in paragraph 3 or its legal import or the conclusions made therein. Defendants admit that Mr. Faulkner executed the document, without knowledge or intent to do so.

4. Defendants admit that they met with the Griffis' to discuss the transaction on October 8 as alleged in paragraph 4. Defendants deny the legal conclusions asserted therein.

5. Defendants deny the allegations of paragraph 5 of the Counterclaims.

6. Defendants admit the allegations of paragraph 6 of the Counterclaims except they deny that Mr. Faulkner intended to give a personal guaranty to Ms. Griffis, thus, they do not admit that a guaranty was given.

7. Defendants deny the characterizations made within the allegations of paragraph 7 and demand proof thereof.

8. Defendants deny the allegations of paragraph 8 in their entirety.

9. Defendants deny the allegations of paragraph 9 in their entirety.

As to the Second Counterclaim:

10. Defendants deny that Mr. Faulkner or Cherry Hill Estates, LLC owes, or owed, any legally recognizable duty to their attorney, Mr. Griffis.

11. Defendants deny the allegations of paragraphs 11 and 12 of the Counterclaims in their entirety.

As to the Third Counterclaim:

12. Defendants deny the allegations of paragraphs 14 through 20 of the Counterclaims in their entirety.

As to the Fourth Counterclaim:

13. Defendants deny the allegations of paragraphs 21 through 26 in their entirety.

Affirmative and General Defenses

14. The Counterclaim Plaintiff's Complaint fails to state a cause of action for which relief may be granted and should be dismissed.

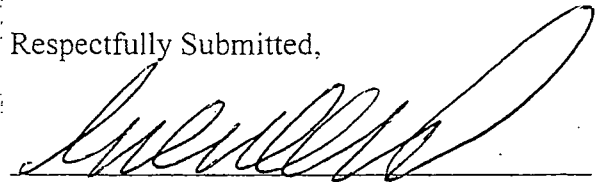
15. The September 13 and October 8 Agreements alleged to be enforceable by Griffis are agreements which are void as against public policy and unenforceable obligations.

16. Counterclaim Plaintiff is barred from recovering in this matter under the doctrines of waiver, estoppel and unclean hands.

WHEREFORE, Defendants Ronald Faulkner and Cherry Hill Estates, LLC request that the Honorable Court dismiss the Counterclaims in this matter, award them their fees and costs incurred in the defense hereof, and for such other relief as the Court deems just and proper.

November 12, 2010
Hilton Head Island, SC

Respectfully Submitted,



Law Office of Michael W. Mogil, P.A.

Michael W. Mogil, SC Bar No. 11933

2 Corpus Christie Place, Suite 303

Hilton Head Island, SC 29928

(843) 785-8110

Email mmogil@mogillaw.com

Attorney for Defendants Ronald Faulkner

And Cherry Hill Estates, LLC

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
Cynthia Griffis)
)
Plaintiff)
v.)
Cherry Hill Estates, LLC, Eugene O'Neil)
and Ronald Faulkner)
Defendant(s))
Cherry Hill Estates, LLC and Ronald)
Faulkner,)
Third Party Plaintiffs)
v.)
Anthony E. Griffis)
Third Party Defendant)
_____)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2009-CP-07-06054

AMENDED
THIRD PARTY COMPLAINT
(Jury Trial Demanded)

2010 NOV 15 PM 4:58
CLERK OF COURT

TO: ANTHONY E. GRIFFIS:

Defendants and Third Party Plaintiffs Cherry Hill Estates, LLC and Ronald Faulkner (hereinafter "Defendants"), through their undersigned counsel, respectfully assert their Third Party Complaint in this matter as follows:

GENERAL ALLEGATIONS

1. Ronald Faulkner is a resident of Maryland whom was, at all times relevant to the events and transactions that give rise to this lawsuit, a client of the law office of Anthony E. Griffis (hereinafter "Anthony Griffis" or "Griffis"), both individually and as a member of various corporate business entities.
2. Anthony Griffis was, upon information and belief, the attorney whom formed Cherry Hill Estates,

LLC, a South Carolina Limited Liability , and whom, over the course of one year, structured a real estate transaction the purpose of which was to accomplish a marital property settlement with his estranged wife and former employee, Cynthia Griffis, the Plaintiff in the underlying matter herein.

3. In connection with the proposed transaction, prior to closing it was determined that a credit worthy loan guarantor was required, and Anthony Griffis solicited his client, Ronald Faulkner, to guarantee the loan(s) necessary to secure the financing needed to accomplish the proposed transaction.

4. Prior to closing on October 8, 2010, Anthony Griffis drafted and solicited Mr. Faulkner to execute a separate, side agreement contract relating to the sale of Cherry Hill Estates, LLC which by its terms required Mr. Faulkner to guarantee a purchase money second mortgage note to Mr. Griffis' wife in amount of \$ 200,000. Further the side agreement required certain sales proceeds to be reinvested in the purchasing entity.

5. Further, at or after closing, Mr. Griffis caused approximately \$ 323,000 of sales proceeds to be paid directly to Eugene O'Neil, in contravention of the representations in the final Contract of Sale and the executed settlement statement that was provided to the first mortgage lender, Woodlands Bank.

6. Upon information and belief, neither the side agreement(s) of October 8, 2010 nor the closing disbursements to Mr. O'Neil were disclosed to Woodlands Bank, or to the settlement agent Qualey Law Firm.

7. Upon information and belief, Anthony Griffis was expressly aware that the value of the subject property at Cherry Hill Estates was equal to or less than \$ 810,000, and thus materially lower than the contract purchase price of \$ 1,013,000 that Cherry Hill Estates was paying and paid to Anthony

Griffis and his wife for the subject property, being 27 acres in Ridgeland, South Carolina. The August 30, 2007 Contract of Sale between the Griffis' and Cherry Hill Estates, LLC expressly increased the purchase price by nearly \$ 200,000, to facilitate bank financing for the purchase and generate cash monies to payoff Mrs. Griffis and satisfy Mr. O'Neil's terms.

8. Anthony Griffis advised Ronald Faulkner to execute a personal guarantee of Cherry Hill Estates, LLC's loan obligation to Woodland's Bank for a purchase money loan in amount of \$ 850,000, and structured a transaction to reflect this guarantee. Alternatively, Mr. Griffis allowed and permitted his clients Mr. Faulkner and Cherry Hill Estates, LLC to execute said note guaranty obligations and to participate in the subject transaction.

9. Anthony Griffis advised/ and or permitted Ronald Faulkner to execute a short term, two year purchase money note in amount of \$ 200,000 given to his wife, Cynthia Griffis, to complete the financing necessary for the loan, and to enable, Mrs. Griffis, Mr. Griffis, and Cherry Hill Estates, LLC to receive funds at closing and structured a transaction to reflect this guarantee.

10. Upon information and belief, Anthony Griffis did not advise or instruct Ronald Faulkner or Cherry Hill Estates, LLC, in writing, to obtain separate and independent legal advice relating to the transaction, and in particular, prior to executing the September and October 8, 2010 side agreements, as required by the Rules of Professional Conduct, since he and his wife were the Sellers of the subject property.

11. Defendant Ronald Faulkner avers and alleges that he did not understand, or have actual knowledge, that he was entering into a short term, two year note obligation with Cynthia Griffis which could be potentially construed as unconditional and not dependent on the sale of the subject property. Further, Mr. Faulkner avers and alleges that he did not understand that the agreement

between the parties required him to personally guarantee a note to Ms. Griffis. Rather, he alleges that he understood the agreement between the parties to not require any personal guarantee of the Purchaser obligations to Ms. Griffis.

12. Upon information and belief, Anthony Griffis did personally benefit from Cherry Hill Estate's purchase of the subject property, and from Mr. Faulkner's loan guarantees, to those Defendants' detriment and damage.

13. Anthony Griffis expressly reserved for himself an equity interest in Cherry Hill Estates, LLC and expressly declined to guarantee its debts.

For a First Cause of Action (Breach of Fiduciary Duty owed to Faulkner)

14. Defendant Ronald Faulkner re-alleges the allegations of paragraphs 1 through 13 above as though fully restated herein.

15. Anthony Griffis learned of Ronald Faulkner's financial situation and his financial and personal strengths, weaknesses and affairs in his unique position as Mr. Faulkner's attorney.

16. Anthony Griffis, whom had personally provided legal advice to Ronald Faulkner, and whom had confidential knowledge of Ronald Faulkner's financial affairs, owed Faulkner a fiduciary duty to protect Mr. Faulkner's best interests. Ronald Faulkner relied on Anthony Griffis in his capacity as his attorney.

17. Anthony Griffis owed Mr. Faulkner and Cherry Hill Estates a duty to expressly advise them in writing, individually and collectively, that prior to engaging in a business transaction with Mr. Griffis they should obtain independent advice of counsel, pursuant to Rules of Professional Conduct Rule 1.8.

18. Mr. Griffis did not at any point advise Mr. Faulkner in writing, or otherwise, that he should

obtain separate independent counsel as required by the Rules of Professional Conduct, Rule 1.8.

19. Mr. Griffis' failure to advise Mr. Faulkner as required by the Rules of Professional Conduct is a breach of his fiduciary duty owed to Mr. Faulkner. This breach is affirmed by the affidavit of Thomas Pendarvis, Esq., attached hereto.

20. As a result of the breach of fiduciary duty, Mr. Faulkner was connected as a loan guarantor to two loans which are vastly undersecured, and is potentially personally liable for note guarantees to Ms. Griffis and to Woodlands Bank.

21. The transaction to sell 27 acres at Cherry Hill Estates to Cherry Hill Estates, LLC, as structured by Mr. Griffis, is and was a transaction void against public policy because it required that the parties not disclose material events, such as the existence of the October 8, 2010 side agreement, and the disbursements to Mr. O'Neil from the sales proceeds, in order to complete the transaction with loan funding from Woodlands Bank.

22. Anthony Griffis owed Mr. Faulkner a fiduciary duty to not involve Mr. Faulkner in such a transaction that could potentially expose Mr. Faulkner to liability.

23. As a direct and proximate result of Third Party Defendant Griffis' breach(s), Defendant Ronald Faulkner has been damaged by the potential liability he owes to Woodlands Bank and Cynthia Griffis, by loss of any his personal down payment funds used to purchase Cherry Hill Estates, by the damage to Ronald Faulkner's credit rating and standing, and for the costs and fees incurred in defending this lawsuit, in an amount to be proven at trial.

For a Second Cause of Action (Breach of Fiduciary Duty owed Cherry Hill Estates, LLC)

24. Defendant Cherry Hill Estates, LLC re-alleges the matters in paragraphs 1 through 23 above as though fully restated herein.

25. Anthony Griffis owed a fiduciary duty to his client, Cherry Hill Estates, LLC, the purchaser of his property. Mr. Griffis violated the Rule 1.8 of the Rules of Professional Conduct by engaging in a business transaction with his client, without first giving it express instruction to seek independent counsel, and by engaging in the conduct as alleged above. This is affirmed by the affidavit of Thomas Pendarvis attached hereto.

26. As a direct and proximate result of Third Party Defendant Griffis' breach(s), Defendant Cherry Hill Estates, LLC has been damaged by the potential liability it owes to Woodlands Bank and Cynthia Griffis, and for the costs and fees incurred in defendant this lawsuit, in an amount to be proven at trial.

For a Third Cause of Action (professional negligence claimed by Ronald Faulkner and Cherry Hill Estates, LLC)

27. Defendants re-allege the matters in paragraphs 1 through 26 as though fully restated herein.

28. As their attorney, Anthony Griffis owed Defendants a duty of care and duty of conduct.

29. Anthony Griffis conduct and actions in this matter are conduct and actions below the standard of care for an attorney in his community. This is affirmed by the affidavit of Thomas Pendarvis, attached hereto.

30. Upon information and belief, it is alleged that Anthony Griffis's conduct and actions did not meet the standards set forth in the Rules of Professional Conduct governing attorneys in South Carolina. This allegation is affirmed by the affidavit of Thomas Pendarvis, attached hereto.

31. As a direct and proximate result of Third Party Defendant Griffis' breach(s) of the duty of care and duty of conduct, Defendants Ronald Faulkner and Cherry Hill Estates, LLC have been damaged by the potential liability they owe to Woodlands Bank and Cynthia Griffis, by loss of their down

payment to purchase Cherry Hill Estates, by their potential liability to Woodlands Bank and Cynthia Griffis, by the damage to Ronald Faulkner's credit rating and standing, and for the costs and fees incurred in defendant this lawsuit, in an amount to be proven at trial.

For a Fourth Cause of Action (Unjust enrichment)

32. Defendants re-allege paragraphs 1 through 31 above as though fully restated herein.

33. Defendant Ronald Faulkner's execution of a loan guarantee enabled Anthony Griffis to accomplish a divorce property settlement agreement through sale of his property, and possibly to receive a direct cash distribution from a real estate closing which was structured by Anthony Griffis.

34. Due to Woodlands Bank's financing of the transaction, Anthony Griffis and his wife received cash funds at closing, in addition to Mrs. Griffis receiving a note and second mortgage in amount of \$ 200,000 which is the basis for the particular collection action plead against Mr. Faulkner.

35. Anthony Griffis's benefit was realized to the detriment of Defendants, whom also executed a note and loan guarantee with both Cynthia Griffis and Woodlands Bank.

36. Defendants Ronald Faulkner and Cherry Hill Estates, LLC allege that it is inequitable for Anthony Griffis to retain the benefits of the transaction he structured and induced Faulkner to guarantee, to Faulkner's detriment, and as such demands damages to recompense Ronald Faulkner and Cherry Hill Estates, LLC in an amount to be proven at trial.

For a Fifth Cause of Action (Indemnification)

37. Defendants re-allege paragraphs 1 through 36 above as though fully restated herein.

38. In his capacity as Mr. Faulkner's prior attorney, Cherry Hill Estates, LLC's attorney, as the Seller, and as a member of Cherry Hill Estates, LLC, Anthony Griffis owes Ronald Faulkner and Cherry Hill Estates, LLC a duty of legal indemnification and a duty of equitable indemnification for

all losses, fees and costs that they sustain as a result of the transaction Mr. Griffis structured and placed them in.

For a Sixth Cause of Action (Fraud in the Inducement)

39. Defendants re-allege paragraphs 1-31 above as though re-stated herein.

40. As alleged above, Anthony Griffis, acting alone or in concert with Cynthia Griffis and/or Eugene O'Neil, structured a transaction which by its terms relied upon and required the non disclosure by Mr. Griffis, Ms. Griffis and Mr. O'Neil of material agreements and the event of closing day disbursements to Woodlands Bank, the disclosure of which would have jeopardized or defeated the first mortgage loan financing for which the transaction relied.

41. Mr. Griffis as Seller executed a settlement statement which he knew, or should have known, to be false in that it omitted the existence of the closing day disbursements of sales proceeds as required by the side agreements.

42. Mr. Griffis' inclusion of Cherry Hill Estates, LLC and Mr. Faulkner in such a transaction is fraudulent inducement.

43. Further, upon information and belief, Mr. Griffis knew or should have known that the value of the property he was conveying to Cherry Hill Estates, LLC was less than the August 30, 2007 contract price.

44. As a direct and proximate result of Third Party Defendant Griffis' actions as alleged herein, Defendant Cherry Hill Estates, LLC has been damaged by the potential liability it owes to Woodlands Bank and Cynthia Griffis, and for the costs and fees incurred in defendant this lawsuit, in an amount to be proven at trial.

45. As a direct and proximate result of Third Party Defendant Griffis' actions as alleged herein,

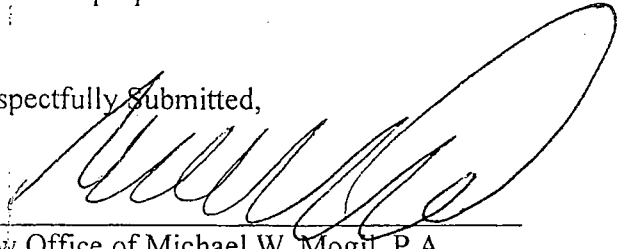
Defendant Ronald Faulkner has been damaged by the potential liability he to Woodlands Bank and Cynthia Griffis, by loss of any monies he contributed to the down payment to purchase Cherry Hill Estates, and to its carrying costs, by the damage to his credit standing. and for the costs and fees incurred in defendant this lawsuit, in an amount to be proven at trial.

WHEREFORE, Defendants Ronald Faulkner and Cherry Hill Estates, LLC request that the Honorable Court grant them relief as follows:

- 1) For judgment of damages against Anthony Griffis on all causes of action plead herein;
- 2) For actual damages including reimbursement of down payment monies and expenditures relating to Cherry Hill Estates, LLC;
- 3) If the prevailing party in their breach of fiduciary duty cause(s) of action, for disgorgement of fees and profits earned by Anthony Griffis in the sales transaction;
- 4) For an order of indemnification against Anthony Griffis for all damages, costs and fees sustained herein;
- 5) For an award of Defendants' attorney fees and costs of defending and prosecuting this action; and
- 6) For such other relief as the Honorable Court deems just and proper.

November 12, 2010
Hilton Head Island, SC

Respectfully Submitted,



Law Office of Michael W. Mogil, P.A.
Michael W. Mogil, SC Bar No. 11933
2 Corpus Christie Place, Suite 303
Hilton Head Island, SC 29928
(843) 785-8110
Email mmogil@mogillaw.com
Attorney for Defendants Ronald Faulkner
And Cherry Hill Estates, LLC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2009-CP-07-6054

Cynthia Griffis,

Plaintiff,

vs.

CHERRY HILL ESTATES, L.L.C.; Eugene
O'Neil; and Ronald Faulkner,

Defendants.

CHERRY HILL ESTATES, L.L.C. and
Ronald Faulkner,

Third Party Plaintiffs,

v.

Anthony E. Griffis,

Third Party Defendant.

**AFFIDAVIT OF
THOMAS A. PENDARVIS, J.D.**

2010 MAY 15 PM 1:56
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

SS:

PERSONALLY APPEARED before me, Thomas A. Pendarvis, J.D., who, first being
duly sworn, and says that:

1. Assuming that the Third-Party Plaintiffs in this action prove the facts alleged in their
Third-Party Complaint, it is my expert opinion, held to a reasonable degree of
professional certainty, that Anthony E. Griffis, J.D. (GRIFFIS) committed malpractice
– violating the standard of care of South Carolina lawyers by failing to render
services and provide legal advice to his clients, CHERRY HILL ESTATES, L.L.C. and
Ronald Faulkner ("the CLIENTS"), with the degree of skill, care, knowledge, and

judgment usually possessed and exercised by members of the legal profession in South Carolina -- that proximately caused damages to them:

- a. In failing to represent the CLIENTS with undivided loyalty, to preserve the CLIENTS' confidences, and to disclose to the CLIENTS any material matters infringing upon those obligations.
 - b. In entering into a business transaction with the CLIENTS.
 - c. In entering into a business transaction with the CLIENTS on terms that were not fair and reasonable to the CLIENTS.
 - d. In entering into a business transaction with the CLIENTS without advising the Clients in writing of the desirability of seeking and being given a reasonable opportunity to seek the advice of independent counsel concerning "side contracts" dated September 13, 2007 and October 8, 2007.
 - e. In failing to obtain from the CLIENTS informed consent for a waiver of the conflicts of interest inherent in the "side contracts" dated September 13, 2007 and October 8, 2007.
 - f. In failing to advise CLIENTS that the disbursements and side agreements must be disclosed to the settlement agent and lender prior to the subject closing, and seeing to it that such disclosures were accomplished.
2. It is my expert opinion, held to a reasonable degree of professional certainty, that GRIFFIS committed violations of the South Carolina Rules of Professional Conduct (Rule 407, SCACR), including those listed below, and that this professional misconduct constitutes further evidence of GRIFFIS' violations of the standard of care and his duties to the CLIENTS:

- a. GRIFFIS violated Rule 1.7 of the South Carolina Rules of Professional Conduct, failing to obtain from the CLIENTS informed consent for a waiver of the conflict of interest inherent in the "side contract" dated October 8, 2007, in which GRIFFIS entered into a business transaction with his clients. GRIFFIS' interests were clearly in conflict with those of the CLIENTS. By representing the CLIENTS with regard to the "side contracts" dated September 13, 2007 and October 8, 2007, and failing to obtain informed consent, GRIFFIS was involved in an impermissible conflict of interest. As a result, GRIFFIS breached his duty of care and duty of conduct to the CLIENTS thereby violating his fiduciary duties to the CLIENTS. See Rule 1.8, RPC, Rule 407, SCACR.
 - b. Violations of this provision of the South Carolina Rules of Professional Conduct that were intended to protect clients in the position of the CLIENTS at the time of GRIFFIS' violation of that Rule;
 - c. This violation was a violation of the South Carolina Rules of Professional Conduct that were in effect at the time of the violative conduct by GRIFFIS;
 - d. This violation of the Rules of Professional Conduct by GRIFFIS was also a violation of the standard of care of a South Carolina lawyer – failures to render legal services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession.
3. GRIFFIS' history of legal services performed on behalf of the CLIENTS and, if the finder of fact were to accept Mr. Faulkner's testimony that he communicated in a confidence with GRIFFIS for the purpose of obtaining such advice regarding the

subject transaction, establishes that GRIFFIS had an attorney-client relationship with the CLIENTS. It is my expert opinion, held to a reasonable degree of professional certainty, that his breaches of duty outlined above occurred within the scope of and grew out of the attorney-client relationship between GRIFFIS and the CLIENTS, as did the damages they suffered as a proximate result of those breaches.

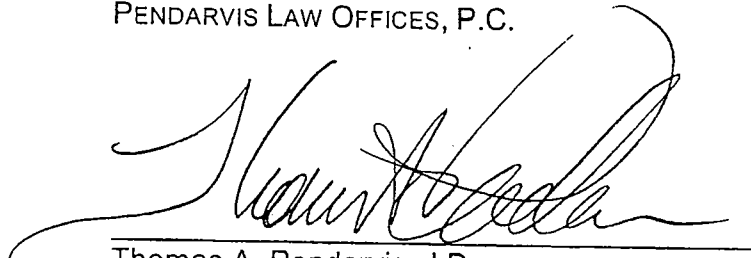
4. I have reviewed documentary evidence from the foregoing lawsuit, which includes the kinds of factual sources and legal authorities customarily relied upon by experts in the field of legal ethics, attorney malpractice, and the liability of lawyers and law firms, all of which, taken together, support the allegations of the Third-Party Complaint, and the expert opinions I express in this affidavit.
5. My resume is attached as Exhibit A to this Affidavit, and sets forth my experience in the practice of law in South Carolina, including:
 - a. I am an attorney licensed to practice law in the State of South Carolina and in the State of Georgia since 1992.
 - b. I am the sole shareholder of PENDARVIS LAW OFFICES, P.C., located at 500 Carteret Street, Ste. A, Beaufort, South Carolina.
 - c. My areas of practice and expertise are litigation matters, including litigation of legal malpractice claims, other professional malpractice claims, breach of fiduciary duty claims, business tort claims, commercial claims, toxic tort claims, and personal injury claims, and I have been regularly engaged in these areas of practice since 1992.
 - d. I have been retained by Michael W. Mogil, J.D. with offices on Hilton Head Island, South Carolina, as an Expert Witness in this matter on behalf of

Third-Party Plaintiffs, CHERRY HILL ESTATES, L.L.C. and Ronald Faulkner.

- e. My expert opinions are based upon the evidence available to me at this time and are subject to expansion and modification as further evidence or issues develop.

The affiant sayeth further not.

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis, J.D.
Affiant

SWORN to before me this 11th day of November, 2010

Jennifer A. Clark (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires July 8, 2015.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO. 09-CP-07-6054

CYNTHIA GRIFFIS,)
)
Plaintiff,)

vs.)

CHERRY HILL ESTATES, LLC, EUGENE)
O'NEIL, and RONALD FAULKNER,)
)
Defendants,)

of whom)

CHERRY HILL ESTATES, LLC and)
RONALD FAULKNER, are)
)
Third-Party Plaintiffs,)

vs.)

ANTHONY E. GRIFFIS,)
)
Third-Party Defendant.)

THIRD-PARTY DEFENDANT'S
NOTICE AND MOTION TO DISMISS

Third-Party Defendant hereby moves the Court, pursuant to South Carolina Rule of Civil Procedure 12(b)(6) and S.C. Code Ann. §15-36-100 (Supp. 2008), for an Order dismissing the Third-Party Complaint against him because the Third-Party Plaintiff's claims are fatally deficient in that they do not incorporate an affidavit of an attorney.

South Carolina Code section 15-36-100(B) provides, in pertinent part:

[I]n an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G)¹ ..., the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

Here, the Third-Party Plaintiffs allege in their third cause of action a claim for negligence (specifically alleging a deviation from the standard of care applicable to attorneys) arising out of

¹ Subsection (G)(2) lists "attorneys" among the "professionals" to which the statute applies.

an alleged attorney-client relationship with Third-Party Defendant. The first and second causes of action allege breaches of fiduciary duty related to Third-Party Plaintiffs' alleged attorney-client relationship with Third-Party Defendant. The remaining causes of action are based upon the same acts and omissions alleged in the first through third causes of action. Thus, Third-Party Plaintiffs were required to file an expert affidavit with the Third-Party Complaint.

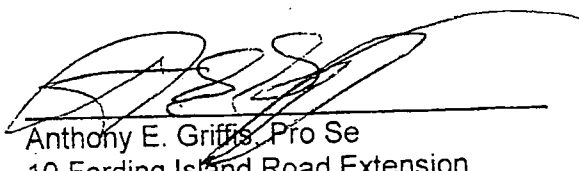
Third-Party Plaintiffs did not attach to the Third-Party Complaint an expert affidavit as required by Section 15-36-100, nor have they sought to file such an affidavit since filing the Third-Party Complaint. Per South Carolina Code section 15-36-100(C)(1), Third-Party Plaintiff's failure to file an expert affidavit is fatally defective to the claims against Third-Party Defendant; that code section states:

If an affidavit is not filed [contemporaneously with the Complaint²] and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim.

Further, the Third-Party Complaint fails to set forth facts sufficient to constitute a cause of action, including the recovery of attorney's fees and, at a minimum, this portion of the claim for relief should be dismissed pursuant to SCRCP 12(b)(6).

For the foregoing reasons, Third-Party Defendant requests that the Court dismiss the Third-Party Complaint with prejudice. In the alternative, he requests that the Court dismiss any causes of action it determines to be for "professional negligence" as that term is used in S.C. Code Ann. §15-36-100 (Supp. 2008).

September 17, 2010
Hilton Head Island, SC



Anthony E. Griffis, Pro Se
10 Fording Island Road Extension
Hilton Head Island, SC 29926
(843) 837-3777
Email: griffis@hargray.com

² The statute also contains provisions regarding extension of the expert affidavit deadline; but, none apply because Third-Party Plaintiffs have not requested such an extension.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
Cynthia Griffis)
)
Plaintiff)
)
v.)
)
Cherry Hill Estates, LLC,)
Eugene O'Neil and)
Ronald Faulkner)
)
Defendants)
)
Cherry Hill Estates, LLC and)
Ronald Faulkner)
)
Third Party Plaintiffs)
)
v.)
)
Anthony E. Griffis)
)
Third Party Defendant)
_____)

IN THE COURT OF COMMON PLEAS
EIGHT JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2009-CP-07-06054

THIRD PARTY ANSWER
OF ANTHONY E. GRIFFIS

AND

COUNTERCLAIM

v.

THIRD PARTY PLAINTIFFS

TO: Cherry Hill Estates, LLC, and Roland Faulkner as Third Party Plaintiffs
C/O Michael W. Mogil, Esq.

Subject to my Motion to Dismiss filed herewith, I, Anthony E. Griffis as Third Party Defendant, answer the Third Party Complaint (herein "Complaint") as follows:

1. To the extent not otherwise answered, I deny all of the allegations of the Complaint.
2. As to Complaint paragraph 1, I deny that I represented Ronald Faulkner at any time during the transaction which is the subject of this action. I admit, upon information and belief, that Ronald Faulkner is a resident of the State of Maryland.
3. As to Complaint Paragraph 2, I deny the allegations of paragraph 2 and demand strict proof thereof..
4. I deny the allegations of Paragraphs 3, 4, 5, 6, 7, and demand strict proof thereof.

8. I deny the allegations of Paragraph 8 and demand strict proof thereof, and affirmatively assert that Ronald Faulkner had John P. Qualey's independent legal advice prior to closing, and he granted John P. Qualey, as his attorney-in-fact, the authority to execute the personal guaranties.

9. I deny the allegations of Paragraph 9 and demand strict proof thereof.

10. Answering the allegations of Paragraph 10, I admit I did not personally guaranty the debts of Cherry Hill Estates, LLC; however, I deny the remaining allegations as stated and demand strict proof thereof. I affirmatively assert that, upon the inducements of Ron Faulkner and Eugene O'Neil, I invested \$320,000.00, after closing, for a 1/3rd equity membership interest in the LLC, although said sums were wrongfully diverted from Cherry Hill Estates, LLC, to Ronald Faulkner for his personal use and for his and Eugene O'Neil's unrelated business of Buckingham Development, LLC.

ANSWER TO FIRST CAUSE OF ACTION

11. Answering the allegations of Paragraph 11, my answers of Paragraphs 1-10 are incorporated herein as if re-stated.

12. I deny all of the allegations of paragraphs 12-15, being all the remaining allegations of the First Cause of Action, and demand strict proof thereof.

ANSWER TO SECOND CAUSE OF ACTION

16. Answering the allegations of Paragraph 16, my answers of Paragraphs 1-15 are incorporated herein as if re-stated.

17. I deny all of the allegations of Paragraphs 17-18, being all the remaining allegations of the Second Cause of Action and demand strict proof thereof.

ANSWER TO THIRD CAUSE OF ACTION

18. Answering the allegations of Paragraph 19, my answers of Paragraphs 1-18 are incorporated herein as if re-stated.

19. I deny the allegations of Paragraphs 20-23, being all the remaining allegations of the Third Cause of Action and demand strict proof thereof.

ANSWER AS TO FOURTH CAUSE OF ACTION

20. Answering the allegations of Paragraph 24, my answers of Paragraphs 1-23 are incorporated herein as if re-stated.

21. I deny the allegations of Paragraphs 25-27, being all the remaining allegations of the Fourth Cause of Action.

ANSWER AS TO THE FIFTH CAUSE OF ACTION

22. Answering the allegations of Paragraph 28, my answers of Paragraphs 1-27 are incorporated herein as if re-stated.

23. I deny the allegations of Paragraphs 28-32, being all the remaining allegations of the Fifth Cause of Action and demand strict proof thereof.

ANSWER TO THE SIXTH CAUSE OF ACTION

24. Answering the allegations of Paragraph 33, my answers of Paragraphs 1-23 are incorporated herein as if re-stated.

25. I deny all the allegations of Paragraph 34, being all the remaining allegations of the Sixth Cause of Action and of the Third-Party Complaint and demand strict proof thereof.

ANSWER AS TO ALL CAUSES OF ACTION

26. Third Party Plaintiffs have failed to comply with S.C. Code Ann. Section 15-36-100(B) by failing to file an affidavit of an expert witness with the Third Party Complaint, rendering said Complaint subject to dismissal for failure to state a claim.

27. The Third-Party Complaint (or, alternatively, causes of action thereof) fails to set forth facts sufficient to constitute a cause of action and should be dismissed pursuant to SCRCP 12(b)(6).

28. Some or all of Third-Party Plaintiffs' claims are barred by the doctrine of unclean hands.

29. Even if I were negligent (which I deny), some or all of Third-Party Plaintiffs' claims should be barred or, alternatively, reduced by their comparative negligence.

30. The Third-Party Complaint fails to set forth facts sufficient to constitute a cause of action for the recovery of attorney's fees and, at a minimum, this portion of the claim for relief should be dismissed pursuant to SCRCP 12(b)(6).

COUNTERCLAIMS

I, Anthony E. Griffis, respectfully assert my Counterclaims against Ronald Faulkner in this matter as follows:

My answers of Paragraphs 1-30 are incorporated herein for all Counterclaims as if re-stated.

FOR A FIRST CAUSE OF ACTION (Breach of Contract)

1. On August 30, 2007, Anthony E. Griffis and Cynthia Griffis (Sellers) executed a contract (herein "contract") for the sale of 27.1 acres to Cherry Hill Estates, LLC. The contract purchase price was \$1,013,000.00, with Sellers to provide \$200,000.00 (nonrecourse) financing.
2. On or about September 13, 2007, Anthony E. Griffis was notified by Eugene O'Neil and Ronald Faulkner, that they would not guarantee the loan with Woodlands Bank, thereby rendering the sales contract void, unless Anthony E. Griffis agreed to invest at least \$320,000.00 in the Buyer entity, Cherry Hill Estates, LLC.
3. A proposed, non-binding amendment (dated September 13, 2007) to the original sales contract (herein "proposal"), was executed personally by Eugene O'Neil and Ronald Faulkner, on behalf of the buyer, and Anthony E. Griffis, as a seller, and was subject to the approval of Cynthia Griffis, as a seller. This proposal provided that, because of the investment of \$320,000 from the sales proceeds into Cherry Hill Estates, LLC, both Eugene O'Neil and Ronald Faulkner agreed to personally guarantee a \$200,000.00 Note and Mortgage to Cynthia Griffis and, instead of receiving \$350,000.00 cash as her ½ share of the net sales proceeds, Cynthia Griffis would be only receiving \$150,000.00 cash at closing, plus a personally guaranteed \$200,000.00 Note.
4. On October 8, 2007, both Eugene O'Neil and Ronald Faulkner met privately (without Anthony E. Griffis present) with Cynthia Griffis to discuss her concerns and encourage her to

sign the Proposal. On information and belief Ronald Faulkner personally assured Cynthia Griffis that he was standing behind the \$200,000.00 note; thereafter an Amendment (dated October 8, 2007) to the Contract was signed by Eugene O'Neil and Ronald Faulkner, on behalf of the buyer, and Cynthia Griffis, and Anthony E. Griffis, as sellers.

5. The closing on this amended contract occurred on October 10, 2007, at which time the buyer and the personal guarantors were represented by counsel other than Anthony E. Griffis, who was one of the sellers.

6. Immediately following the closing on October 10, 2007, Anthony E. Griffis, gave a check (number 1060) payable to "Eugene O'Neil for Cherry Hill Estates, LLC" for \$320,000.00 for a 1/3 membership interest in Cherry Hill Estates, LLC, pursuant to the terms of the Amendment to the Contract dated October 8, 2007. Anthony E. Griffis also received a Bill of Sale executed by Eugene O'Neil as managing member for Cherry Hill Estates, LLC, evidencing his 1/3rd ownership interest and the personal guarantee obligations of Eugene O'Neil and Ronald Faulkner.

7. Upon information and belief, the \$320,000.00 payable to Cherry Hill Estates, LLC, was wrongfully deposited directly into the bank account (at BankMeridian) of Buckingham Development, LLC, a separate business entity owned by Ronald Faulkner. A \$230,000.00 check was immediately issued from Buckingham Development, LLC to Ronald Faulkner, personally, with the remaining \$90,000.00 left in the business account of Buckingham Development, LLC. Upon information and belief, Ronald Faulkner also received the \$20,000.00 of excess closing proceeds which was payable to Cherry Hill Estates, LLC, for a total amount directly received by Ronald Faulkner of \$250,000.00, with the remaining \$90,000.00 in his Buckingham Development, LLC account.

8. Every provision of the Amendment to the Contract dated October 8, 2007, regarding distribution of the closing proceeds and investment of the \$320,000.00 into Cherry Hill Estates, LLC, has been breached by Ronald Faulkner, in that:

(a) Paragraph 1 provided that the Promissory Note to Cynthia Griffis for \$200,000.00 shall be personally guaranteed by both Eugene O'Neil and Ronald Faulkner. Ronald Faulkner

has breached this provision by refusing to honor his personal guarantee on the \$200,000.00 obligation to Cynthia Griffis.

(b) Paragraph 2 provided that Anthony E. Griffis would receive the difference between Seller's mortgage payoff (\$287,091.00) and \$300,000.00, (i.e., \$12,909.00). Cherry Hill Estates, LLC, Eugene O'Neil and Ronald Faulkner received this additional \$12,909.00 (from the excess closing proceeds of \$20,000) in breach of the amended agreement and have never reimbursed Anthony E. Griffis for this amount.

(c) The intent of the agreement, paragraph 3, was that the \$320,000.00 would be invested for the development purposes of Cherry Hill Estates, LLC. However, Ronald Faulkner and/or Buckingham Development, LLC have taken the \$320,000.00 for Ronald Faulkner's personal use, with no intent of ever investing said funds in Cherry Hill Estates, LLC, development - thereby breaching the agreement.

(d) Paragraph (4) of the agreement provided that Anthony E. Griffis was to be entitled to the tax deduction for the interest on the Buyer's loan at Woodlands Bank. However, Anthony E. Griffis never received a tax return or K-1 from Cherry Hill Estates, LLC, so that he could take such tax deduction. Upon information and belief, said amount was never escrowed from the \$320,000.00, and further, on information and belief Ronald Faulkner took said deduction for said interest on his personal tax returns, in breach of said agreement.

(e) Any use of the \$320,000.00 was to be approved by a majority vote of the members (paragraph 5 of the agreement) of Cherry Hill Estates, LLC; however, no notice of meeting, meeting, or vote of the members was ever had, thereby breaching the Agreement, and rendering any use of the \$320,000.00 for any other purpose invalid;

(f) Paragraph 6 of the agreement provided that, if any of the \$320,000.00 was disbursed for any purpose other than the development of the Cherry Hill property, then the LLC shall give a Promissory Note secured by a Mortgage to Anthony Griffis for said amount. Although the \$320,000.00 has been used by Ronald Faulkner and/or Buckingham Development, LLC for purposes other than the development of the Cherry Hill property, no Note and Mortgage was ever given to Anthony E. Griffis, thereby breaching the Agreement.

9. Anthony E. Griffis has been directly and proximately damaged by Ronald Faulkner's breach of the Agreement as set forth above.

FOR A SECOND CAUSE OF ACTION (Breach of Fiduciary Duty)

10. The above allegations are incorporated herein as if restated.

11. Ronald Faulkner and his business partner Eugene O'Neil owed Anthony E. Griffis a fiduciary duty to act in good faith, to be loyal, and to exercise due care regarding the business of Cherry Hill Estates, LLC, which duty they violated by:

(a) wrongly depositing the \$320,000.00 check, payable to Cherry Hill Estates, LLC, directly into the business account of Buckingham Development, LLC.

(b) immediately disbursing the \$320,000.00 to or for the benefit of Ronald Faulkner, without a proper notice of a meeting or vote by the members of Cherry Hill Estates, LLC;

(c) failing to give Anthony E. Griffis a Note secured by a Mortgage, evidencing the \$320,000.00 when the funds were disbursed for purposes other than the business of Cherry Hill Estates, LLC.

(d) failing to properly account for the use of the \$320,000.00, and by failing to provide Anthony E. Griffis an accounting and tax return with K-1 for the business transactions of the LLC including the payments of interest to Woodlands Bank, although Anthony E. Griffis has requested such accounting repeatedly.

12. Anthony E. Griffis has been directly and proximately damaged by the breach of fiduciary duty owed him by Ronald Faulkner in the amount of \$320,000.00.

FOR A THIRD CAUSE OF ACTION (Unlawful Distribution)

13. The above allegations are incorporated herein as if restated.

14. No operating agreement was ever entered into with respect to Cherry Hill Estates, LLC which could alter the statutory rights of the LLC members.

15. The \$320,000.00 invested by Anthony E. Griffis in Cherry Hill Estates, LLC, was wrongfully distributed to Ronald Faulkner, in violation of the Agreement dated October 8, 2007, because (a) the funds were not reinvested for development purposes in Cherry Hill Estates, LLC, as intended by paragraph 3 of said agreement; (b) \$119,000.00 was never escrowed from the \$320,000.00 for the interest payments, and Anthony E. Griffis was never given a tax return or K-1 from the LLC to entitle him to the interest deduction, in violation of paragraph 4 of said agreement; (c) No notice of meeting, meeting, or vote of the members was held to approve said disbursement, in violation of paragraph 5 of said agreement; and (d) although the funds were disbursed for an unrelated purpose, no Promissory Note secured by a mortgage was ever given to Anthony E. Griffis, in violation of paragraph 6 of said Agreement.

16. S.C. Code Ann. § 33-44-406(a)(1) (2006) states that "A distribution may not be made if the limited liability company would not be able to pay its debts as they become due in the ordinary course of business". S.C. Code Ann. § 33-44-405(a)(2) (2006) states that a distribution may not be made if "the company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and termination of members whose preferential rights are superior to those receiving the distribution".

17. The distribution of \$340,000.00 was in violation of S.C. Code Ann. § 33-44-406(a) (2006), and thereby unlawful, because the LLC was thereafter unable to pay its debts as they became due, specifically the \$200,000.00 mortgage debt to Cynthia Griffis.

18. S.C. Code Ann. § 33-44-405(a) (2006) states that "Any distribution made by a limited liability company before its dissolution and winding up must be in equal shares".

19. Ronald Faulkner and/or his company, Buckingham Development, LLC received the unequal distribution of \$320,000.00, and \$20,000.00 in excess closing proceeds, in violation of the above statute. Anthony E. Griffis has never received any distribution from Cherry Hill Estate, LLC, much less a \$340,000.00 distribution, and is entitled to all remedies available to a creditor of the LLC with respect to the wrongful distribution of \$340,000.00, pursuant to S.C. Code Ann. Section 33-44-405(c).

20. Anthony E. Griffis is entitled to restitution of the \$320,000.00, personally from Ronald Faulkner, because of the unlawful violation of the above statutes, and the breach of the amendment agreement dated October 8, 2007, by Ronald Faulkner.

FOR A FOURTH CAUSE OF ACTION (Conversion)

21. The above allegations are incorporated herein as if restated.

22. Without Anthony E. Griffis' consent, Ronald Faulkner intentionally took the \$320,000.00, and the \$20,000.00 excess closing proceeds, as set forth above, even though these funds belonged to Plaintiff.

23. Ronald Faulkner has retained and continued to use for his own benefit these funds owned by Anthony E. Griffis.

24. Ronald Faulkner's retention and use of Anthony E. Griffis' funds has been exclusive to Anthony E. Griffis' rights to said property and constitutes an intentional conversion of that property, as a direct and proximate result of which Anthony E. Griffis has sustained damages.

25. Ronald Faulkner's conversion of Anthony E. Griffis' funds was intentional, wrongful, without justification, and malicious, thereby justifying an award of punitive damages against Ronald Faulkner.

26. Anthony E. Griffis is entitled to a judgment against Ronald Faulkner for actual and punitive damages due to his conversion of this property.

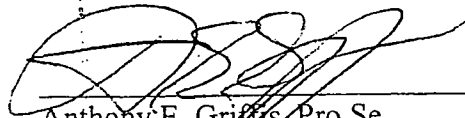
WHEREFORE, Anthony E. Griffis requests that this Honorable Court grant him relief as follows:

1. Dismiss the Third Party Complaint of Ronald Faulkner v. Anthony E. Griffis;
2. Order an accounting for all activities of Cherry Hill Estates, LLC, including the \$20,000.00 excess closing proceeds received by Cherry Hill Estates, LLC, at the closing on October 10, 2007, the \$320,000.00 invested in the LLC by Anthony E. Griffis and the tax treatment of the interest paid on the Woodlands Bank loan;

3. For a judgment of damages in the amount of \$320,000.00 with interest against Ronald Faulkner for breach of contract and fiduciary duty;
4. For an award of attorney's fees and costs;
5. For an award of punitive damages against Ronald Faulkner, in an amount in the discretion of the Court;
6. For such other relief as this Honorable Court deems just and proper.

September 17, 2010
Hilton Head Island, SC

Respectfully Submitted:



Anthony E. Griffis, Pro Se
10 Fording Island Road Extension
Hilton Head Island, SC 29926
(843) 837-3777
Email: griffis@hargray.com

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
EIGHT JUDICIAL CIRCUIT

COUNTY OF BEAUFORT)

Cynthia Griffis)

CIVIL ACTION NO.: 2009-CP-07-06054

Plaintiff)

Cherry Hill Estates, LLC,)

Eugene O'Neil and)

Ronald Faulkner)

AFFIDAVIT OF SERVICE

Defendants)

Cherry Hill Estates, LLC and)

Ronald Faulkner)

Third Party Plaintiffs)

v.)

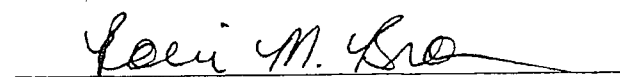
Anthony E. Griffis)

Third Party Defendant)

PERSONALLY appeared before me Anthony E. Griffis who being duly sworn, deposes and states that he served his Answer, Summons, Counterclaim, and Motion to Dismiss, of the above-captioned action, on Third Party Plaintiffs by mailing same, with first class postage affixed, to their attorney, Michael W. Mogil, Esq., at 2 Corpus Christie Place, Ste. 303, Hilton Head Island, SC 29928, on September 17, 2010.


Anthony E. Griffis

SWORN to before me this 17th
day of September, 2010.


Notary Public for South Carolina
My Commission Expires: 9/27/2014

0110

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Cynthia Griffis)

Plaintiff)

v.)

Cherry Hill Estates, LLC, Eugene O'Neil
and Ronald Faulkner)

Defendant(s))

Cherry Hill Estates, LLC and Ronald
Faulkner,)

Third Party Plaintiffs)

v.)

Anthony E. Griffis)

Third Party Defendant)

TO: ANTHONY GRIFFIS

Defendants and Third Party Plaintiffs Cherry Hill Estates, LLC and Ronald Faulkner (hereinafter "Defendants"), through their undersigned counsel, respectfully assert their Third Party Complaint in this matter as follows:

GENERAL ALLEGATIONS

1. Ronald Faulkner is a resident of Maryland who was, at all times relevant to the events and transactions that give rise to this lawsuit, a client of the law office of Anthony E. Griffis (hereinafter "Anthony Griffis" or "Griffis"), both individually and as a member of various corporate business entities.

2. Anthony Griffis was, upon information and belief, the attorney whom formed Cherry Hill Estates,

Third Party Complaint Griffis v. Cherry Hill Estates, LLC , et al 2009-CP-07-06054

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0111

LLC, a South Carolina Limited Liability , and whom, over the course of one year, structured a real estate transaction the purpose of which was to accomplish a marital property settlement with his estranged wife and former employee, Cynthia Griffis, the Plaintiff in the underlying matter herein.

3. In connection with the proposed transaction, prior to closing it was determined that a credit worthy loan guarantor was required, and Anthony Griffis solicited his client, Ronald Faulkner, to guarantee the loan(s) necessary to secure the financing needed to accomplish the proposed transaction.

4. Prior to closing on October 10, 2007, Anthony Griffis was expressly aware that the appraised value of the subject property at Cherry Hill Estates was less than \$ 800,000, and thus materially lower than the contract purchase price of \$ 1,013,000 that Cherry Hill Estates was paying and paid to Anthony Griffis and his wife for the subject property, being 27 acres in Ridgeland, South Carolina.

5. Anthony Griffis advised Ronald Faulkner to execute a personal guarantee of Cherry Hill Estates, LLC's loan obligation to Woodland's Bank for a purchase money loan in amount of \$ 850,000.

6. Anthony Griffis advised Ronald Faulkner to execute a short term, two year purchase money note in amount of \$ 200,000 given to his wife, Cynthia Griffis, to complete the financing necessary for the loan, and to enable, Mrs. Griffis, Mr. Griffis, and Cherry Hill Estates, LLC to receive funds at closing.

7. Upon information and belief, Anthony Griffis did not advise Ronald Faulkner or Cherry Hill Estates, LLC to obtain separate and independent legal advice relating to the transaction, as required by the Rules of Professional Conduct, since he and his wife were the sellers of the subject property.

8. Defendant Ronald Faulkner avers and alleges that he did not understand, or have actual knowledge, that he was entering into a short term, two year note obligation with Cynthia Griffis which could be potentially construed as unconditional and not dependent on the sale of the subject

property.

9. Upon information and belief, Anthony Griffis did personally benefit from Cherry Hill Estate's purchase of the subject property, and from Mr. Faulkner's loan guarantees, to those Defendants detriment and damage.

10. Anthony Griffis expressly reserved for himself an equity interest in Cherry Hill Estates, LLC and expressly declined to guarantee its debts.

For a First Cause of Action (Breach of Fiduciary Duty owed to Faulkner)

11. Defendant Ronald Faulkner re-alleges the allegations of paragraphs 1 through 10 above as though fully restated herein.

12. Anthony Griffis learned of Ronald Faulkner's financial situation and his financial and personal strengths, weaknesses and affairs in his unique position as Mr. Faulkner's attorney.

13. Anthony Griffis, whom had personally provided legal advice to Ronald Faulkner, and whom had confidential knowledge of Ronald Faulkner's financial affairs, owed Faulkner a unique fiduciary duty to protect Mr. Faulkner's best interests. Ronald Faulkner relied on Anthony Griffis in his capacity as his attorney.

14. Anthony Griffis had actual knowledge that the real property being 27 acres at Cherry Hill Road which was conveyed by Cynthia Griffis to Cherry Point, LLC, was appraised in 2007 for a sum significantly and materially less than the sum in which Mr. Griffis and Ms. Griffis was selling the property to Cherry Hill Estates, LLC, the entity which, upon information and belief, executed a number of contracts, all created by Anthony Griffis, with Anthony Griffis and Cynthia Griffis as Sellers, for this reason. Further, Anthony Griffis had actual knowledge that at the time of the transaction, neither Cherry Hill Estates, LLC nor Mr. Eugene O'Neill had the ability to pay the note

given to Plaintiff within the two year term structured by Anthony Griffis, and that only Defendant Faulkner then possessed that ability to pay and the credit standing to obtain a loan.

15. In structuring the subject transaction and recommending it to his client, Anthony Griffis breached his fiduciary duty to Mr. Faulkner, to whom he owed a duty to exercise judgment and to ensure his best interests. As a direct and proximate result of Third Party Defendant Griffis' breach(s), Defendant Ronald Faulkner has been damaged by the potential liability he owes to Woodlands Bank and Cynthia Griffis, by loss of any his personal down payment funds used to purchase Cherry Hill Estates, by the damage to Ronald Faulkner's credit rating and standing, and for the costs and fees incurred in defending this lawsuit, in an amount to be proven at trial.

For a Second Cause of Action (Breach of Fiduciary Duty owed Cherry Hill Estates, LLC)

16. Defendant Cherry Hill Estates, LLC re-alleges the matters in paragraphs 1 through 15 as though fully restated herein.

17. Anthony Griffis owed a fiduciary duty to his client, Cherry Hill Estates, LLC, the purchaser of his property.

18. As a direct and proximate result of Third Party Defendant Griffis' breach(s), Defendant Cherry Hill Estates, LLC has been damaged by the potential liability it owes to Woodlands Bank and Cynthia Griffis, by loss of its down payment to purchase Cherry Hill Estates, by the damage to and for the costs and fees incurred in defendant this lawsuit, in an amount to be proven at trial. For a

Third Cause of Action (negligence claimed by Ronald Faulkner and Cherry Hill Estates, LLC)

19. Defendants re-allege the matters in paragraphs 1 through 18 as though fully restated herein.

20. As their attorney, Anthony Griffis owed Defendants a duty of care.

21. Anthony Griffis conduct and actions in this matter are conduct and actions below the standard

of care for an attorney in his community.

22. Upon information and belief, it is alleged that Anthony Griffis's conduct and actions did not meet the standards set forth in the Rules of Professional Conduct governing attorneys in South Carolina.

23. As a direct and proximate result of Third Party Defendant Griffis' breach(s), Defendants Ronald Faulkner and Cherry Hill Estates, LLC have been damaged by the potential liability they owe to Woodlands Bank and Cynthia Griffis, by loss of their down payment to purchase Cherry Hill Estates, by the damage to Ronald Faulkner's credit rating and standing, and for the costs and fees incurred in defendant this lawsuit, in an amount to be proven at trial.

For a Fourth Cause of Action (Civil Conspiracy)

24. Defendants re-allege paragraphs 1 through 23 above as though fully restated herein.

25. Anthony Griffis undertook the actions precedent to Mr. Faulkner's execution of the loan guarantee, as pled above, in concert with Cynthia Griffis, his wife and possibly other persons, for the purpose of advancing his own benefit, and his wife's benefit to the specific harm and detriment of Mr. Faulkner and Cherry Hill Estates, LLC.

26. Anthony Griffis' actions, in concert with Cynthia Griffis, caused Mr. Faulkner to become personally obligated on a short term note, to his detriment and negative financial consequence as well as Cherry Hill Estates, LLC and Mr. Faulkner's ongoing obligations to Woodlands Bank.

27. Anthony Griffis' conduct, in concert with his wife, constitutes civil conspiracy, and has caused Mr. Faulkner damages in an amount to be proven at trial.

For a Fifth Cause of Action (Unjust enrichment)

28. Defendants re-allege paragraphs 1 through 27 above as though fully restated herein.

29. Defendant Ronald Faulkner's execution of a loan guarantee enabled Anthony Griffis to accomplish a divorce property settlement agreement through sale of his property, and possibly to receive a direct cash distribution from a real estate closing which was structured by Anthony Griffis.

30. Due to Woodlands Bank's financing of the transaction, and the Cherry Hill Estate's down payment, sourced by Mr. Faulkner and Eugene O'Neill, upon information and belief Anthony Griffis and his wife received cash funds at closing, in addition to the wife receiving a note and second mortgage which is the basis for the particular collection action plead against Mr. Faulkner.

31. Anthony Griffis's benefit was realized to the detriment of Defendants, whom also executed a note and loan guarantee with both Cynthia Griffis and Woodlands Bank.

32. Defendants Ronald Faulkner and Cherry Hill Estates, LLC allege that it is inequitable for Anthony Griffis to retain the benefits of the transaction he structured and induced Faulkner to guarantee, to Faulkner's detriment, and as such demands damages to recompense Ronald Faulkner and Cherry Hill Estates, LLC in an amount to be proven at trial.

For a Sixth Cause of Action (Indemnification)

33. Defendants re-allege paragraphs 1 through 32 above as though fully restated herein.

34. Anthony Griffis owes Ronald Faulkner and Cherry Hill Estates, LLC and duty of equitable indemnification for all losses, fees and costs that they sustain as a result of the transaction Mr. Griffis structured and placed them in.

WHEREFORE, Defendants Ronald Faulkner and Cherry Hill Estates, LLC request that the Honorable Court grant them relief as follows:

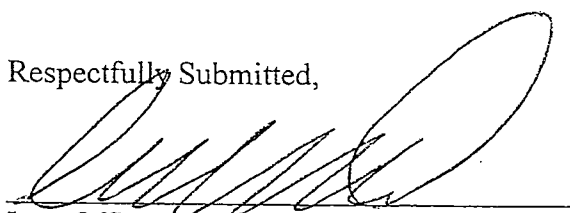
- 1) For judgment of damages against Anthony Griffis on all causes of action plead herein;
- 2) For an order of indemnification against Anthony Griffis for all damages, costs and fees sustained

herein;

- 3) For an award of Defendants' attorney fees and costs of defending and prosecuting this action; and
- 4) For such other relief as the Honorable Court deems just and proper.

June 18, 2010
Hilton Head Island, SC

Respectfully Submitted,



Law Office of Michael W. Mogil, P.A.
Michael W. Mogil, SC Bar No. 11933
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Hilton Head Island, SC 29928
(843) 785-8110
Email mmogil@mogillaw.com
Attorney for Defendants Ronald Faulkner
And Cherry Hill Estates, LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
Cynthia Griffis	)	CIVIL ACTION NO.: 2009-CP-07-06054
	)	
	)	
Plaintiff	)	
	)	MEMORANDUM IN OPPOSITION TO
v.	)	SUMMARY JUDGMENT
	)	
Cherry Hill Estates, LLC, Eugene O'Neil	)	
and Ronald Faulkner	)	
Defendant(s)	)	
	)	
Cherry Hill Estates, LLC and Ronald	)	
Faulkner,	)	
Third Party Plaintiffs	)	
	)	
v.	)	
	)	
Anthony E. Griffis	)	
Third Party Defendant	)	
_____	)	

TO: PLAINTIFF, THROUGH HER ATTORNEY OF RECORD, JAMES O. HALE, ESQ.:

Defendants Ronald Faulkner and Cherry Hill Estates, LLC submit this memorandum in opposition to the Motion for Summary Judgment filed by the Plaintiff. Summary Judgment is not appropriate at this stage of the litigation because there are material issues of fact in dispute, demonstrated by the sworn deposition testimony, documents and affidavit(s), which defeat the entry of judgment as a matter of law.

I. Summary of Argument

Defendant Ronald Faulkner was a real estate client of the Griffis Law Firm. Cynthia Griffis was a paralegal in the Griffis Law Firm at all times material hereto. She only worked on real estate closings and was paid based on the number of closings she managed. The real estate transaction and

loan transaction which give rise to Plaintiff's claim was a transaction structured by the Plaintiff and her husband, attorney and co-defendant Anthony Griffis to facilitate a bank loan equal to or in excess of the full market value of the their marital property to generate sales proceeds to fund a large payoff to Ms. Griffis which would settle Mr. and Mrs. Griffis marital property for a contemplated divorce, and to further fund monies to Mr. Griffis and the Defendants herein. To wit, the Contract for Sale entered into by the Plaintiff Cynthia Griffis, Anthony Griffis, and Eugene O'Neil in August on August 30, 2007 for \$ 1,013,000 was at least \$ 200,000 greater than the Contract for Sale entered into by the same parties in March, 2007 for approximately \$ 30,000 per acre, or \$ 810,000. This increase in price occurred during a period when real estate prices were rapidly declining and can only be explained as a manipulation to permit bank financing to fund the payouts described below. During the same period, Mr. Griffis drafted and the parties hereto executed a separate, side agreement contract dated October 8, 2007 which provided that Mr. Griffis would allocate more than two thirds (2/3) the Sellers' proceeds, immediately after closing, to the Defendants or their entity in exchange for Mr. Griffis receiving a one-third interest in the purchasing entity, Cherry Hill Estates, LLC, and for Mr. Faulkner's loan guarantees of Cynthia Griffis' second mortgage promissory note. Neither the Seller side (Attorney Griffis or his wife, the Plaintiff) nor the Purchaser side (Cherry Hill Estates, LLC, Eugene O'Neil and Mr. Faulkner) has any recollection that the October 8, 2007 side agreement was provided to Woodlands Bank, which funded an \$ 850,000 purchase money loan just two days later. There is no record of the October 8 side agreement in Mr. Qualey's settlement file. Mr. Faulkner, who was brought into this transaction for his financial strength, has testified that he did not understand that the side agreement contract he signed in his attorney's (Griffis) office was a promise to give a loan guarantee to Cynthia Griffis on a two year

demand note. He has further testified that he did not understand that Mr. Qualey was executing a loan guaranty on his behalf for the Plaintiff's second mortgage and note.

As a consequence of the transaction, Mr. Faulkner is a guarantor on Ms. Griffis "purchase money" second mortgage loan to Cherry Hill Estates, LLC, and he also is a guarantor on an \$ 850,000 mortgage given by Cherry Hill Estates, LLC to Woodlands Bank for property that is now believed to be worth far less than its original purchase price.

In opposition to this motion for summary judgment, Defendant Faulkner argues that the underlying promissory note was incorporated by by the Plaintiff and her husband, without his actual knowledge, in connection with a voidable, and potentially fraudulent transaction, and thus his personal guarantee is void. Faulkner further argues that because he did not understand he was giving a personal guarantee and relied on his historical attorney Mr. Griffis and his trust in Ms. Griffis, that this guarantee obligation fails for lack of mutual assent. Mr. Faulkner further argues that although he did receive monies in the form of reimbursements from Mr. O'Neil and jointly controlled LLCs which were funded with the sales proceeds, in balance Mr. Faulkner received no consideration for the guarantee, but rather he incurred an almost open ended liability, and it is also an unenforceable obligation for that reason.

As demonstrated below, there are numerous and significant disputed issues of material facts in this matter, and it is not ripe for summary judgment as a matter of law.

II. Summary of Facts Relevant to the Motion.

In February, 2007 Attorney Tony Griffis began structuring a transaction with his client Eugene O'Neill to sell property Mr. Griffis owned with his estranged wife, Cynthia Griffis, to Mr. O'Neil to enable the finalization of a divorce. The property was not for sale on the open market at

the time nor was it ever listed for sale. (Cynthia Griffis Depo at pp 49-51). At that time, Mr. Griffis had already contemplated that Mr. Faulkner, whom he knew based on prior representation as a real estate client, be brought into the transaction, as necessary, to provide financial strength. (See Confidential Memorandum from Anthony Griffis dated February 22, 2007, Def Exh Griffis' Deposition, attached hereto as Exhibit B.) Although Mr. Griffis testified that he did not contemplate that Mr. Faulkner be brought in until September, 2007, the memorandum, which he drafted and circulated to Mr. O'Neill and to Ms. Griffis, in February, 2007, suggests otherwise.

In the course of the year, a number of contracts were drafted, first in March, 2007 which provided for an approximate sales price of \$ 810,000 (See Agreement of Sale attached as Exhibit A). Ultimately a contract, referred to as a Contract of Sale, was executed on August 30, 2007 between the Plaintiff Cynthia Griffis, Attorney Anthony Griffis, and Eugene O'Neil to sell the property to an entity to be formed by Mr. Griffis, known as Cherry Hill Estates, LLC for \$ 1,013,000. (See Agreement of Sale attached hereto as Exhibit C). Mr. Faulkner was not a party to the August 30, 2007 Agreement of Sale. This Contract is believed to have been provided by either Mr. Griffis, Ms. Griffis or Mr. O'Neil to the first mortgage lender, Woodlands Bank, and also the closing attorney whom Mr. Griffis recommended, Jack Qualey. Mr. O'Neil testified that he does not recall communicating with Qualey Law Firm on this matter, so it is presumed by Mr. Faulkner that the Agreement of Sale was provided to Qualey by someone on the Seller side (the Griffis side). The Agreement of Sale does not reference any second mortgage or loan guarantees.

Mr. Griffis and Mr. O'Neil determined in September, 2007 to formally bring Mr. Faulkner into the transaction as they needed his credit to fund a loan, but Ms. Griffis did not agree to the terms proposed. (See September 13, 2007 Agreement, attached hereto as Exhibit D). Ultimately,

the Plaintiff agreed to the transaction, and Ms. Griffis, Mr. Griffis and Mr. O'Neil and Mr. Faulkner executed a second side agreement on October 8, 2007, prepared by Mr. Griffis, in Mr. Griffis' office which outlined the terms of the proposed transaction, which are now disputed. This October 8 side agreement, referred to as the "Agreement Regarding Cherry Hill Estates, LLC" (attached hereto as Exhibit E), was not provided to the lender by either Mr. Griffis, Cynthia Griffis, or Mr. O'Neil. It provided that 1) Mr. Griffis reinvest the net Sellers' proceeds from sale into Cherry Hill Estates, LLC in exchange for Mr. Griffis receiving a one third interest in Cherry Hill Estates, LLC, 2) that Mr. O'Neil and Mr. Faulkner would proceed with the transaction 3) that Ms. Cynthia Griffis could remain living in the trailer on the property until her second mortgage loan was paid, and 4) according to terms of this side agreement, that Mr. O'Neil and Mr. Faulkner agree to guarantee the second mortgage note to Ms. Griffis. Anthony Griffis expressly declined to guarantee Cherry Hill Estate's obligation to Cynthia Griffis even though he was obtaining a one third interest in the entity. It is noted that Mr. Griffis prepared the Agreement on behalf of himself and his wife, and ostensibly for Mr. O'Neil and Mr. Faulkner, whom were not represented by separate counsel at the meeting or before closing.

Mr. Faulkner has testified that he did not understand he was agreeing to give a guarantee on a two year demand note (Faulkner Affidavit attached hereto as Exhibit H) (Faulkner Depo at page 10 and page 66), or that he was jointly and severally liable as a guarantor of a corporate obligation, (Faulkner Depo at pp 37,38, 39-41, page 66 and 67). Mr. Faulkner executed the October 8 "Agreement Regarding Cherry Hill Estates, LLC" in his attorney's office, trusting it was in his best interests as his attorney and paralegal had all information about him and structured and pushed the deal on him. (Faulkner Depo at page 26 and page 58). Faulkner testified he never was showed the

actual Contract of Sale. According to his own testimony, Mr. O'Neil was initially referred by either Cynthia Griffis or Tony Griffis to the Hale Law firm to act as settlement agent for the transaction but was ultimately referred to the Qualey Law Firm (O'Neil Depo at Page 16-17). The Qualey Law Firm processed the pending transaction in late September and early October. Mr. Faulkner does not recall ever meeting Mr. Qualey. On October 10, Mr. Faulkner gave Jack Qualey a limited power of attorney to execute any necessary documents to sign documents on his behalf relating to the transaction, including the loan guarantee to Cynthia Griffis, and then left town. Mr. O'Neil signed the closing documents for Cherry Hill Estate at Mr. Qualey's office for the transaction the same day, on or about October 10, 2007. At closing, the property was deeded from Mr. and Mrs. Griffis to Cherry Hill Estates, LLC for \$ 1,013,000. (See HUD 1 Settlement Statement, Def. Ex 1, Attached hereto as Exhibit F) Woodlands Bank funded the transaction with an \$ 850,000 purchase money loan. The Griffis' existing mortgage to SunTrust Bank in amount of \$ 287,000 was paid out of settlement proceeds at closing. A "second mortgage" in amount of \$ 200,000 was reflected on Lines 206 and 506 of the HUD 1. The Borrower, Cherry Hill Estates, LLC was refunded \$ 20,016 at closing and the Sellers, Mr. and Mrs. Griffis, received \$ 523,164.08 payable to Anthony and Cynthia Griffis, which money was deposited into Mr. Griffis' account. Later that same day, Mr. Griffis wrote from his personal account a check to Cynthia Griffis for her net proceeds in amount of \$ 150,000. Mr. Griffis then issued a check to Eugene O'Neil for \$ 323,000, which money was sourced and paid out of the Sellers' net funds from the sale. (See, copies of checks, attached Exhibit G hereto).

Mr. Faulkner has testified that at no time prior to the demand issued by Ms. Griffis relating to her note in this case did he understand or believe that he had issued a personal guarantee on the second mortgage or note. (Faulkner Depo at p 58 and p66 and Affidavit of Ronald Faulkner). Mr.

O'Neil testified that he did not believe that either he or Mr. Faulkner was giving a personal guarantee to Cynthia Griffis. (O'Neil Depo at pp 35-36 and throughout). Rather, O'Neil believed that the October 8 side agreement was just another letter of intent like the many others he had seen and executed with the Griffis' before it, and in any case, he did not read carefully its terms. (O'Neil Depo pp 48-49). O'Neil testified that he relied on and trusted Anthony Griffis, his attorney, and that the personal guarantee was a matter that they had expressly discussed and rejected in conversations. (O'Neil Depo at p 46). O'Neil further testified that Cynthia Griffis expressly understood she was not getting a personal guarantee for the note—rather she was receiving \$ 150,000 at closing and the balance of her share if and when the property was resold. (O'Neil Depo at p 46-47). O'Neil testified that he believed that the property and its development would be the source of repayment to Ms. Griffis.

Mr. Faulkner resides in Annapolis, Maryland. Prior to the Cherry Hill Estates, LLC transaction, he had employed the Griffis Law Firm as his local real estate counsel in at least one personal transaction, the purchase of his home from an estate in which Mr. Griffis was the executor, and one or more LLC purchases. Griffis was his only local law firm. He testified that he relied on both Ms. Griffis and Mr. Griffis as his legal team in this matter. (Faulkner Depo pp 57-59). As it relates to this closing, Mr. Faulkner has no recollection that Mr. Griffis, or his wife, recommended that Mr. Faulkner consult with an independent counsel prior to entering into the sales contract or transaction. Mr. Faulkner recalls meeting with Cynthia Griffis on at least one occasion, in Mr. Griffis' office, to discuss the proposed transaction. He testified that the Griffis' chose Mr. Qualey to be the settlement agent for the transaction, and that while he recalls he spoke with Mr. Qualey by phone the day of closing, he does not recall the subject matter of that conversation or whether he

man

discussed the merits of the transaction or his legal rights and obligations thereunder with Mr. Qualey. He did not discuss anything with Mr. Qualey in person.

III. Argument

A. Voidable Transaction.

As set forth above, the loan guaranty sought to be enforced by the Plaintiff was a purchase money, second mortgage loan given in connection with a transaction in which it appears that neither side, being the Sellers Mr. or Mrs. Griffith, or the Purchaser Cherry Hill Estates, LLC through its Manager Mr. O'Neil, provided the critical side agreement to Woodlands Bank. That side agreement which provided, inter alia, for a return of sales proceeds by the Sellers to the Purchaser after the closing which, if not disclosed prior to the funding of a loan, is *per se* violative of federal law, bank loan protocols, and title company procedures. The refund of purchase money did indeed occur, immediately after the closing. The refund or kick back of sales proceeds is not reflected on the settlement statement signed by the Plaintiff, Mr. Griffiths and Mr. O'Neil. Federal law, bank loan protocols and title insurance standards all require that any agreement to allocate sales proceeds or loan proceeds must be disclosed to the lending institution prior to funding, and that any allocation of sales proceeds must be reflected on the HUD 1 settlement statement. Further, any allocation of proceeds which differs from the HUD Settlement must be signed off on by all parties, including the settlement agent and lender(s). This latter event is precisely what happened in this transaction. First, a contract price was inflated to provide for 100% financing. Then, sales proceeds were refunded back to the purchasing entity, with no evidence that the lender was aware of this refund. Thus, the transaction which gives rise to the loan guaranty by Mr. Faulkner, who was not at the closing and who did not execute the settlement statement, is a voidable, and a potentially fraudulent (if

Woodlands and Qualey did not know about or agree to the post closing re-distribution of the Sellers' proceeds) transaction.

At the depositions in this proceeding, the parties reviewed a number of appraisals obtained by the initial proposed lender, Low Country National Bank, relating to the property. (Faulkner Depo at pp145-147). The final appraisal used by Woodlands has not been discoverable to this date. It is Mr. Faulkner's contention that the final appraisal reflected an actual value lower than the sales price, and thus he was steered into a transaction that was from the outset "upside" down. As the final appraisal has not yet been discovered, Faulkner argues herein that the issue of what the property appraised for, and whether the appraisal was even accurate, is a triable issue and is not appropriate for summary judgment.

B. Lack of Mutual Assent.

A contract of guaranty, like every other contract, can only be made by the mutual assent of the parties. Crafton v. Brown, 346 S.C. at 354, 550 S.E.2d at 907 (Ct. App 2001). "If the guaranty is signed by the guarantor at the request of the other party, or if the latter's agreement is contemporaneous with the guaranty, the mutual assent is proved, and the delivery of the guaranty to him or for his use completes the contract." Id.

Ronald Faulkner's affidavit and testimony in this case reflect that there was no mutual assent to his loan guarantee agreement. He did not understand or agree to its material terms, he did understand that the documents created a loan guarantee, and the guarantee presented to his attorney in fact at closing was materially different than the terms of the transaction which he had discussed prior to closing.

C. Insufficient Legal Consideration

A loan guaranty must be supported by sufficient legal consideration, which can consist of either a benefit to the principal obligor or guarantor, or some detriment to the obligee. Hope Petty Motors of Columbia, Inc. v. Hyatt, 310 S.C. 171, 178, 425 S.E.2d 786, 791 (Ct. App.1992). Here, the record demonstrates that there was little or no benefit to Mr. Faulkner conferred by the loan, as the real property acquired was and is worth materially less than the sales price paid, even by the highest appraisal obtained for the property prior to closing. Mr. Faulkner did receive from Mr. O'Neil reimbursement for the \$ 119,000 deposit monies escrowed to secure the Woodlands' loan, but on balance, if the subject note is enforceable, Mr. Faulkner remains the sole viable guarantor on both this \$ 200,000 demand note, and the underlying \$ 850,000 first mortgage. The only ascertainable benefit was conferred on the Sellers, and in particular the Plaintiff, who obtained a sales price for more money than the property was worth, \$ 150,000 cash at closing, free use of her home and trailer for at least two years, and a short term loan guarantee from the only party in the transaction who on paper had the resources to qualify for financing for such a transaction.

D. Lack of independent advice.

Ronald Faulkner believed that Tony Griffis was his legal advisor prior to the closing of this transaction, and understood that Cynthia Griffis worked for his law firm. Although the Plaintiff can cite testimony from Eugene O'Neil that Mr. O'Neil did not rely on Cynthia Griffis, Mr. Faulkner, who is the subject of this motion, has testified that he met with Ms. Cynthia Griffis, who was a paralegal in his prior transactions, only in Mr. Griffis' law office and presumed that she and Tony Griffis were acting in his best interests in this transaction and that he relied on them as a legal team. Faulkner further testified that he has no recollection or record that either Ms. Griffis or Mr. Griffis suggested that he obtain independent legal advice prior to executing into the real estate contract,

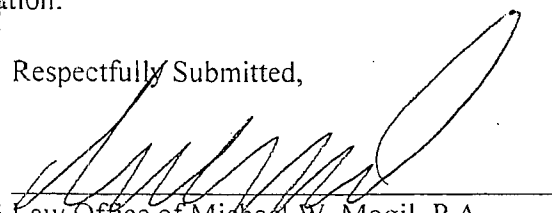
the side agreement(s), or the final settlement and loan documents. Mr. Faulkner has alleged that both Mr. and Mrs. Griffis owed him a fiduciary duty to make such a recommendation prior to entering into a transaction with him, their client. For this reason, the loan contract entered into in contravention of the professional duty to recommend independent counsel should be and is unenforceable, where the note holder is and was both a family member and employee of the lawyer/firm that failed to make the recommendation.

IV. Conclusion

Mr. Faulkner was brought into a transaction designed to facilitate a marital settlement for the Sellers at the last minute, due to his financial strength, and without him ever manifesting he even understood what he was signing for. For the reasons argued above, if the facts as testified to by Mr. Faulkner and as set forth in the document record are found by the trier of fact to be true, Mr. Faulkner's loan guarantee to Ms. Griffis would be unenforceable as a matter of law. Thus, summary judgment is not appropriate at this stage of the litigation.

October 31, 2010
Hilton Head Island, SC

Respectfully Submitted,



Law Office of Michael W. Mogil, P.A.
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Hilton Head Island, SC 29928
(843) 785-8110
Email mmogil@mogillaw.com
Attorney for Defendant Ronald Faulkner
And Cherry Hill Estates, LLC

CONTRACT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT made this 29 day of March, 2007, by and between

CHERRY HILL ESTATES, LLC BY EUGENE O'NEIL, AUTHORIZED MEMBER ("Buyer"),
and ANTHONY E. GRIFFIS AND CYNTHIA GRIFFIS ("Seller").

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section I. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "Broker(s)" shall mean:

N/A NONE ("Listing Agency"),
N/A NONE ("Listing Agent"),
Acting as: Seller's Agent Dual Agent
and NONE ("Buyers Agency"),
 NONE ("Buyers Agent"),
Acting as: Buyer's Agent Seller's (Sub) Agent Dual Agent

(b) "Closing" shall occur on or before APRIL 6, 2007, unless extended pursuant to this contract.

(c) "Earnest Money" shall mean FIVE HUNDRED DOLLARS AND NO CENTS Dollars (\$ 500.00)
terms as follows: ALL EARNEST MONEY DEPOSITS SHALL APPLY TO PURCHASE PRICE AT CLOSING.

Upon acceptance of this contract, the Earnest Money shall be held by ANTHONY E. GRIFFIS, to be applied as part of the purchase price of the property at the time sale is closed. Anthony E. Griffis may pay any earnest money deposit to SunTrust Mortgage towards the mortgage on subject property until closing.

(d) "Examination Period" shall mean BUYER SHALL HAVE until March 31st, 2007 TO INVESTIGATE THE FEASIBILITY OF THE INTENDED USE OF THE PROPERTY.

(e) "Intended Use" shall mean the use of the Property for the following purpose: FUTURE DEVELOPMENT

(f) "Property": (Address) APPROX 27 ACRES, LOCATED AT 1721 CHERRY HILL ROAD, JASPER COUNTY, SOUTH CAROLINA, SEE EXHIBIT A

"Property" is for land only, and does not include any improvements such as the barn, driveways, septic tanks, mobile home.

Said improvements shall be removed from the property at time of payoff of seller financing, unless agreed to by the parties at that time.

(g) "Purchase Price" shall mean the sum of THIRTY THOUSAND DOLLARS PER ACRE, TOTAL PRICE TO BE ADJUSTED AFTER SURVEY

payable on the following terms:

(i) Cash in the amount of THREE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$ 350,000.00), to payoff existing SunTrust mortgage with excess cash payable to Sellers as they agree.

(ii) Note in the amount of \$325,000 secured by a FIRST mortgage on 5.66+ acres, per survey acceptable to Cynthia Griffis, payable to Cynthia Griffis, with 10% annual interest and principal payable in full on or before March 31, 2009. Cynthia Griffis shall have the right to occupy the 5 acres rent free until said Note is paid in full. Should Buyer default on said Note, Buyer agrees that a Deed (in lieu of foreclosure) shall be recorded to Cynthia Griffis for the 5 acres. Said Deed shall be executed at closing and held in the file of Cynthia Griffis' attorney until default, then may be recorded at any time at Cynthia Griffis' option.

(iii) Balance in a second mortgage (behind the first mortgage of Lowcountry National Bank) on the remaining 22 acres payable to Anthony E. Griffis, upon terms to be agreed on by March 31, 2007. The parties agree that the first mortgage loan from Lowcountry National Bank shall be in an amount sufficient to cover the \$350,000, plus anticipated development costs (such as loan interest carry costs) for 24 months.

(h) "Seller's Notice Address" shall be as follows:

Anthony E. Griffis, 1533 Fording Island Rd #322, Hilton Head Island, SC 29926
TEL. 843-837-3777 FAX. 843-837-3778
E-Mail: griffis@harqav.com

except as same may be changed pursuant to Section 13.

(i) "Buyer's Notice Address" shall be as follows:

Eugene O'Neil, 5 Big Oak, Hilton Head Island, SC 29926
E-Mail: epo2@Harqav.com

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except as same may be changed pursuant to Section 13.

(i) "Official Contract Date" The official starting date of the contract shall be from date of the signing of the seller.

Section 2. Proration of Expenses Payment of Costs. Seller and Buyer agree that property taxes shall be prorated as of the date of closing. Seller shall pay deed stamps and other conveyance fees or taxes, and Buyer shall pay recording costs, and all costs associated with the Lowcountry National Bank loan (such as appraisal, survey, title searches and title insurance).

Section 3. Survey. Buyer agrees to obtain a survey, at Buyer's expense, of the subject property showing 2 parcels: the 5 acres for the first mortgage to Cynthia Griffiths, and the 22 acres for the first mortgage to Lowcountry National Bank, including any access easements, no later than March 28, 2007.

Section 4. Payment of Purchase Price. Buyer shall pay the Purchase Price in accordance with all the terms and conditions of this contract.

Section 5. Title. Seller agrees to convey fee simple marketable title to the Property by general warranty deed, subject only to the exceptions hereinafter described. Seller represents and warrants that Seller is the fee simple owner of the property, and at Closing, Seller shall deliver to Buyer good and marketable fee simple title to said Property, free and clear of all liens, encumbrances and defects of title other than zoning ordinances affecting the Property, utility easements of record serving the Property, taxes not yet due and payable, road right-of-ways of record and those other encumbrances, reservations, restrictions and easements and other exceptions set forth on Exhibit C attached hereto ("Permitted Exceptions").

Section 6. Conditions. This agreement and the rights and obligations of the parties under this agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer) of the following conditions:

(a) Examination. After the date of execution of this Agreement by Seller, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period, as defined in Section 1(d). In the event that such title examination shall show that Seller's title is not good, marketable, fee simple and insurable, then the Buyer shall immediately notify the Seller in writing of all such title defects and exceptions, as of the date Buyer learns of the title defects and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, the Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). From the date of notice, all deposits and/or contract dates and monies are suspended. The contract will remain in force until title is cleared by Seller. If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

The examination period consists of the performance of boundary survey, topographic survey, aerial survey, wetland delineation, environmental reports, soil borings, county approvals, appraisal, analysis of sewer and water feasibility, timber cruise, historic reports, title examination, department of transportation review. Buyer shall maintain ownership of the above plats and reports. In the event of default by Buyer, Seller has the right of disclosure and receipt of one copy of information prepared.

(b) Intended Use. Seller represents and warrants that, to the best of Seller's knowledge, use of the Property for its Intended Use will not violate any private restrictions or governmental regulations. If Buyer determines, prior to the date of Closing, that use of the Property for its Intended Use will violate any such private restrictions or governmental regulations, then Buyer may terminate the agreement by written notice and receive a return of the Earnest Money and neither party shall then have any further obligations in connection with this Agreement.

(c) Same Condition. If the Property is not in substantially the same condition as of the date of the offer, reasonable wear and tear, and any change of condition caused by or attributed to the acts of the Buyer, its employees, agents or independent contractors engaged by it excepted, then the Buyer may terminate the Agreement and receive return of the Earnest Money.

(d) Inspections. Buyer, its agents or representatives, at Buyer's expense and at a reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, conducting timber cruises, and surveying the Property. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Paragraph and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. Except as provided in Section 6(c) above, Buyer shall have from the date of acceptance through the end of the closing period to perform the above inspections, examinations and testing to determine if the Property is suitable for the Intended Use. If, prior to the expiration of the examination period, Buyer determines that the Property is unsuitable, at Buyer's sole discretion, and provides written notice to Seller thereof, then this Agreement shall be terminated and Buyer shall receive a return of the Earnest Money; otherwise, after such examination period, the Earnest Money is deemed earned and shall be payable to Seller. In the event of such termination, Buyer shall restore the property to substantially the condition existing prior to the making of any such examinations and inspections.

(e) Reservations. Buyer, at its sole discretion has the right to show the Property and obtain non-binding reservations prior to closing. Said reservations are not a legal binding contract enforceable by the party making the reservation upon the Buyer or Seller. Buyer has the right to erect signage on the property for bureaucratic announcements, reservations, and/or community communication.

(f) Seller Representations of Property. As of the date of this execution Seller hereby makes the following representations and warranties to and covenants with Buyer, each of which shall be deemed material and to have been remade as of the date of Closing:

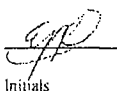
- (1) Seller warrants that there are no gravesites or areas containing Native American artifacts exist on this site.
- (2) Seller warrants that there are no Historical sites existing on this property.
- (3) Seller warrants that there are no organized trash disposal or otherwise existing on the property.

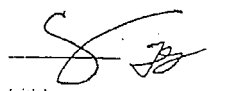
If the representations listed above are misrepresented or misinformation by Seller then (1) Buyer has the right to call the contract null and void, (2) Buyer has the right to receive return of all deposits, (3) Seller has no grounds for dispute upon written notice from Buyer.

- (g) Rezoning. Buyer shall have the right to apply for rezoning to another classification according to the Zoning Ordinance of the City and the County in which the property is located. Seller agrees to enter into and assist in any way reasonably necessary for such rezoning, without any cost to Seller.
- (h) Other. After all investigations have been completed, Seller shall have 15 days to respond to any concerns of Buyer.

Section 7. Environmental. Seller represents and warrants that it has no actual knowledge of the presence or disposal within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a "Hazardous substance" pursuant to Section 331 of the Clean Water Act, 33 U.S.C. Sec. 1251, et. seq. (33 U.S.C. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Sec. 1371), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et. seq. (42 U.S.C. Sec. 6903) or (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, et. seq. (42 U.S.C. 9601). Seller further states that it has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts, and it has no reason to suspect that such use or disposal has occurred, either during or prior to its ownership of Property.

Prior to Closing Buyer will have a Phase 1 Environmental Assessment done on the Subject Property. Should the assessment discover any item that would require further study and/or clean up, Seller shall have the option of (a) resolving the items, (b) providing for their resolution or (c) refusing to resolve them. If Seller elects not to resolve the items, then Buyer shall have the option of (d) accepting the Property in its present condition or (e) terminating this contract, in which case the Deposit(s) shall be refunded to Buyer with no further obligation on the part of either party.


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Section 8. Eminent Domain. If prior to Closing all or any part of the Subject Property is taken by eminent domain or if condemnation proceedings are commenced, Buyer, or its assigns, shall have the option, by written notice to Seller, to terminate this contract and receive an immediate refund of the Deposit(s). If Buyer does not elect to terminate this contract, it shall remain in full force and effect and Seller shall assign, transfer and set over to Buyer at the Closing all of the Seller's right, title and interest in and to any awards that may be made for such taking.

Section 9. Risk of Loss/Damage/Repair. Until the Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. In the event the Property is damaged so that the Property cannot be conveyed in substantially the same condition as it was prior to Closing, Buyer may elect to terminate this Agreement and the Earnest Money shall be returned to the Buyer. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement. Upon acceptance of this contract, the Earnest Money shall be held by the escrow agent until the sale is closed or until the contract is otherwise terminated and it is disbursed in accordance with the provisions of this contract. Provided, however, that any earnest money deposit may be paid to SunTrust Mortgage towards the subject property's mortgage, subject to reimbursement of same to Buyer should this contract be validly terminated by Buyer.

In the event this offer is not accepted, or in the event that any of the conditions hereto are not satisfied, or in the event of a breach of this Agreement by Seller, then the earnest money shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach.

Section 11. Defaults and Remedies. In the event of a default or breach by Seller of any of the covenants, conditions or obligations of the Seller under this contract, then Buyer shall all rights available to it at law or in equity including a suit for damages or an action for specific performance or Buyer has the right to terminate this contract by giving written notice of such termination to Seller addressed as in Section 1(h), whereupon the Deposit(s) shall be refunded to the Buyer.

The parties hereto acknowledge that in the event of a default or breach by the Buyer or its assigns, of any of the covenants, conditions or obligations of Buyer under this contract, the damages to the Seller would be speculative and difficult, if not impossible, to determine. Therefore the parties hereto agree that in such event, Seller shall be entitled to receive the Deposit(s) as full and complete liquidated damages as its sole remedy.

Section 12. Closing. The Closing shall consist of the execution and delivery by Seller to Buyer of a General Warranty Deed and other documents customarily executed by a seller in similar transactions, including without limitation, an owner's affidavit, lien waiver forms and a non-foreign affidavit, and the payment by Buyer to Seller of the Purchase Price in accordance with the terms of the Purchase Price. At Closing, the Earnest Money shall be applied as a part of the Purchase Price or as otherwise provided in Section 1(c). The Closing shall be held at the office of Buyer's attorney or such other place as the parties hereto may mutually agree.

Section 13. Notices. Unless otherwise provided herein, all notices and other communication which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date delivered in person or deposited in the United States mail, registered or certified, return receipt requested, or via electronic mail, or by facsimile, to the addresses set out in Section 1(h) as to the Seller and in Section 1(i) as to the Buyer, or at such other addresses as specified by written notice delivered in accordance herewith.

Section 14. Entire Agreement. This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.

Section 15. Adverse Information Compliance with Laws.

(a) Seller Knowledge. Seller has no knowledge of (i) condemnation(s) or assessments(s) affecting or contemplated with respect to the Property, (ii) actions, suits or proceedings pending against the Property, (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property.

(b) Compliance. To the best of Seller's knowledge and belief, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, or constitute any default under or result in the imposition of, any lien or encumbrance upon the Property under any Agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

(c) Disclosure. There is no significant adverse fact or condition known to Seller relating to the Property or the Intended Use, which has not been specifically disclosed in writing by Seller to Buyer.

Section 16. Survival of Representations and Warranties. All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 17. Applicable Law. This Agreement shall be construed under the laws of the United States in which the Property is located.

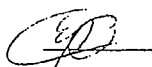
Section 18. Compliance with IRS Code. Seller will inform Buyer, if any owner, who will receive monies from this transaction is a foreign national, or resident alien, in order to insure compliance with Section 1445 of the Internal Revenue Code of 1954, as amended.

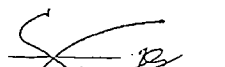
Section 19. Tax-Deferred Exchange. In the event Buyer or Seller desires to elect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 20. Assignment. Buyer may assign its rights and delegate its obligations hereunder. If the Buyer assigns its interest to an assignee, the assignee shall assume the obligations and liabilities of the Buyer under this Agreement and such modification to the representations and warranties set forth in this Agreement as are reasonably acceptable to the Seller shall be made as are required because of the nature of such assignee. Such assignment shall relieve and discharge Buyer of all obligations hereunder or under the agreement to be executed by Buyer.

Section 21. Delivery of Documents. Immediately after execution of this contract by the parties, Seller shall deliver to Buyer all engineering reports, surveys, topos, plats, permits, governmental approvals, studies, brochures, marketing reports, and other miscellaneous documentation and information which Seller has in its possession and which Seller is legally entitled to deliver to third parties provided that they can be delivered without additional cost to Seller. Any items so delivered are without any representation or warranty on the part of Seller as to the accuracy thereof or as to whether Buyer can utilize such information. In the event, Buyer does not close the transaction as herein contemplated, except for default by Seller, Buyer shall furnish to Seller, without charge to Seller, the results of any and all examinations, surveys or inspections made upon the property, including, but without limitation, environmental audits, surveys of the property, wetlands delineation surveys, soil test borings and subdivision or planned unit development plans, and Seller shall be deemed owner of all such reports, results, plans and lists and entitled to the use of the same.

Section 22. Arbitration. All claims and disputes between Buyer and Seller shall be arbitrated under the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless Seller and Buyer agree in writing to another method of settlement. Arbitration proceedings under this Article shall be limited to Seller, Buyer, and those whose presence is essential to a complete resolution of the matter in dispute and who have a substantial interest in that matter. Any consent to arbitration requiring the presence of an additional person or persons shall be limited to the matter in dispute and the parties described in the consent. This agreement to arbitrate and any additional agreement or consent to arbitrate approved by Seller and Buyer shall be enforceable under the prevailing arbitration law. The award of the arbitrators shall be final and any court having jurisdiction may enter a judgment on it.


Initials


Initials "SB" 0131

The party demanding arbitration shall give notice to the opposite party, the American Arbitration Association, and Architect within a reasonable time after the matter in dispute has arisen. In no event, however, shall a written notice of demand for arbitration be given after the date on which a legal action concerning the matter in dispute would be barred by the appropriate statute of limitations.

Attorney's Fees: In the event any party must bring legal action to enforce the terms of this Agreement, the prevailing party in such legal action, suit, or arbitration shall be entitled to collect from the non prevailing party all its reasonable attorneys' fees and court costs, both prior to and on appeal.

Section 23. Termination Clause. Buyer has ten (10) business days (no weekends) from the end of the exam period and/or the closing period in addition to any extensions to perform on contract.

Section 24. Confidentiality. Seller acknowledges that the information contained in this document is confidential information to the Buyer, the disclosure of which would cause irreparable harm to the Buyer, and further covenants and agrees to maintain that confidentiality and not to disclose any information herein except with the prior written consent of the Buyer.

Section 25. Brokers. Buyer and Seller each represent and warrant to the other that the real estate agent(s) involved in this Agreement is/are as stated in Section 1. (a). Each party agrees to indemnify and hold the other harmless from any loss or claim resulting from the inaccuracies of these representations and warranties. Seller agrees to pay a commission to the Agency/Agencies calculated at the rate of 8 percent of the total purchase price and equally distributed between agencies if applicable. The commission may be deemed earned and payable upon closing and payment of the respective purchase price to Seller.

Section 26. Survival of Indemnification. All indemnification and hold harmless agreements herein given shall survive any assignment and shall survive closing, whether or not assigned.

Section 27. Counterparts. This contract may be executed in separate counterparts, which when executed by all parties, shall constitute one entire agreement. Facsimile transmission of original signatures shall be deemed original signatures.

THIS DOCUMENT IS A LEGAL DOCUMENT. EXECUTION OF THIS DOCUMENT HAS LEGAL CONSEQUENCES THAT COULD BE ENFORCEABLE IN A COURT OF LAW. NO PARTY MAKES ANY REPRESENTATIONS CONCERNING THE LEGAL SUFFICIENCY, LEGAL EFFECT OR TAX CONSEQUENCES OF THIS DOCUMENT OR THE TRANSACTION TO WHICH IT RELATES. EACH PARTY REPRESENTS THAT S/HE HAS BEEN ADVISED TO SEEK INDEPENDENT LEGAL REPRESENTATION AND HAS HAD THE OPPORTUNITY FOR INDEPENDENT LEGAL REPRESENTATION.

BUYER:

CHERRY HILL ESTATES, LLC

(Name of Firm)

By: [Signature] (SEAL)

EUGENE O'NEIL:

Date: 3/29/07

Witness: [Signature]

SELLER:

[Signature] (SEAL)
CYNTHIA GRIFFIS

[Signature] (SEAL)
ANTHONY E. GRIFFIS

Date: 3/29/07

Witness: [Signature]

Anthony E. Griffis

Attorney at Law

1533 Fording Island Road #322

(322 Moss Creek Village Drive)

Hilton Head Island, South Carolina 29926

(843) 837-3777

Fax: (843) 837-3778

E-mail: griffis@hargray.com

February 22, 2007

CONFIDENTIAL MEMORANDUM

To: Eugene O'Neil

From: Anthony E. Griffis

Re: 1721 Cherry Hill Rd, Ridgeland, SC **LETTER OF INTENT**

Date: 2/22/2007

This is to summarize our discussions regarding development of our 27+ acres located at 1721 Cherry Hill Road, Ridgeland, SC

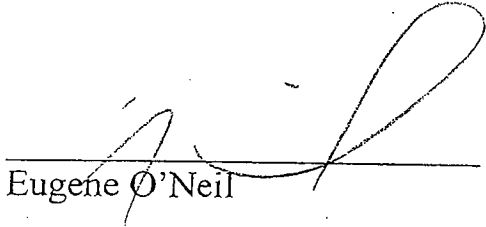
1. We will form an LLC (Cherry Hill Plantation, LLC) for the purpose of holding title to the land for development;
2. We will transfer approx 22 acres to the LLC (after surveying out the existing residential property);
3. The LLC will mortgage the 22 acres for a loan in an amount sufficient to pay:
 - a. \$350,000 to Griffis, for payoff of Suntrust mortgage, and other misc obligations.
 - b. enough cash reserve to pay initial development costs (surveys, etc), and interest carry costs for up to 18 months. This cash reserve shall be maintained in an account requiring joint signatures for all disbursements, except the automatic debits for interest payments.You will be responsible for securing all financing necessary for the development; if required, you will obtain Ron Faulkner's participation for financial guarantees for the LLC loans.
4. The difference in the purchase price shall be financed by Seller (2nd mortgage), with full payment of principal and accrued interest when the development phase commences (18-24 months).
5. The LLC shall have the option to purchase the other (residential) property, if necessary for the development plans. We (Griffis) shall have the right to exchange the residential property for other property in the

development. The LLC shall be responsible for all costs of moving/relocating the mobile home, up to a distance of 100 miles (Branchville SC). The LLC will pay the value of the land (\$30,000/acre min), plus replacement cost of the barn (about \$200,000), and other improvements (2 septic tanks, well, driveways, etc). Alternatively, the existing residence could be conformed to meet the development standards, and the seller financing could be used to pay for replacing or modifying the existing residence. All construction costs shall be at actual (out of pocket) cost to the LLC.

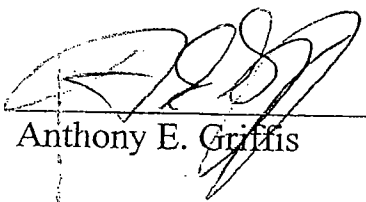
6. We agree to immediately move forward by:
- a. obtaining a survey of the property showing the residential property to be retained, and the remaining property to be conveyed to the LLC
 - b. your submitting any required application and financial documentation to Lowcountry National Bank for loan approval.

Upon obtaining a survey and loan approval, we would then finalize the terms of the purchase, any contingencies, and the terms of the LLC.

We understand that this Letter of Intent is not binding, but simply an expression of our good faith intent to go forward with this transaction.



Eugene O'Neil



Anthony E. Griffiths

Preliminary LLC terms:

50/50 ownership between O'Neil and Anthony Griffis; spouses shall not have any ownership interest; typical operating agreement shall be executed, with buyout provisions in event of death, etc

Griffis shall not be required to personally guarantee any LLC loans; O'neil secures financing, Griffis is providing the land equity for collateral.

If required for LLC financing, Ron Faulkner will be admitted as a member upon terms to be negotiated.

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

CONTRACT FOR REAL ESTATE

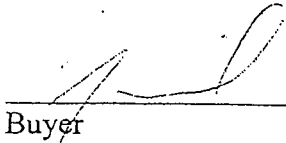
Eugene O'Neil ("Buyer") hereby agree to purchase from Anthony E. Griffis and Cynthia Griffis ("Sellers") 21.4 acres of property located at 1721 Cherry Hill Road, Ridgeland, South Carolina (see plat of 27.1 acres attached, subject property to exclude "proposed lot" of 5.66 acres), on the following terms:

Sales Price: \$600,500.00
Down Payment: 500.00 payable upon execution of this Contract by Seller
Balance at Closing: \$600,000.00, on or before June 20, 2007

Subject to a financing contingency for a loan in the approximate amount of \$450,000.00 at prevailing market terms.

Buyer accepts the property in an "as is" condition. Sellers to provide good, clear and marketable title.

All property taxes and any other pre/post-paid items to be pro-rated at closing.

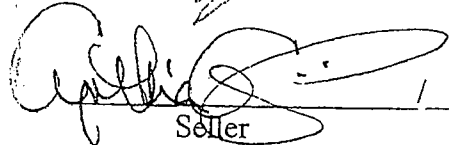


Buyer Date 15/23/07

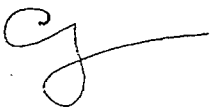
Date



Seller Date 15/23/07



Seller Date 5/23/07



Sep 06 07 01:07p

09/06/2007 12:31

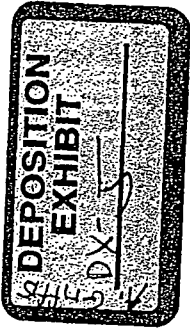
8438373778

8438376967

GRIFFIS LAW OFFICE

p.1

PAGE 01/01



STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

CONTRACT FOR REAL ESTATE

Cherry Hill Estates, LLC by Eugene O'Neil and/or its assigns ("Buyer") hereby agree to purchase from Anthony E. Griffis and Cynthia Griffis ("Sellers") 27.1 acres of property located at 1721 Cherry Hill Road, Ridgeland, South Carolina, on the following terms:

Sales Price: \$1,013,000.00

Down Payment: ~~500.00~~ payable upon execution of this Contract by Seller

Balance at Closing: \$1,012,500.00, on or before September 21, 2007

Subject to a financing contingency for a loan in the approximate amount of \$ 800,000.00 at prevailing market terms; Seller to provide \$200,000.00 secondary mortgage financing.

Buyer accepts the property in an "as is" condition. Sellers to provide good, clear and marketable title.

All property taxes and any other pre/post-paid items to be pro-rated at closing.

Cherry Hill Estates 8/30/07
Buyer Date

Date

8/30/07
Seller Date
 8/30/07
Seller Date

See Please Purchaser

#500 Fee



WOODLANDS BANKSM

A New Experience in Banking.

Fax

To: Nancy	From: Debbie M. Perez
Fax: 843-785-3528	Pages: 2
Phone:	Date: 10/02/07
Re: Cherry Hill Estates	CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Nancy, please find attached copy of the contract agreement you requested for the above borrower. If you need anything else, please let me know.

Thanks

Debbie

Legal description:

PB18 PG 439, DB 142 PG 220, Jasper County, SC.

This facsimile transmission contains information, which is confidential and/or privileged. This information is intended for use only by the addressee indicated above. If you are not the intended recipient, please be advised that any disclosure, copying, distribution, or use of the contents of this information is strictly prohibited, and that any misdirected or improperly received information must be returned to this company immediately, or destroyed. Your cooperation in phoning us of erroneous receipt is requested.

0138



A. Settlement Statement

U.S. Department of Housing
and Urban Development

OMB No. 2502-0265

B. Type of Loan				6. File Number		7. Loan Number		8. Mortgage Insurance Case Number	
1. ☐ FHA		2. ☐ FmHA		3. ☒ Conv. Unins.		CHERRYHI		BB	
4. ☐ VA		5. ☐ Conv. Ins.							
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for information purposes and are not included in the totals.									
D. Name and Address of Borrower				E. Name and Address of Seller				F. Name and Address of Lender	
Cherry Hill Estates, LLC 5 Big Oak Street Hilton Head Island, SC 29926				Anthony E. Griffiths Cynthia Griffiths 1721 Cherry Hill Road Ridgeland, SC 29936				Woodlands Bank 135 Canal Street Pooler, GA 31322	
G. Property Location				H. Settlement Agent					
1721 Cherry Hill Road Ridgeland, SC 29936 27.098 Acres Jasper County, SC				QUALEY LAW FIRM, P.A. Place of Settlement 32 Office Park Rd., Ste. 100 P.O. BOX 10 HILTON HEAD ISL, SC 29936					
				I. Settlement Date 10/10/07					
J. SUMMARY OF BORROWER'S TRANSACTION:					K. SUMMARY OF SELLER'S TRANSACTION:				
100. GROSS AMOUNT DUE FROM BORROWER					400. GROSS AMOUNT DUE TO SELLER				
101. Contract sales price		1,013,000.00			401. Contract sales price		1,013,000.00		
102. Personal property					402. Personal property				
103. Settlement charges to borrower (line 1400)		17,449.06			403.				
104.					404.				
105.					405.				
Adjustments for items paid by seller in advance					Adjustments for items paid by seller in advance				
106. Rental Taxes to					406. Rental Taxes to				
107. County taxes to					407. County taxes to				
108. Assessments to					408. Assessments to				
109.					409.				
110.					410.				
111.					411.				
112.					412.				
120. GROSS AMOUNT DUE FROM BORROWER					420. GROSS AMOUNT DUE TO SELLER				
1,030,449.06					1,013,000.00				
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER					500. REDUCTIONS IN AMOUNT TO SELLER				
201. Deposit or earnest money					501. Excess Deposit (see instructions)				
202. Principal amount of new loan(s)		850,000.00			502. Settlement charges to seller (line 1400)		2,280.00		
203. Existing loan(s) taken subject to					503. Existing loans taken subject to				
204.					504. Payoff of first mortgage loan		287,090.73		
205.					505. Payoff of second mortgage loan				
206. Second Mortgage		200,000.00			506. Second Mortgage		200,000.00		
207.					507.				
208.					508.				
209.					509.				
Adjustments for items unpaid by seller					Adjustments for items unpaid by seller				
210. Rental Taxes to					510. Rental Taxes to				
211. County taxes 01/01 to 10/10		169.92			511. County taxes 01/01 to 10/10		169.92		
212. Assessments to					512. Assessments to				
213.					513.				
214. Mobil Home Taxes		295.27			514. Mobil Home Taxes		295.27		
215.					515.				
216.					516.				
217.					517.				
218.					518.				
219.					519.				
220. TOTAL PAID BY / FOR BORROWER					520. TOTAL REDUCTION AMOUNT DUE SELLER				
1,050,465.19					489,835.92				
300. CASH AT SETTLEMENT FROM OR TO BORROWER					600. CASH AT SETTLEMENT TO OR FROM SELLER				
301. Gross amount due from borrower (line 120)		1,030,449.06			601. Gross amount due to seller (line 420)		1,013,000.00		
302. Less amounts paid by/bor borrower (line 220)		1,050,465.19			602. Less reduction amount due to seller (line 520)		489,835.92		
303. CASH TO BORROWER		20,016.13			603. CASH TO SELLER		523,164.08		

In the event a re-proration of the taxes is necessary when the tax bills for 2007 are prepared, the parties agree to handle said re-proration between themselves. SUBSTITUTE FORM 1099 SELLER STATEMENT: The information contained herein is important tax information and is being furnished to the Internal Revenue Service. If you are a taxpayer, please file a return, a negligence penalty or other sanction will be imposed on you if this form is required to be reported and the IRS determines that it has not been reported. The Contract Sales Price described on Line 401 above constitutes the Gross Proceeds of this transaction.

0139

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SETTLEMENT STATEMENT
PAGE 2

File Number: CHERRYHI

L. SETTLEMENT CHARGES:		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700.	TOTAL SALES/BROKER'S COMMISSION based on price \$		
Division of commission (line 700) as follows:			
701.	\$ to		
702.	\$ to		
703.	Commission paid at Settlement		
704.			
800.	ITEMS PAYABLE IN CONNECTION WITH LOAN P.O.C.		
801.	Loan Origination Fee % Woodlands Bank	8,500.00	
802.	Loan Discount %		
803.	Appraisal Fee to Lowcountry Appraisals 2100.00S		
804.	Credit Report to Woodlands Bank	17.00	
805.	Lender's Inspection Fee to		
806.	Administrative Fee to		
807.	Underwriting Fee to		
808.	Flood Certification CBCInnovis	13.00	
809.	Processing Fee		
810.	Lender Doc. Prep. Fee Woodlands Bank	125.00	
811.			
812.			
813.			
814.			
815.			
900.	ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE		
901.	Interest from to @ \$ /day		
902.	Mortgage Insurance Premium to		
903.	Hazard Insurance Premium 1 yrs. to BB&T Carswell Insurance Services	2,110.46	
904.			
905.			
1000.	RESERVES DEPOSITED WITH LENDER FOR		
1001.	Hazard Insurance mo. @ \$ / mo.		
1002.	Mortgage Insurance mo. @ \$ / mo.		
1003.	City property taxes mo. @ \$ / mo.		
1004.	County property taxes mo. @ \$ / mo.		
1005.	Annual Assessments mo. @ \$ / mo.		
1006.	mo. @ \$ / mo.		
1007.	mo. @ \$ / mo.		
1008.	Aggregate Reserve for Hazard/Flood Ins, City/County Prop Taxes, Mortgage Ins & Annual Assessments		
1100.	TITLE CHARGES		
1101.	Settlement or closing fee to		
1102.	Abstract or title search to Freelance Abstracting	175.00	
1103.	Title examination final update to Freelance Abstracting	45.00	
1104.	Title insurance binder to Plantation Title Agency, Inc.	75.00	
1105.	Document preparation to		
1106.	Notary fees to		
1107.	Attorney's fees to Quayley Law Firm, P.A.	500.00	
(Includes above item No:)			
1108.	Title Insurance to Plantation Title Agency, Inc.	1,819.50	
(Includes above item No: Due to CTIC: \$727.80)			
1109.	Lender's coverage 850,000.00 -- 75.00		
1110.	Owner's coverage 1,013,000.00 -- 1,744.50		
1111.	Doc. Prep. For Second Mortgage Quayley Law Firm, P.A.	200.00	
1112.			
1113.			
1200.	GOVERNMENT RECORDING AND TRANSFER CHARGES		
1201.	Recording fees Deed \$ 10.00 ; Mortgage \$ 25.00 ; Releases \$ 5.00	95.00	5.00
1202.	City/county/stamps Deed \$; Mortgage \$		
1203.	State tax/stamps Deed \$ 3,748.10 ; Mortgage \$	3,748.10	
1204.			
1205.			
1300.	ADDITIONAL SETTLEMENT CHARGES		
1301.	Survey to		
1302.	Termite Inspection to		
1303.	Courier, Copy, Phone, Fax Quayley Law Firm, P.A.	50.00	
1304.	Overnight Loan Pkg. & Payoff Quayley Law Firm, P.A.	25.00	25.00
1305.	Survey Sea Island Land Survey, LLC		2,250.00
1306.	Record Second Mortgage Jasper County ROD	11.00	
1307.			
1308.			
1400.	TOTAL SETTLEMENT CHARGES (enter on lines 103 and 502, Sections J and K)	17,449.06	2,280.00

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all amounts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Eugene C. Nott, Managing Member

Ronald T. Featherer, Member

Anthony E. Grier

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

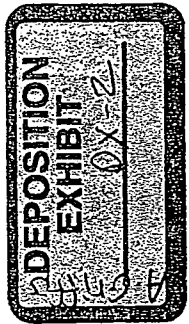
QUALEY LAW FIRM, P.A.

Date

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment. For details see Title 18 U.S. Code Section 1001 and Section 1010.

RESPA, REG. 2003.2 - REV. 11/01 (4/06)

0140



ANTHONY E. GRIFFIS
322 MOORE CREEK VILLAGE DRIVE
MILTON HEAD, SC 29555

1059

Pay to the Order of Cynthia Griffis \$ 150,000.00

One Hundred Fifty Thousand

For Cheryl Griffis

10/10/07

1059

ANTHONY E. GRIFFIS
322 MOORE CREEK VILLAGE DRIVE
MILTON HEAD, SC 29555

1060

Pay to the Order of Eugene O'Neil \$ 320,000.00

Three Hundred Twenty Thousand

For Eugene O'Neil

10/10/07

1060

#1059 Posted 10/11/07 \$150,000.00

ANTHONY E. GRIFFIS
322 MOORE CREEK VILLAGE DRIVE
MILTON HEAD, SC 29555

1095

Pay to the Order of Calista Mims \$ 277.44

Two Hundred Seventy Seven and 44/100

For Calista Mims

9/24/07

1095

#1050 Posted 10/12/07 \$320,000.00

ANTHONY E. GRIFFIS
322 MOORE CREEK VILLAGE DRIVE
MILTON HEAD, SC 29555

1100

Pay to the Order of Pete Fuge \$ 250.00

Two Hundred Fifty

For Pete Fuge

10/8/07

1100

#1095 Posted 9/27/07 \$277.44

ANTHONY E. GRIFFIS
322 MOORE CREEK VILLAGE DRIVE
MILTON HEAD, SC 29555

1102

Pay to the Order of Susan Waite \$ 1,743.23

One Thousand Seven Hundred Forty Three and 23/100

For Susan Waite

10/11/07

1102

#1100 Posted 10/15/07 \$250.00

ANTHONY E. GRIFFIS
322 MOORE CREEK VILLAGE DRIVE
MILTON HEAD, SC 29555

1108

Pay to the Order of Susan Waite \$ 150.00

One Hundred Fifty

For Susan Waite

10/4/07

1108

#1102 Posted 10/09/07 \$1,743.23

#1108 Posted 10/05/07 \$1,500.00

10/11/07 wire from Qualey	\$ 523,164.08
10/4/07 - ck 1108 Susan Waite - appraisal	(1500.00) + 600 prepaid
10/10/07 ck 1059 Cynthia Griffis	(150,000.00)
10/10/07 ck 1060 Eugene O'Neil	(320,000.00)
Balance	\$ 51,664.08

RECEIPT #	DATE	TYPE	NAME	AMOUNT
	10/10/07	RR	Woodlands Bank	850,000.00

TOTAL DEPOSITS

850,000.00

CHECK #	DATE	TYPE	NAME	AMOUNT
3412	10/10/07	**	Anthony E. Griffis and Cynthia Griffis	523,164.08
3413	10/10/07	**	Cherry Hill Estates, LLC	20,016.13
3414	10/10/07	**	Qualey Law Firm, P.A.	800.00
3415	10/10/07	**	Plantation Title Agency, Inc.	1,166.70
3416	10/10/07	**	Woodlands Bank	8,500.00
3417	10/10/07	**	Woodlands Bank	17.00
3418	10/10/07	**	CBCInnovis	13.00
3419	10/10/07	**	Woodlands Bank	125.00
3420	10/10/07	**	BB&T Carswell Insurance Services	2,110.46
3421	10/10/07	**	Freelance Abstracting	175.00
3422	10/10/07	**	Freelance Abstracting	45.00
3423	10/10/07	**	Chicago Title Insurance Company	727.80
3424	10/10/07	**	Sea Island Land Survey, LLC	2,250.00
3425	10/10/07	**	Jasper County ROD	11.00
3426	10/10/07	**	Clerk of Court	3,783.10
3427	10/10/07	**	SunTrust Bank	287,090.73
3428	10/10/07	**	Clerk of Court	5.00

TOTAL DISBURSEMENT

850,000.00

DIFFERENCE

0.00

0142

Exhibit H to Memo in CP

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Cynthia Griffis

Plaintiff

v.

Cherry Hill Estates, LLC, Eugene O' Neil
and Ronald Faulkner

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2009-CP-07-06054

AFFIDAVIT OF RONALD FAULKNER

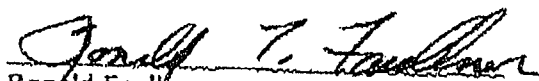
THE UNDERSIGNED, upon being duly sworn, hereby declares and affirms that:

1. I am a resident of Annapolis, Maryland and a Defendant in the above captioned matter.
2. I was, prior to 2007 and during all of the events and transactions that give rise to Plaintiff's claim, a client of the law office of Anthony E. Griffis, both individually and as a member of various corporate business entities that Mr. Griffis either set up or counseled us relating to.
3. Cynthia Griffis was the spouse of Anthony Griffis and worked as an employee within the law office of Anthony Griffis. She was the paralegal for many of the transactions handled by the law firm.
4. I met with Cynthia Griffis, within the law office of Anthony Griffis, one at least one occasion to discuss both the subject transaction with she and her husband and prior business transactions.
5. I did not attend the loan closing with Woodlands Bank and Cynthia Griffis. The Griffis' chose Jack Qualey to supervise the closing and act as settlement agent. Because I could not be in South Carolina on the designated day, I gave Power of Attorney to Jack Qualey, Esq. to execute the loan documents on my behalf. I did not review or see the note with Ms. Griffis before closing, nor any of the other material loan documents.
6. Prior to closing, I was not informed, nor did I understand, that I was executing a short term, two year note with Ms. Griffis.
7. Further, I was not informed by Ms. Griffis, my paralegal, nor her husband, that the subject property appraised for a price that was materially lower than the loan amounts and purchase price.
8. Further, I did not understand, or have actual knowledge, that I was entering into a short term, two year note obligation with Plaintiff which could be potentially construed as unconditional and not dependent on the sale or refinance of the subject land.
9. I believe that Ms. Griffis required me to be a loan guarantor because she learned of my financial situation and his strengths, weaknesses and personal affairs in her unique position as an employee of her husband's law practice, and through her personal dealings with me in the law offices.
10. At no point in the discussions prior to the loan closing did Ms. Griffis or her husband advise

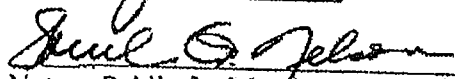
me to seek independent legal counsel to evaluate the proposed transaction and my liabilities and obligations attendant to the transaction. In agreeing to purchase their property, I relied on Ms. Griffis and Mr. Griffis, being my lawyer and his staff, to give me objective advice regarding the propriety of the transaction and my rights, obligations and liabilities thereunder. At no point did Ms. Griffis, or Mr. Griffis, advise me that I was executing a two year term note, or that the transaction had been changed at the last minute to include that two year term note.

11. I did not agree to execute a note with Ms. Griffis under the terms of the note that is attached to her Complaint. I did not agree, and would not have agreed, to execute a two year term note with Ms. Griffis.

12. In addition to becoming personally liable to Ms. Griffis as a result of the loan she engineered, I am now personally obligated to Woodlands Bank for a sum that exceeds the market value of the property Cherry Hill Estates purchased.


Ronald Faulkner

Sworn to before me this 14th
Day of June, 2010.


Notary Public for Maryland
My Commission Expires: 8-5-2012

SHIRL G. NELSON
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires August 5, 2012

1 MOGIL A. GRIFFIS (DIRECT EXAMINATION)

17

2 concerns. I didn't have a personal concern with
3 my acquiescing so much in the terms as far as
4 what I was being prejudiced at the time except
5 for Cindy's consent to the agreement, and how it
6 would affect us going forward.

7 And at the time I said to them I said
8 it is going to be very difficult to get Cindy to
9 agree to this because she was expecting \$350,000
10 cash at closing. And they both assured me that
11 they would personally guarantee it and so I
12 agreed to do it at that time, which was
13 September 13 of '07. Subject of course to
14 Cindy's approval, and they took their agreements
15 with them.

16 I didn't hear from them again until two
17 days before closing, in which I was contacted
18 and said what is the status. I say -- I don't
19 know whether I was contacted, but I know two
20 days before closing it was coming to a head and
21 I had tried to even talk to Cindy. She would
22 not talk to me during this period of time about
23 anything. And which I conveyed to them on
24 October 8 that there was no way Cindy and I were
25 going to come to any kind of agreement on this.

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0145

2 Q What did Cindy want? Let us take a
3 step back.

4 Cindy Griffis testified that she was
5 aware by the end of 2006 that the note was
6 terming with Suntrust and that something had to
7 be done to prevent foreclosure of the family
8 property.

9 Is that also your recollection?

10 A I don't recall that specifically.
11 There was a long period of time. You got to
12 understand Cindy and I were actually separated
13 in 2004. I moved out during that course of time
14 of separation. Of course our marital situation
15 deteriorated. She refused to get out of my
16 office, so there was a lot of hostility in my
17 office between me and Cindy on a daily basis.

18 Towards the end of '06, of course I am
19 not living at the property. She is refusing to
20 cooperate in any way with me so far as
21 refinancing, signing anything. I was basically
22 stymied, vetoed at every step of the way. She
23 would not communicate. She would not agree to
24 sign her name on any documents.

25 So at that point in time I was pretty

1 MOGIL A. GRIFFIS (DIRECT EXAMINATION)

19

2 frustrated. I could not since she was jointly
3 on the deed, I could not go and refinance or do
4 anything without her consent. She knew that
5 this thing would be coming to a head at that
6 point in time and which it did. I mean the note
7 matured and went from a couple of thousand
8 dollars a month in payments to over \$5,000 a
9 month.

10 So at that point in time from a
11 financial standpoint I was pretty upset because
12 of the lack of cooperation and the marital
13 hostilities we had going between us.

14 And I'm sorry, to ramble on, but I
15 don't know how to -- I don't really agree with
16 what Cindy's simple characterization of that
17 was.

18 Q Well, I guess you were here earlier and
19 we introduced Exhibits Numbers 1 and 2 in her
20 deposition, which were an invoice and an
21 appraisal from Low Country Appraisals to go out
22 to the property in January of 2007. You were
23 listed on those appraisals which were exhibits
24 in her deposition as the borrower/owner.

25 Did you commission those appraisals?

1 MOGIL A. GRIFFIS (DIRECT EXAMINATION)

20

2 A I don't recall exactly how I ended up
3 being on the appraisal. It was my recollection
4 at the time that Eugene O'Neil was already
5 involved on buying the property from us. We
6 were in negotiations with Low Country National
7 Bank at that time. I don't recall ever applying
8 to Low Country National Bank for a loan for me.
9 I think it was for a loan for Eugene.

10 Eugene's position then as well as later
11 was that he wasn't going to put any kind of
12 money in like for appraisals or surveys or
13 anything else until he knew that we had a
14 closing because of the uncertainty of Cindy's
15 cooperation.

16 Q Cindy said she had no idea that that
17 appraisal was done at the time, but later she
18 learned of it when you went to the first
19 contract?

20 A Well, I don't know whether that is -- I
21 would say from my role -- I didn't understand
22 her to say that.

23 Q Was she back in December of '06 and
24 January of '07, was she aware that you were
25 discussing this property the sale of this

2 property to Mr. O'Neil?

3 A Yes.

4 Q You said you may have been frustrated
5 in efforts to refinance the property.

6 Which banks were you dealing with to
7 refinance this property?

8 A It was primarily Suntrust Bank that had
9 the first mortgage at the time this was coming
10 up.

11 Q How would she have had to have
12 cooperated in order to secure an extension or a
13 modification from Suntrust?

14 A She would have had to sign and agree,
15 because she was a co-owner of the property.

16 Q Did you bring to her a firm proposal
17 from Suntrust, a loan modification agreement, a
18 promissory note that she refused to sign?

19 A We never got to that point. Originally
20 it was Lighthouse Mortgage, Rick Sebastian I
21 think was the loan officer that did the loan
22 originally; and there would have been no problem
23 with doing the loan again, except for the fact
24 that Suntrust took them over and from that point
25 on it was a bureaucratic nightmare. So that

2 coupled with the fact that Cindy and I could not
3 get on the same page as to how to go forward
4 with the refinancing or anything else, it was
5 pretty much stymied.

6 Q How did Eugene O'Neil come to be
7 interested or involved in this property?

8 A Specifically I don't remember the dates
9 or conversations as to how he became involved.
10 I think the general approach that I think
11 brought him into it was his role as a real
12 estate salesman. I asked him at some point
13 whether he wanted to get involved in trying to
14 help me sell the property.

15 Q What was the genesis of events that led
16 to Mr. O'Neil either contacting Low Country Bank
17 or another lender to try and see if he could
18 obtain financing for this property? What took
19 it from him being a broker to him being involved
20 as a principal in your recollection?

21 A Well, in our initial discussions he
22 knew my marital difficulties with Cindy, the
23 impasse that I was at so far as resolving my
24 personal marital situations as well as the bank
25 situation with the property that I had not lived

2 on for three or four years, but was still having
3 to make the payments on.

4 And he saw -- I don't know, you have to
5 ask him. I think he perceived that it might be
6 an opportunity for him because of my willingness
7 to go along with any kind of proposed terms that
8 would resolve the marital situation, as well as
9 paying off the Suntrust Bank. And I think I
10 conveyed to him that I didn't care so much at
11 the time about my personal part of the sale
12 price, so long as Cindy was happy and the
13 mortgage was paid off. I would accept any kind
14 of participation, whether it be cash back for me
15 or a reduced price or however you want it
16 structured.

17 I was not primarily motivated with
18 making a lot of money on the property at that
19 time.

20 Q Are we talking about at the time of
21 closing or early 2007?

22 A At any time. At any time throughout
23 the whole process.

24 Now, there was a certain limit that I
25 was not willing to go beyond, of course. But

2 be that transaction to the transaction that
3 ultimately resulted in Eugene O'Neil receiving
4 320,000, her receiving 150, and a \$200,000 note
5 and you receiving --

6 A Well, a couple of weeks later it was
7 August 30 and September 13 when Eugene and Ron
8 came in my office and made the demand that I
9 basically from my way of thinking kickback to
10 them \$320,000. That has bad connotations
11 because there was at that time an expectation
12 that the 320,000 be actually for my one-third
13 interest and that the money be invested in
14 Cherry Hill Estates. So it did have a
15 legitimate business purpose.

16 But from my way of thinking they were
17 taking \$320,000 off the top of our net sale cash
18 proceeds, which would mean Cindy would be -- I
19 wouldn't have the money to come up with to pay
20 Cindy. So her total \$350,000 cash. And my main
21 concern at that point in time was getting Cindy
22 to agree to it, and the only way that Cindy
23 would agree was if she was guaranteed to get at
24 some point in time her \$350,000. And that is
25 where the personal guarantee on the \$200,000

2 came into play. She is only getting 150,000 at
3 closing, then the \$200,000 note had to be
4 personally guaranteed. And it also changed from
5 the original contract from being a nonpersonal
6 guarantee to a personal guarantee, in the sense
7 that the original note would have been made
8 payable to me and Cindy jointly, and in this
9 case it changed to be made payable only to
10 Cindy; not to me.

11 Q Who required that?

12 A Well, I did. At the time I said there
13 is no way you can talk Cindy into doing anything
14 unless she is assured she is going to get -- she
15 had already told me over and over she wanted her
16 350 or she wasn't going to go on with anything.

17 Q So you were speaking for her with
18 Mr. O'Neil at the time, but she was not involved
19 with these conversations directly?

20 A I wasn't speaking for her. I was
21 speaking from a very sensible standpoint from my
22 own perspective, knowing Cindy and getting her
23 to agree to this change. And as you can see
24 from that date, September 13 until October 8, 25
25 days I believe, over three weeks I tried to talk

2 to Cindy and she refused to even talk to me
3 about those changes.

4 Q But ultimately she agreed to take 150
5 at closing and a \$200,000 note?

6 A Two days before closing Eugene and Ron
7 came into my office and talked her into it,
8 because she would not talk to me about the
9 agreement.

10 Q When you say they talked her into it,
11 were you in a conversation with them where you
12 heard them talking her into it?

13 A No, I was sitting outside the room.
14 Cindy came into my office, they came into my
15 office. Cindy was out front. We asked her to
16 come in. We immediately had a pretty heavy
17 atmosphere and hostility between me and Cindy.
18 I told Cindy what was going on. We started
19 bickering and fighting. Ron and Eugene asked me
20 to leave the room because it was deteriorating
21 real fast between me and Cindy and our personal
22 hostilities that it was going to go nowhere.

23 So I went out in the parking lot for
24 35, 45 minutes, and then Eugene came out and
25 told me that she had agreed to do it.

1 MOGIL - O'NEIL (DIRECT EXAMINATION)

14

2 specifically.

3 What is your recollection of the
4 circumstances in which you just testified Mr.
5 Griffis referred, recommended you bring Ron in?

6 A May I use my notes?

7 Q I guess you have to. If you use your
8 notes --

9 A This is just stuff you already have
10 copies of, but that is fine.

11 Q Whatever you refer to we can examine
12 you on and make a part of the record of this
13 deposition.

14 A When Tony and I first started talking
15 about it, it was primarily those two want to
16 split. It was their last asset. They were
17 fighting like cats and dogs. Tony told me that
18 basically it is either they are going to loose
19 the property or whatever.

20 Him and I talked about it initially,
21 myself when it was just a matter of just taking
22 out the loan. That wasn't good enough for
23 Cindy. There were so many different things
24 drawn up and went back and forth, and half of
25 them I don't even have and they are probably in

1 MOGIL - O'NEIL (DIRECT EXAMINATION)

17

2 designated for this transaction?

3 A It was suggested by either Cindy or
4 Tony, and I knew Jim so it was no big deal.

5 Q So why didn't Mr. Hale's office close
6 it?

7 A That I don't know.

8 Q And then Mr. Qualey, you didn't contact
9 Mr. Qualey?

10 A No.

11 Q Would it have been Cynthia Griffis who
12 referred him or Tony Griffis?

13 A I don't know that. Tony Griffis is who
14 informed me that it was going to be there.

15 Q Do you recall entering into an
16 engagement letter with Mr. Qualey?

17 A No, I did not.

18 Q I looked at his file and I did not see
19 one.

20 Who informed Woodlands Bank that Qualey
21 was the law firm?

22 A That I do not know.

23 Q Did you?

24 A I did not.

25 Q Are you sure?

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1 Let me, Ron and explain to her the document of
2 what I intend to do. If you agree with it,
3 fine. If not, we are just walking out of here.
4

5 I sat down and went over it with her.
6 And I even gave her the scenario. I said
7 basically to make a long story short, that if we
8 develop this property and it makes money you
9 will get your 200 or whatever it was. Whatever
10 additional profits would go to Cherry Hill
11 Estates, LLC, of which Tony will get one-third
12 of.

13 On the other side of the coin if it
14 doesn't work or something happens to the note,
15 you have got your 150 now, the rest of it may be
16 lost.

17 At that point she understood everything
18 and she said fine. There were a few expletives
19 in there in the middle, but she just made it
20 real clear I don't want Tony to touch, expletive
21 again, money. As long as the check is written
22 out to you guys and you cut me the check, we are
23 done.

24 I called Tony back in and explained it
25 to him, and I think there was another document

2 This document without rereading every
3 word because it has been read twice into the
4 depositions, says that very explicitly Cynthia
5 Griffis shall receive a promissory note
6 guaranteed by Ron Faulkner and Eugene O'Neil for
7 200,000 secured by a second mortgage on the
8 subject property and she will be paid in full no
9 later than two years with 5 percent interest.

10 That provision which you signed
11 directly contradicts what you just said you
12 stated to her and she understood?

13 A I understand.

14 Q How is it that it came to be that in
15 Mr. Griffis' office you signed this document
16 that is different?

17 A That document was not signed until
18 afterwards, and the way that this whole
19 transaction went down is that one of those just
20 about before every contract. And I assumed,
21 which makes an ass of you and me, but I assumed
22 that Tony was going to take what we talked about
23 and redo it again.

24 Q So you are saying this was signed after
25 the meeting you had with Cynthia?

1 MOGIL - O'NEIL (DIRECT EXAMINATION)

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2 A It was signed with all four of us at
3 the same time under the conditions, and it
4 should have been changed right then and there.
5 I didn't even catch it.

6 Q So you are saying that this document
7 was signed right after you met with Cynthia?

8 A That is correct.

9 Q Did Tony come back in with a document
10 for you to sign, or was there a delay of three
11 hours or --

12 A It was another document change in that,
13 and I don't -- actually, I don't think it was
14 right after that one, because at that point I
15 was waiting to see a final contract.

16 Q You didn't consider this to be a
17 contract?

18 A No, I just considered it to be another
19 one of the intent agreements or whatever, that
20 we have done so many of, and done so many
21 different ways the whole time.

22 Q So did you read this carefully?

23 A Not really.

24 Q Why not?

25 A Because it wasn't anything that I

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considered final at the time.

Q Did you trust Tony?

A Exactly.

Q Was he your lawyer?

A In my mind he was.

Q In this transaction?

A As far as I am concerned he is my lawyer and my friend.

Q At the time were you acting on advice from him?

A Yes.

Q Did you enter into this transaction based on advice from him?

A Yes, I did.

Q Now, Mr. Griffis has testified that -- well --

A The whole purpose of that whole meeting was to make sure she understood that if it doesn't sell for what is in there, that she may not see that; and that also Tony would be receiving any profits over and above it. I just wanted to make sure that was clear with her.

Q Did you read this agreement to Mr. Faulkner?

2 A It was paid from Tony Griffis's account
3 to -- without going to my records it was either
4 going into Buckingham, LLC, which is probably
5 where it went, but I can't answer that without
6 my checks in front of me. I don't know how Tony
7 wrote the check. It would have gone into those
8 accounts. Whether he wrote the check and I
9 endorsed it and put it into the account, or
10 whether he wrote it to the LLC and I had to
11 deposit it, I don't recall.

12 Q The Exhibit that I just showed you
13 which was the October 8 agreement of sale, was
14 that presented to Woodlands Bank?

15 A Not by me.

16 Q Did anybody suggest that you present it
17 to Woodlands Bank?

18 A No. I didn't even expect that to be
19 the final agreement. I didn't even leave with a
20 copy of it.

21 Q What was your understanding going back
22 to October 10, 2007 about what Woodlands Bank
23 thought the final agreement was?

24 A I didn't think about it, Michael. I
25 mean Tony was handling the whole thing. Cindy

1 was part of it. She does part of his paperwork
2 too. I don't know who did what, what was going
3 on there. We came up to that agreement. I was
4 expecting another contract. Apparently either
5 that does exist or it doesn't exist. And we put
6 it to Jack's office. I went in there and I
7 signed the papers and I left.

8 Q Nobody asked any questions?

9 A No.

10 Q Was Cynthia Griffis involved with the
11 preparation of any of the documents or contracts
12 involved with this thing?

13 A Not that I recall. I mean I have no
14 way of knowing. My documents I would receive
15 from Tony. Who prepared them, I don't know. I
16 had no real conversations with Cindy, except
17 right at the last except for her ranting's and
18 raving's.

19 Q What documents would you have been
20 receiving from Tony in connection with this
21 transaction?

22 A From way back when we first started
23 back in January of '07 or whenever it was, the
24 different agreements.

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Q How about Mr. Faulkner, who was
advising Mr. Faulkner as to what this
transaction was about?

A Most likely that would be me.

Q And what did you tell Mr. Faulkner he
was getting into?

A As it was related from Tony to me, I
would tell Ron.

Q What did you tell Ron he was getting
into when it came down to --

A We were going to purchase this property
to help out Tony and Cindy, and hopefully
develop it to something in the future. There
was like two or three different agreements that
went through. When he finally came down here --
again, it goes back to that last meeting,
because I made it clear through the whole thing.
It was even in the first contract that there was
no personal guarantees involved. But all it --
it didn't use the words personal guarantee. It
says you will be holding a second trust against
the property is how I actually put it. In
Maryland we talk different.

Q When was the first time you understood

1 MOGIL - O'NEIL (DIRECT EXAMINATION)

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2 until Woodlands needed stronger financial's.

3 Q If Woodlands had not asked for stronger
4 financial's does Ron get brought in?

5 A No.

6 Q Did Cynthia require Ron to be brought
7 in?

8 A No.

9 Q Did Tony?

10 A Tony asked me to approach him.

11 Q How about -- did you believe Ron was
12 giving a personal guarantee on this?

13 A No, I was actually -- I was pissed and
14 I had part blame for it.

15 Q Why were you pissed?

16 A Because it was made real clear to both
17 of them there was no personal -- you all call it
18 personal guarantee down here. In Maryland it is
19 a promissory note. We talk different lingo, but
20 anyway -- but just as I said before, the intent
21 was if the property sold for or more whatever
22 the contract was for, that she would receive the
23 funds. That she also understood the risks, that
24 if it sold for less for whatever reason she may
25 not see any of it. She is getting her 150 now.

1 MOGIL - O'NEIL (DIRECT EXAMINATION)

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2 And I mean that was over and over again.

3 Q Is that how Ron understood it, if --

4 A No -- this is how Ron understood it,
5 because that is how I conveyed it to him.

6 Q You just testified that on October 8
7 right before closing you had a meeting in
8 Griffis' office, and you told Mr. Griffis to
9 leave so you could make sure that Cynthia
10 Griffis understood what was going on; and that
11 the agreement that you signed was different than
12 what you thought your conversation with her was?

13 A That is not exactly what I said, but
14 close.

15 Q Okay.

16 A What I said was is we all four of us
17 met. We went over it. These two were going at
18 it like cats and dogs. I finally said Tony,
19 please leave the office. I went over the
20 agreement with Tony of what was supposed to be
21 in the contract -- not with Tony, with Cynthia.
22 I explained to her how it was going to work.
23 Her only request is that we handle her money
24 because she didn't want him getting his hands on
25 it.

2 And from there I expected that to be
3 turned into a regular contract and gone forward.

4 Q I am going to show you a document which
5 you signed ostensibly. I am going to ask you if
6 this is your signature dated September 13, 2007,
7 which has been introduced as an exhibit in
8 several depositions; but we will reintroduce it
9 here as Defendant's Exhibit 1.

10 (Whereupon, Defendant's Exhibit
11 Number 1 was marked for
12 identification.)

13 BY MR. MOGIL:

14 Q Mr. O'Neil, can you take a look at that
15 and then also let me know if that is your
16 signature at the bottom.

17 A Uh-huh. It is just one of those -- as
18 I mentioned before that there were so many of
19 them that it would be drawn up whenever somebody
20 changed their mind, but at that point that is
21 correct.

22 Q So this is a document -- where do you
23 think this document was entered into?

24 A Where do I think what?

25 Q Where was this document signed?

2 A I presume at Tony's office.

3 Q Would you have met with Tony on or
4 around September 13, 2007?

5 A I probably met with Tony at least once
6 or twice a month. Just if nothing else to say
7 hi, so probably yes.

8 Q So this document signed now three weeks
9 before the closing also says that Ron Faulkner
10 and Eugene O'Neil guarantee a \$200,000
11 promissory note secured by a second mortgage.

12 A Then that would have been -- again, it
13 goes back to the same thing. It got to the
14 point where they were all intent and agreements
15 that changed every time until we get a final
16 agreement.

17 Q Why did you sign it?

18 A Because of my conversations with Tony.
19 I trusted that there was no personal guarantee.
20 And again I go back to a background of real
21 estate in Maryland. A promissory note is a
22 promissory note held against the property.
23 There is no recourse to that.

24 Q So what did you believe this agreement
25 was going to be used for?

1 **HALE - QUALEY (DIRECT EXAMINATION)**

2 years?

3 A 33 years.

4 Q And what area of concentration do you
5 practice in?

6 A Real estate.

7 Q Now, do you understand the rules
8 regarding giving a deposition, that during
9 breaks and so forth you're not to consult with
10 anyone?

11 A I do.

12 Q You're to give verbal responses.

13 A Yes.

14 Q And if you have any questions, you
15 can't understand my questions, you ask me to
16 clarify myself. Is that acceptable to you.

17 A Yes.

18 Q If you need to take a break, let me
19 know and we'll take a break. And this of course
20 isn't a marathon. I hope we're not too long.

21 Give me a brief synopsis about your
22 current status, your residence, where your
23 practice is located, telephone numbers,
24 addresses, so forth.

25 A Well, my only law office is at 32

1 **HALE - QUALEY (DIRECT EXAMINATION)**

2 Q And have you spoken with anyone
3 regarding this deposition?

4 A I have spoken with you about this
5 deposition with regard to the potential
6 attorney-client privilege issues that may arise
7 during my deposition.

8 Q Have you spoken with anyone else?

9 A No.

10 Q I have communicated with Mr. Faulkner's
11 counsel pertaining to this deposition, and I now
12 hand you an e-mail from his counsel sent to me
13 December 8th, 2010, 2:33 p.m., and it addresses
14 that issue, does it not?

15 A You're asking me whether this e-mail
16 from Mike Mogil addresses that issue?

17 Q Yes.

18 A Yes, it does.

19 **MR. HALE:** Let's go ahead and have
20 that introduced as Plaintiff's

21 Exhibit 2.

22 (Whereupon, Plaintiff's Exhibit
23 Number 2 was marked for
24 identification.)

25 **BY MR. HALE:**

1 **HALE - QUALEY (DIRECT EXAMINATION)**

2 Office Park Road, Suite 100, Hilton Head. My
3 office phone number is 785-3525. My residence
4 is 35 Widewater Road in Hilton Head. And my
5 home number is 681-5432.

6 Q And if you would, give me a synopsis of
7 your background. Let's start with college
8 education, the year, degree, and bring it
9 forward, very quickly.

10 A I have a degree, my B.A., from Spring
11 Hill College in Mobile, Alabama in 1973. I
12 attended one year of law school at Stetson
13 College of Law in St. Petersburg, Florida for
14 one year, from '74 to '75, and then completed my
15 law degree at the University of South Carolina
16 in 1977.

17 I practiced law in Charleston with
18 Buist, Moore, Smythe and McGee from '77 to '82,
19 moved to Hilton Head in 1982, and have been in
20 practice here since then.

21 Q And today is there any reason why you
22 feel you are not capable of giving true and
23 accurate testimony, any impairment or problem
24 that you have today?

25 A No, no problem.

1 **HALE - QUALEY (DIRECT EXAMINATION)**

2 Q Now, in that e-mail, in addressing that
3 issue, it makes it very clear Mr. Faulkner does
4 not waive any attorney-client privilege.

5 A Correct.

6 Q And what is your position regarding
7 Mr. Faulkner's position in that regard?

8 A That he has the right to assert that
9 privilege.

10 Q And did you represent Mr. Faulkner in
11 this transaction that we're referring to?

12 A Yes.

13 Q And for purposes of our discussion, we
14 are talking about a purchase transaction of 1721
15 Cherry Hill Road, Ridgeland, South Carolina,
16 approximately 27.09 acres, which occurred on
17 October 10th, 2007; is that not correct?

18 A That is correct.

19 Q And when I refer to this transaction,
20 or generally, I'll be referring to that
21 particular transaction. Do you understand that?

22 A I do.

23 Q And if it's not acceptable, if you feel
24 I need to clarify what exactly I'm speaking
25 about, please ask me to do so. Otherwise, I'm

HALE - QUALEY (DIRECT EXAMINATION)

going to refer to the general transaction.

A Okay.

Q And what was the nature of the transaction? How would you describe it?

A It was a purchase of the property that you just described by an LLC, of which Eugene O'Neil and Ronald Faulkner were the principals, from the sellers, which -- or seller. Cynthia Griffis, as I recall, was the seller.

Q And you're looking at your file for that transaction; correct?

A Well, actually, it shows that Tony and Cindy were the owners and the sellers.

Q But you're looking at your file?

A Yes, to refresh my memory on that issue as to who the sellers were.

Q And please feel free to do so throughout this deposition, if you will.

A Okay.

Q And who did you represent in the transaction?

A Cherry Hill Estates.

Q Which is the LLC?

A The LLC, and its members, Eugene O'Neil

HALE - QUALEY (DIRECT EXAMINATION)

purchase?

A Not that I know of.

Q Do you mind if we make a copy of this?

Because that way I can have the date of the transmittal and communications from Woodlands Bank.

A No.

MR. HALE: Thank you. Give us a brief second to make copies.

(Whereupon, an off-the-record discussion was held.)

BY MR. HALE:

Q I'm going hand you the contract, and I've made a copy of your contract.

And the notation about the fees, what you intend to charge as a fee on the transaction, is that the amount that you indeed did charge on the transaction?

A I don't know. I'd have to look.

Yes, that's correct, as the fee for representing the buyer in connection with the purchase. But there was an additional fee of \$200 because I was asked to prepare additional documents that were not addressed in the initial

HALE - QUALEY (DIRECT EXAMINATION)
and Ronald Faulkner.

Q Looking at your file, how did you first become involved?

A As far as I can tell, we first became involved by receiving a copy of the contract, which I believe we received from Mr. O'Neil.

Q And can you identify the contract that you received?

MR. HALE: While he's looking for that, let's take a brief break.

(Whereupon, an off-the-record discussion was held.)

BY MR. HALE:

Q Let's go back on the record.

A It appears the contract was sent to us by Woodlands Bank, by Debbie Perez at Woodlands Bank on October 2nd, 2007.

Q And if I could see your copy.

A Here it is. And the fax showing that it -- the cover sheet sending it to us is attached to the back of the contract.

Q Now, at the time of this transmittal, were there any other addendums or was any other information sent to you regarding this proposed

HALE - QUALEY (DIRECT EXAMINATION)
fee quote.

MR. HALE: Let's go ahead and introduce the copies as the next exhibit in this deposition.

(Whereupon, Plaintiff's Exhibit Number 3 and 4 were marked for identification.)

BY MR. HALE:

Q We have as Plaintiff's Exhibit 3 your contract. And then Plaintiff's Exhibit 4 is the transmittal from Debbie Perez, and it was sent to Nancy. Who is Nancy?

A Nancy Marcus used to work for me. She was a paralegal here.

Q And was she a paralegal on this date, October 2nd, 2007?

A Yes.

Q And when did she leave your employ?

A Probably about a year ago.

Q Was she the paralegal involved in this transaction?

A She would have been one of them. But the paralegal that primarily handled the file, her name was Brooke Brown, B-R-O-W-N.

1 HALE - QUALEY (DIRECT EXAMINATION)
2 figures. But it does not bear the signatures of
3 Ronald Faulkner, which I signed as his attorney
4 in fact, or Tony and Cindy Griffis.

5 Q And do you have a copy that was signed
6 by all those parties?

7 A I do.

8 Q If I can make a copy, we'll introduce
9 that as an exhibit.

10 A The closing statement is in
11 counterparts. The top one is signed by the
12 buyers, and the bottom one is signed by the
13 sellers.

14 Q We'll make a copy of that.

15 Now, if I recall your previous
16 testimony, you said that in this matter you
17 represented the buyer, Cherry Hill Estates, LLC?

18 A Yes.

19 Q Eugene O'Neil and Ronald Faulkner;
20 correct?

21 A Correct.

22 Q Did you represent anyone else?

23 A No, I did not.

24 Q Were you familiar with the entity
25 Cherry Hill Estates, LLC?

1 HALE - QUALEY (DIRECT EXAMINATION)

2 A Was I familiar with them?

3 Q Prior to this transaction had you been
4 familiar with them?

5 A No.

6 Q Did you aid in establishing the LLC in
7 any format?

8 A No.

9 Q How did you become knowledgeable that
10 the LLC existed and that it was to be involved
11 in this transaction?

12 A I believe it was named as the
13 purchaser. It was named as the purchaser in the
14 contract.

15 Q So Plaintiff's Exhibit 3 is the way
16 that you became aware of that particular LLC,
17 and you had no prior recollections of it prior
18 to that time?

19 A Correct.

20 Q Other than this transaction have you
21 done any other business or representations of
22 that LLC?

23 A No.

24 Q How about after this transaction, have
25 you done any other business with Mr. O'Neil --

1 HALE - QUALEY (DIRECT EXAMINATION)

2 A No.

3 Q -- and Mr. Faulkner?

4 A No.

5 Q Prior to this transaction or prior to
6 having the transaction referred to you to
7 operate as closing attorney, were you
8 knowledgeable of Mr. O'Neil?

9 A I think I may have been involved in a
10 transaction with him many years ago, 20 plus
11 years ago, but I don't remember the nature of
12 the transaction or whether -- you know, what my
13 involvement was. But I did have some
14 involvement with him. I just don't remember
15 what it was.

16 Q Do you have any knowledge of his
17 activities in the area and what he was employed
18 previously as or any of his business dealings?

19 A I just knew him to be a real estate
20 agent.

21 Q At least at the time of the
22 transaction?

23 A Not necessarily then. I assumed he was
24 then. But the transaction that I dealt with him
25 many years ago, as I recall, he was a real

1 HALE - QUALEY (DIRECT EXAMINATION)

2 estate agent. He wasn't acting as a real estate
3 agent in this transaction, so I didn't -- I
4 didn't really look at him as acting in that
5 capacity.

6 Q As the next Plaintiff's Exhibit, we
7 will introduce your copy of the closing
8 statement, in counterparts as you have
9 described; correct?

10 A That's correct.

11 (Whereupon, Plaintiff's Exhibit
12 Number 7 was marked for
13 identification.)

14 BY MR. HALE:

15 Q Prior to this transaction, did you have
16 any knowledge or had you ever met Mr. Ronald
17 Faulkner?

18 A No.

19 Q In conjunction with this transaction,
20 did you meet Mr. Faulkner?

21 A I don't recall whether I did or not.

22 Q Did you ever speak with Mr. Faulkner,
23 telephonically or otherwise?

24 A I don't recall whether I did or not. I
25 may have talked with him by phone, but I just

1 HALE - QUALEY (DIRECT EXAMINATION)
2 don't recall exactly, you know, whether I did or
3 not.

4 Q During or following this transaction,
5 have you conducted or represented Mr. Faulkner
6 in any venture or in any other way?

7 A No.

8 Q So this was a single transaction for
9 purposes of Mr. Faulkner and to your knowledge
10 was the first time that you had to become
11 familiar with him one way or the other?

12 A Correct.

13 Q Now, Mr. Faulkner has testified that he
14 spoke with you while in a restaurant somewhere
15 in -- I believe he said he was in Hilton Head
16 and spoke with you over the telephone. Do you
17 recall that?

18 A I don't recall that. But, like I said,
19 I mean, we could have had a phone conversation.
20 If we did, I just don't remember it. I've had a
21 lot of phone conversations since 2007.

22 Q And with respect to Mr. O'Neil, do you
23 recall any specific phone conversations or any
24 conversations you had with him?

25 A I do remember having conversations with

1 HALE - QUALEY (DIRECT EXAMINATION)
2 him by phone and in the office. I met and
3 talked with him in the office.

4 Q What was the content of those
5 conversations?

6 A It would have just been routine aspects
7 of the closing.

8 Q Do you recall any specific things
9 discussed during those discussions of routine
10 aspects of the closing?

11 A No, I don't.

12 Q Do you recall Mr. O'Neil discussing the
13 value of this property at all?

14 A No.

15 Q Do you recall Mr. O'Neil discussing the
16 contracts that had been entered into by the
17 parties?

18 A No, we never had any discussions like
19 that.

20 Q I'm now going to hand you what has been
21 Bate stamped Number 20 through 22 and ask if you
22 recognize that document?

23 A Yes. I recognize this as the
24 promissory note from Cherry Hill Estates to
25 Cynthia Griffis.

1 HALE - QUALEY (DIRECT EXAMINATION)

2 Q And do you recall who prepared this
3 document?

4 A I prepared that.

5 Q And was that part of the additional fee
6 that you charged the purchaser \$200 for that you
7 referenced previously?

8 A Yes.

9 Q Referring to Bate stamp 22, the
10 document was signed by the borrower Cherry Hill
11 Estates, Mr. O'Neil, and yourself as attorney in
12 fact for Mr. Faulkner?

13 A Correct.

14 Q Who were the witnesses on those
15 documents? Do you recognize the names of the
16 witnesses?

17 A Brooke Brown and I witnessed
18 Mr. O'Neil's signature on behalf of Cherry Hill
19 Estates. There were no separate witnesses for
20 the signing of the guarantee.

21 Q And how did you come to hold
22 Mr. Faulkner's Power of Attorney?

23 A We prepared a Power of Attorney and
24 sent it to him for him to sign, and he signed
25 and returned it to us.

1 HALE - QUALEY (DIRECT EXAMINATION)

2 Q And I'm referring to -- I just handed
3 you a document Bate stamped 23 and 24. Is that
4 the Power of Attorney that you're speaking of.

5 A Yes.

6 Q And you're saying you prepared the
7 Power of Attorney, sent it to Mr. Faulkner?

8 A Yes. And then he signed it and
9 returned -- or he obviously signed it here.

10 Q And how do you know that he signed it
11 here?

12 A Because two of my employees witnessed
13 his signature, Brooke Brown and Monica Chandler.

14 Q Now, Monica Chandler had not been
15 involved in this transaction?

16 A No. She was our receptionist. So if
17 she signed it, that means that somebody came to
18 the front desk, and she signed as a witness when
19 he signed it. She and Brooke Brown acted as the
20 witnesses. Brooke was the paralegal on the
21 transaction.

22 Q Now, this was a Specific Power of
23 Attorney.

24 A Right.

25 Q How would you explain the difference

1 **HALE - QUALEY (DIRECT EXAMINATION)**
2 between a Specific Power of Attorney and just a
3 General Power of Attorney?

4 A That document specifies the limitations
5 on my authority to act on his behalf as opposed
6 to a General Power of Attorney which doesn't
7 place specific limitations on the agent's
8 authority.

9 Q Do you have any standard practices or
10 explanations that you typically give individuals
11 when they appoint you as a Specific Power of
12 Attorney?

13 A Well, our typical practice is that
14 prior to signing any documents on behalf of the
15 principal, the paralegal e-mails the documents
16 to the principal and gets authorization for me
17 to sign on behalf of the principal. So our
18 standard procedure would have been for Brooke to
19 e-mail Mr. Faulkner a copy of the guarantee to
20 be signed in favor of Woodlands Bank and the
21 guarantee to be signed in favor of Cynthia
22 Griffis in accordance with the Power of
23 Attorney.

24 Q Do you have any evidence in your file
25 that that procedure was followed in this case?

1 **HALE - QUALEY (DIRECT EXAMINATION)**

2 A I don't see an e-mail, a copy of an
3 e-mail from Brooke confirming that, but that's
4 what they were required to do, so I assume she
5 did that.

6 Q Would you require to see such an e-mail
7 prior to exercising the rights under the Power
8 of Attorney?

9 A I would require that she confirm to me
10 verbally, more often than not, just verbally,
11 that she had gotten the client's approval.

12 Q Based on your practice, is it your
13 belief that that was done in this case, that she
14 did make such confirmation to you?

15 A Yes.

16 Q Do you have her backup records as far
17 as e-mail transmittals?

18 A Probably. I would just have to look
19 for them.

20 Q Is that something that you're willing
21 to commit to look for, this specific e-mail?

22 A Sure.

23 Q And we're looking for an e-mail that
24 would have occurred sometime around --

25 A Either October 9th or the 10th.

1 **HALE - QUALEY (DIRECT EXAMINATION)**

2 Q -- October 9th or October 10th from
3 Brooke.

4 A And a reply.

5 Q And a reply from Mr. Faulkner; correct?

6 A Correct. I mean, the paralegals know
7 they're subject to being dismissed from their
8 employment here if they don't do that, so they
9 tend to do that.

10 Q So that is a grounds for dismissal if
11 they fail to do that?

12 A Correct.

13 Q So it's a very strict policy in your
14 office.

15 A Yes.

16 **MR. HALE:** Off the record a
17 second.

18 (Whereupon, an off-the-record
19 discussion was held.)

20 **MR. HALE:** I will consult with the
21 other counsel once that e-mail is
22 produced, and I may ask them at that
23 time whether -- in the production of
24 the e-mail, either under the business
25 records rule or otherwise, I may seek

1 **HALE - QUALEY (DIRECT EXAMINATION)**

2 to reconvene this deposition for that
3 reason, or we will all stipulate as to
4 what Mr. Qualey's position is relative
5 to such e-mail. Is that acceptable?

6 **MR. MOGIL:** That's acceptable.

7 **THE WITNESS:** That's fine. But
8 you're saying he was in transit at the
9 time?

10 **MR. MOGIL:** He testified that he
11 came in, and he believes he flew back
12 to Maryland the day of the transaction,
13 and that's -- he testified that that's
14 why he thinks he gave you Power of
15 Attorney, because he wasn't able to
16 stay.

17 **MR. HALE:** Now, is that acceptable
18 to you, Tony?

19 **MR. GRIFFIS:** Yes, that's fine.

20 **BY MR. HALE:**

21 Q Now, I will mention that on the
22 Specific Power of Attorney, just as a point of
23 interest, the acknowledgment is dated the 10th
24 day of October 2007.

25 A And what date should it be?

HALE - QUALEY (DIRECT EXAMINATION)

Q Well, I'm not saying the date should have been any different, but it was the same date of the closing, which is, I would think, in these type of transactions, as I do them myself, Jack, as you know, that's just a little peculiar. Would you not agree that's just --

A Well, unless he came in that morning --

Q And then the transaction was that afternoon.

A -- and then the transaction happened that afternoon.

Q And he was not available for the afternoon.

A Right.

Q And then I will hand you what has been Bate stamped 25 through 27. And I will mention there are two Bate stamps on this, but I'm referring to the smaller one, and ask you if you recognize that document?

A Yes. It's a guarantee signed by Eugene O'Neil and Ronald Faulkner.

Q And would that further evidence the guarantee that they were giving relative to this transaction?

HALE - QUALEY (DIRECT EXAMINATION)

that document?

A Yes. That is a mortgage that we prepared for signature by Cherry Hill Estates. This is a recorded copy of it.

Q And that was signed on behalf of Cherry Hill Estates, referring to Bate stamp 31, by Mr. O'Neil --

A Correct.

Q -- with Brooke and yourself as witnesses and you as the notary public?

A Correct.

Q And then I will refer you to what has been Bate stamped Numbers 33 through 35 and ask if you recognize that particular document?

A Yes. This is the Deed signed by Tony and Cindy Griffis transferring the property to Cherry Hill Estates.

Q Did Cherry Hill Estates receive any other conveyance documents relative to this transaction?

A Not to my knowledge.

Q I'll hand you a document that has been Bate stamped 36 and ask if you recognize that particular document?

HALE - QUALEY (DIRECT EXAMINATION)

A It would. I'm not sure why it was needed. I'm not sure if I prepared it. But obviously it would be an additional guarantee to the guarantee that was endorsed on the note itself.

I do have a copy of it here. I'm not sure if I prepared that or not, but I'm not sure that that's really an issue. It may have been prepared by someone else.

Q But at least on Bate stamp Page 27, it was signed by Mr. O'Neil and signed by you as the Power of Attorney for Mr. Faulkner?

A Correct.

Q And was that within the gamut of the authorities granted to you by the Specific Power of Attorney?

A Yes.

Okay.

Q I saw you looking through your file, so I was giving you the courtesy of the time to refresh whatever recollection you sought to refresh.

I will now hand you what has been Bate stamped 28 through 32 and ask if you recognize

HALE - QUALEY (DIRECT EXAMINATION)

A I don't recognize this document.

Q Now, do you recall any discussions of any arrangement of Mr. Griffis being involved or subsequently to be involved in Cherry Hill Estates?

A No.

Q With respect to this transaction and your duties in the transaction, would that have mattered to you one way or the other?

A If he was going to be involved post closing?

Q Yes.

A After the transaction was over?

Q Yes.

A Unless the client asked me to review it, it wouldn't have affected the transaction.

Q And by virtue of saying you do not recall the document, were you asked to review anything of that nature?

A No.

Q Was anything asked of you relative to that arrangement?

A No.

Q And so that really was of no concern of

1 **HALE - QUALEY (DIRECT EXAMINATION)**
2 yours?

3 A I didn't know anything about it.

4 Q Well, I mean, had you known about it,
5 would you have acted or operated any differently
6 than the way you did relative to this
7 transaction?

8 A If I had known that Tony Griffis was
9 going to become a member of Cherry Hill Estates
10 at some point in the future, after the
11 transaction?

12 Q Yes.

13 A I don't think it would have affected my
14 handling of the transaction any differently, no.

15 Q If there had been a commitment made
16 prior to the transaction for that particular
17 type arrangement, would that have impacted the
18 manner in which you handled the transaction in
19 any fashion?

20 A Not if the commitment was for something
21 to be implemented post closing.

22 Q Do you have any knowledge as to whether
23 this bill of sale, one-third membership, was
24 post closing or pre closing?

25 A I've never seen it, so I don't know

1 **HALE - QUALEY (DIRECT EXAMINATION)**
2 anything about it. I don't know when it was
3 entered into.

4 Q Now, in your file, do you have a
5 disbursement sheet for the disbursements that
6 were made?

7 A What we would have, yes, we have --
8 there are actually three different check
9 disbursement statements, but they all relate to
10 the same transaction.

11 Q How do they differ?

12 A They differ just in the checks that
13 were voided. One shows a check to the Clerk of
14 Court as being voided, and another shows another
15 check to the Clerk of Court as being voided.
16 That would be because they were initially made
17 out to the Clerk of Court and should have been
18 made out to the Register of Deeds for Jasper
19 County. Because Jasper County didn't have a
20 Register of Deeds until 2005 or something, so
21 she probably entered it as Clerk of Court and
22 then changed it to Register of Deeds.

23 Q Would the last disbursement statement
24 be complete as to all of your disbursements?
25 Would it have all the changes and the voiding?

1 **HALE - QUALEY (DIRECT EXAMINATION)**

2 A Yes. It should have, yes.

3 Q Which one is the last disbursement
4 statement?

5 A This one dated October 16th, 2007, at
6 2:36 p.m.

7 **MR. HALE:** And it is my intention
8 to introduce that as well once we have
9 the copy.

10 **MR. GRIFFIS:** What is that?

11 **MR. HALE:** That is the
12 disbursement statement.

13 **BY MR. HALE:**

14 Q I'll now hand you a document that is
15 Bate stamped 86. It shows copies of checks.
16 Have you seen any of those checks?

17 A No. No, I've never seen these.

18 Q And I'll hand you what has been marked
19 as Bate stamp 87 and ask you if you have seen
20 that?

21 A Yes, I have seen it.

22 Q And what does Bate stamp 87 represent
23 to you?

24 A It is instructions from Tony Griffis to
25 Brooke in our office. He says, "Please put the

1 **HALE - QUALEY (DIRECT EXAMINATION)**
2 \$200,000 second mortgage and note only in
3 Cynthia Griffis' name" and then specifies the
4 terms of the note, 5 percent annual interest,
5 two year balloon, for a total interest and
6 principal from Cherry Hill Estates, LLC,
7 personally guaranteed by both Eugene O'Neil and
8 Ronald Faulkner, signed Anthony E. Griffis.

9 Q And you received that, the date
10 indicates, October 9th, 2007?

11 A I recall seeing a copy of that in my
12 file, yes.

13 Q And did you comply with this request?

14 A Yes, we did.

15 **MR. HALE:** And again, this is now
16 an exhibit by reference; correct, Mike?

17 **MR. MOGIL:** Correct.

18 **MR. HALE:** Tony?

19 **MR. GRIFFIS:** What reference would
20 that be?

21 **THE WITNESS:** The Bate stamp.

22 **MR. GRIFFIS:** Okay, I got you.

23 **BY MR. HALE:**

24 Q Now, do you recall having any
25 discussions with Tony Griffis pertaining to this

1 GRIFFIS - QUALEY (CROSS EXAMINATION)

2 MR. HALE: Well, I'm assuming
3 though, for purposes of the record --

4 THE WITNESS: Okay, I'll refer to
5 the Bate stamp. Bate stamps Number 23
6 and 24, this is the Power of Attorney
7 signed by Mr. Faulkner.

8 BY MR. GRIFFIS:

9 Q Is there any doubt in your mind from
10 that Power of Attorney that was executed by
11 Ronald Faulkner that you had express authority
12 to execute the guarantees to Cynthia Griffis and
13 to Woodlands Bank on his behalf, you acting as
14 his attorney in fact?

15 A No, there is no question in my mind
16 that I had that authorization.

17 Q Now, the document that's referenced
18 Bate stamp 87, which is the memo from me to
19 Brooke dated October 9th, '07, there's a fax
20 memo that we just had a minute ago, Exhibit Bate
21 stamp 87 and 88, I think 88 was the e-mail she
22 sent to you, is there any doubt in your mind
23 that as of October 9, 2007, you as the attorney
24 and later as the attorney in fact had notice
25 that there were personal guarantees required for

1 MOGIL - QUALEY (CROSS EXAMINATION)
2 the \$200,000 note given to Cynthia Griffis?

3 A You put me on notice of that
4 requirement.

5 Q On October 9, 2007?

6 A Correct.

7 MR. GRIFFIS: Thanks. I don't
8 have any more questions.

9 MR. MOGIL: Michael Mogil for
10 Defendant Faulkner and Cherry Hill
11 Estates, not for Mr. O'Neil.

12 CROSS EXAMINATION

13 BY MR. MOGIL:

14 Q Mr. Griffis just asked you about when
15 you became on notice that there was a personal
16 guarantee required on the secondary financing
17 and the implication. And your answer was that
18 it was on October 9th, which was the day before
19 closing.

20 You've also testified that you don't
21 recall any specific conversations with
22 Mr. Faulkner.

23 In your mind, whom else might have or
24 would have been the person that explained to
25 Mr. Faulkner about the change in circumstances

1 MOGIL - QUALEY (CROSS EXAMINATION)
2 and what that Power of Attorney meant?

3 MR. HALE: I object to the form.

4 THE WITNESS: My paralegal Brooke
5 Brown would have discussed it with him
6 when she was making arrangements for
7 him to sign the Power of Attorney.

8 BY MR. MOGIL:

9 Q Do you recall how you came to have
10 Cherry Hill Estates, O'Neil, and Faulkner as
11 clients? Were they referred to you by somebody?

12 A I assume that they were referred to me,
13 but I honestly can't tell you who would have
14 referred them to me.

15 Q You have no personal recollection of
16 how they came to your office?

17 A No.

18 Q Does the file reflect how they came to
19 the office?

20 A No.

21 Q You don't recall doing any work for
22 Mr. O'Neil in the immediate future prior to
23 this?

24 A No.

25 Q You testified a few minutes ago that

1 MOGIL - QUALEY (CROSS EXAMINATION)

2 Woodlands Bank would have approved the Power of
3 Attorney and had approved the secondary
4 financing, which is actually referenced on the
5 contract itself. Did you have any personal
6 communications with Woodlands Bank?

7 A No. Brooke would have had all those
8 communications.

9 Q So when you say that they approved it,
10 is that based on the transmissions that are
11 going back and forth from Brooke to Woodlands?

12 A Yes.

13 Q When you looked at your file a minute
14 ago, is there any transmission that involves the
15 personal guarantee on the second mortgage
16 financing that you could see that went to
17 Woodlands?

18 A No. I just answered Jim saying that
19 they never asked us to see any information about
20 the second mortgage.

21 Q Do you have any knowledge of any
22 requests made by Woodlands relating to this
23 transaction, any personal knowledge, meaning
24 anything that was made to you directly?

25 A In what regard? What are you --

1 HALE - QUALEY (REDIRECT EXAMINATION)

2 Q Earlier, Mr. Hale showed you and I
3 believe introduced, by reference to Bate stamp,
4 a series of exhibits, one of which was an
5 agreement regarding Cherry Hill Estates, Bate
6 stamped 16, dated October 8th. You testified
7 that you had never seen that document. Is that
8 document in your file anywhere?

9 A Not that I know of, no.

10 Q Prior to today, had you ever heard of
11 that document?

12 A No.

13 MR. MOGIL: That's it.

14 REDIRECT EXAMINATION

15 BY MR. HALE:

16 Q Now, one question, again, subject to
17 the right to reconvene, as previously made a
18 record of. Were you present when all the
19 closing documents for this transaction were
20 signed by Mr. O'Neil?

21 A Yes.

22 MR. HALE: Thank you. I have no
23 further questions.

24 MR. MOGIL: And just for the
25 record, and I'll probably say it on

1 CERTIFICATE

2
3
4 STATE OF SOUTH CAROLINA:
5 BEAUFORT COUNTY:

6
7 I, Theresa D. Saxon, Certified Court
8 Reporter and Notary Public in and for the above
9 county and state, do hereby certify that the
10 foregoing testimony was taken before me at the
11 time and place herein-before set forth; that the
12 witness was by me first duly sworn to testify to
13 the truth, that thereupon the foregoing
14 testimony was transcribed by computer
15 transcription; and I certify that this is a true
16 and correct transcript of my stenographic notes
17 so taken.

18
19 I further certify that I am not of
20 counsel to either party, nor interested in the
21 event of this cause.
22

23 Theresa D. Saxon
24 Certified Court Reporter
25 Notary Public
Beaufort, South Carolina
My commission expires
10.4.2015

1 HALE - QUALEY (REDIRECT EXAMINATION)

2 behalf of Mr. Griffis as well because
3 there's ongoing third-party litigation,
4 we want to reserve the same right to
5 reconvene as you are.

6 MR. HALE: I have no objection to
7 that.
8

9 (Whereupon, the deposition of
10 Jack P. Qualey, Jr.,
11 was recessed at
12 4:00 p.m.)

13 (The witness waived the right to
14 read and sign the deposition
15 transcript.)
16
17
18
19
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24
25

1 HALE - FAULKNER (DIRECT EXAMINATION)

10

2 meeting?

3 A I wasn't dealing with a problem during
4 the meeting.

5 Q So at the time of the meeting, you
6 really didn't have any problem with that
7 situation or condition?

8 A At the time of the meeting, correct.

9 Q Now, at the time of the meeting, was
10 there any solution negotiated?

11 A I don't recall any solution at that
12 time. At that time it was a general -- just a
13 general meeting. Nothing was -- basically, we
14 were just talking about the LLC and how Tony
15 Griffis and O'Neil and I were going to be
16 involved in the LLC. And there was no talk
17 about guarantees or personal guarantees or
18 how -- it was actually just a real estate
19 transaction.

20 Q You're saying there was no talk of
21 guarantees?

22 A No.

23 Q Are you firm in that memory?

24 A Yes.

25 Q Would it surprise you to learn that

0177

1 HALE - FAULKNER (DIRECT EXAMINATION)

23

2 Q Now, did John Quailey represent you, was
3 he your attorney?

4 A Was he my attorney, no.

5 Q He was not your attorney in this
6 transaction?

7 A Well, on the transaction with the Power
8 of Attorney, yes.

9 Q He had a Power of Attorney, but was he
10 your attorney at law?

11 MR. MOGIL: I'm objecting to the
12 form.

13 THE WITNESS: No. No. No.

14 BY MR. HALE:

15 Q He was not your attorney at law?

16 A No.

17 Q He did not represent you in a capacity
18 as a lawyer --

19 A No.

20 Q -- in this transaction?

21 A No.

22 Q So you would have no basis to assert
23 that attorney-client privilege would apply to
24 Mr. Quailey with respect to your involvement in
25 this transaction?

0178

1 HALE - FAULKNER (DIRECT EXAMINATION)

37

2 A Number one, I thought I was
3 guaranteeing a mortgage, that promissory note
4 that would be taken care of if the property got
5 sold or developed, and that everybody was going
6 to take their share of one-third, and to me this
7 was a real estate mortgage transaction, not to
8 the point that it was going to be beared by any
9 one person.

10 Q Are there any other things?

11 A It gets back to the fact that I feel I
12 should have been advised to have somebody
13 besides the Griffis law firm just looking at
14 this transaction.

15 Q Anything else?

16 A I feel if -- under the -- what I see is
17 that Tony Griffis also had been part of Cherry
18 Hill Estates as much as one of the guarantors.

19 Q Are you saying you feel he should have
20 been a guarantor there?

21 A Yes.

22 Q Anything else?

23 A I can't think of any right now.

24 Q Now, Paragraph 1 says Cindy Griffis
25 shall receive a promissory note guaranteed by

0179

1 HALE - FAULKNER (DIRECT EXAMINATION)

38

2 Ron Faulkner and Eugene O'Neil. So is it safe
3 to say when you saw that on October 8th, 2007
4 and signed that, that you agreed to guarantee a
5 promissory note?

6 A I did not know that I was signing a
7 note. I thought I was signing a guarantee, when
8 the property was sold or developed, that they
9 would receive a note.

10 Q I'm sorry.

11 A I lost you, huh?

12 Q I don't understand that response. Can
13 you elaborate what your thought was on
14 October 8th, 2007.

15 Are you familiar with the concept of a
16 guarantee?

17 A I think I do.

18 Q Have you ever guaranteed obligations
19 before?

20 A In a real estate transaction, I can't
21 recall.

22 Q You can't recall. Have you ever
23 guaranteed anything before?

24 A If you asked me, I probably couldn't
25 tell you one.

0180

1 HALE - FAULKNER (DIRECT EXAMINATION)

39

2 Q You can't recall one at this time?

3 A Right.

4 Q Other than this obligation?

5 A Correct.

6 Q But you did guarantee this obligation,
7 because you agreed to, didn't you?

8 A It was agreed by Cherry Hill Estates as
9 much as -- which included me, O'Neil, and
10 Mr. Griffis.

11 Q So it's your belief that Mr. O'Neil and
12 Mr. Griffis should share in this obligation?

13 A Yes.

14 Q Have you sued them to get them to share
15 in this obligation?

16 A I probably can't speak on that, but
17 that's a possibility.

18 Q So it's a possibility that you could
19 pursue them for that; correct?

20 A A possibility.

21 Q Now, you did have or Mr. Qualey did act
22 as your Power of Attorney in this matter, did he
23 not?

24 A Yes.

25 Q What discussions did you have with

0181

HALE - FAULKNER (DIRECT EXAMINATION)

40

Mr. Qualey?

A I don't recall.

Q Do you recall having had any discussions with him?

A I recall him calling me and the fact that it was -- I was in a noisy place, had a bad connection. I don't recall everything that was discussed when he did call me.

Q What place were you in?

A I don't even remember.

Q But you do remember it was noisy?

A I remember it was not a good connection with everything on the phone.

Q I believe you testified earlier that it was a restaurant?

A A restaurant/lounge area, yes.

Q And at this point, you have no recollection what that discussion was about?

A Not at all, any detail at all.

Q Do you have any objections as to what Mr. Qualey did?

A Probably under the setting of the discussion and understanding and not having a copy of what was going to be signed, I probably

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1 HALE - FAULKNER (DIRECT EXAMINATION)

41

2 have some objections, yes, because I . . .

3 Q Well, what in particular would you
4 object to with respect to what was signed?

5 A That I -- number one, I probably would
6 have had documents in front of me in an area
7 like my office where I could go over the
8 documents rather than the way it was done.

9 Q It was done without you having
10 documents in front of you?

11 A Right.

12 Q Did you tell him not to proceed until
13 you had the documents in front of you?

14 A At that time, I don't recall, but most
15 likely not, because, as I said, it wasn't a good
16 connection or it was noisy, and I just -- to me,
17 it was very confusing.

18 Q But you did give him a Power of
19 Attorney to proceed in your behalf; correct?

20 A Correct.

21 Q And he was to proceed in your behalf in
22 accordance with the agreement that you had
23 signed and negotiated, I believe we're talking
24 about Plaintiff's Exhibit 6; correct?

0183

25 A You want to know . . .

2 Apple.

3 Q Well, were you in your home in Maryland
4 when you signed this, or were you down here, if
5 you recall?

6 A I can't totally recall that answer.

7 Q I'm going to ask you to look at --
8 there's two documents here, one, there was the
9 document that I produced to Mr. Hale in response
10 to discovery, which is marked Plaintiff's
11 Exhibit 6, which has the Apple Child Care. And
12 then the second is Plaintiff's Exhibit 9, which
13 is a document that does not bear the stamp Apple
14 Child Care but which is also a contract
15 purported to be October 8th, 2007, with a
16 cross-out that was initialed by three of the
17 four parties in Paragraph 3.

18 And I'm going to ask you to look at
19 your signature on Plaintiff's Exhibit 6 and your
20 signature on Plaintiff's Exhibit 9. Is that the
21 same document, or are they two different
22 signatures?

23 A Looks like the same signature.

24 Q It's your signature; correct?

0184

25 A Right.

2 Q But is this a photocopy of that, or is
3 this a separately signed document is what I'm
4 asking you? I'll refer you to your middle
5 initial alone. Is the middle initial the same,
6 written the same way?

7 A Yes, it's written the same way, yes.

8 Q Is this middle initial larger or the
9 same size?

10 A It seems to be larger.

11 Q Is there a dot after the middle initial
12 on Plaintiff's Exhibit 9 as there is on
13 Plaintiff's Exhibit 6?

14 A No.

15 Q Is the "R" written the same way, the
16 first name?

17 A No.

18 Q Look at Mr. O'Neil's signature. Is
19 Mr. O'Neil's signature identical, or is one
20 larger than the other?

21 A I would say it's not identical.

22 Q And Ms. Griffis' signature, is the
23 however she finishes her words, does that look
24 the same?

25 A No.

0185

Q So is it fair to say these documents are not photocopies of one another, but they are separated executed documents?

A That's correct.

Q And even looking at the number "8" at the top of the page, is that number "8" written differently on both of them?

A Yes.

Q At the time you executed whichever of these you executed, did you understand that you were guaranteeing a \$200,000 promissory note secured by a second mortgage on the subject property for two years, as stated in Paragraph 1?

A No, I didn't.

Q Did you read it before you signed it?

A I don't recall if I read it completely.

Q Whose advice were you relying on when you agreed to sign this?

A I was relying on Tony Griffis and Eugene O'Neil.

Q Were you relying on Cynthia Griffis?

A Well, she was part of the law office, so, yes, I was relying on the team there.

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2 Q At the time you entered into this
3 agreement, which was sometime in October of 2007
4 but dated October 8th, did you consider Cynthia
5 Griffis to be working for your law firm?

6 A Yes.

7 Q When you were speaking to her, did you
8 feel like it was in confidence, that you could
9 tell Tony, or what was your expectation?

10 A Yes, I figured that they were a team in
11 the law firm, her being a notary and paralegal,
12 and normally they can speak for each other at
13 that time.

14 Q You testified you didn't understand
15 that you were signing a guarantee on a second
16 mortgage, as it states here?

17 A I didn't understand it completely, no.

18 Q You testified earlier in response to
19 Mr. Hale's questions that you thought that you
20 were going to be paying a third, a third, a
21 third when property was sold or developed. Can
22 you explain what you meant by that.

23 A Well, O'Neil and Griffis and I, as is
24 stated here, were one-third of Cherry Hill
25 Estates, and the idea was to -- when we

0187

developed the property, that, here, Tony would be part of the investment. And that's basically what I meant. I figured that was -- Cherry Hill Estates was basically the three of us were responsible for the development as much as the loan.

Q In Paragraph 3 of the agreement, it says "Anthony Griffis shall receive a one-third interest in Cherry Hill Estates, LLC, for his investment." Did you understand that he was receiving a one-third interest when you signed this?

A Yes, I did.

Q Did you think he was personally obligated on the loan just as you were?

A Yes.

Q When did you first learn he was not personally obligated on the loan?

A Well, when this here lawsuit started, I realized it at that time.

Q Who directed you to go to Mr. Qualey's office?

A It was the Griffis law firm, Tony. I did not set up going to that office.

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1 MOGIL - FAULKNER (CROSS-EXAMINATION)

66

2 understand that you were unconditionally
3 guaranteeing a promissory note?

4 A No. No.

5 Q If you understood that, if that had
6 been explained to you, would you have agreed to
7 do this transaction?

8 A No.

9 Q Why not?

10 A Like I testified, that this was a -- I
11 thought this was a real estate transaction, that
12 there'll be a second for Cindy that was put in
13 there, and I was not -- it was not discussed in
14 our meetings with all parties about a personal
15 guarantee, and I should have been advised more
16 that -- from those discussions that it should
17 not have been in there.

18 Q Going back, did Cynthia Griffis ever
19 encourage you or request that you participate in
20 this transaction?

21 A Say that again now.

22 Q Did Cynthia Griffis encourage you to
23 participate in this transaction?

24 A I would say by my talks with her and
25 meeting with her, that she did encourage.

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2009-CP-07-6054

Cynthia Griffis,

Plaintiff,

vs.

CHERRY HILL ESTATES, L.L.C.; Eugene
O'Neil; and Ronald Faulkner,

Defendants.

CHERRY HILL ESTATES, L.L.C. and
Ronald Faulkner,

Third Party Plaintiffs,

v.

Anthony E. Griffis,

Third Party Defendant.

**AFFIDAVIT OF
THOMAS A. PENDARVIS, J.D.**

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) SS:

PERSONALLY APPEARED before me, Thomas A. Pendarvis, J.D., who, first being
duly sworn, and says that:

1. Assuming that the Third-Party Plaintiffs in this action prove the facts alleged in their
Third-Party Complaint, it is my expert opinion, held to a reasonable degree of
professional certainty, that Anthony E. Griffis, J.D. (GRIFFIS) committed malpractice
– violating the standard of care of South Carolina lawyers by failing to render
services and provide legal advice to his clients, CHERRY HILL ESTATES, L.L.C. and
Ronald Faulkner ("the CLIENTS"), with the degree of skill, care, knowledge, and

judgment usually possessed and exercised by members of the legal profession in South Carolina – that proximately caused damages to them:

- a. In failing to represent the CLIENTS with undivided loyalty, to preserve the CLIENTS' confidences, and to disclose to the CLIENTS any material matters infringing upon those obligations.
- b. In entering into a business transaction with the CLIENTS.
- c. In entering into a business transaction with the CLIENTS on terms that were not fair and reasonable to the CLIENTS.
- d. In entering into a business transaction with the CLIENTS without advising the Clients in writing of the desirability of seeking and being given a reasonable opportunity to seek the advice of independent counsel concerning "side contracts" dated September 13, 2007 and October 8, 2007.
- e. In failing to obtain from the CLIENTS informed consent for a waiver of the conflicts of interest inherent in the "side contracts" dated September 13, 2007 and October 8, 2007.
- f. In failing to advise CLIENTS that the disbursements and side agreements must be disclosed to the settlement agent and lender prior to the subject closing, and seeing to it that such disclosures were accomplished.

2. It is my expert opinion, held to a reasonable degree of professional certainty, that GRIFFIS committed violations of the South Carolina Rules of Professional Conduct (Rule 407, SCACR), including those listed below, and that this professional misconduct constitutes further evidence of GRIFFIS' violations of the standard of care and his duties to the CLIENTS:

- a. GRIFFIS violated Rule 1.7 of the South Carolina Rules of Professional Conduct, failing to obtain from the CLIENTS informed consent for a waiver of the conflict of interest inherent in the "side contract" dated October 8, 2007, in which GRIFFIS entered into a business transaction with his clients. GRIFFIS' interests were clearly in conflict with those of the CLIENTS. By representing the CLIENTS with regard to the "side contracts" dated September 13, 2007 and October 8, 2007, and failing to obtain informed consent, GRIFFIS was involved in an impermissible conflict of interest. As a result, GRIFFIS breached his duty of care and duty of conduct to the CLIENTS thereby violating his fiduciary duties to the CLIENTS. See Rule 1.8, RPC, Rule 407, SCACR.
 - b. Violations of this provision of the South Carolina Rules of Professional Conduct that were intended to protect clients in the position of the CLIENTS at the time of GRIFFIS' violation of that Rule;
 - c. This violation was a violation of the South Carolina Rules of Professional Conduct that were in effect at the time of the violative conduct by GRIFFIS;
 - d. This violation of the Rules of Professional Conduct by GRIFFIS was also a violation of the standard of care of a South Carolina lawyer – failures to render legal services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession.
3. GRIFFIS' history of legal services performed on behalf of the CLIENTS and, if the finder of fact were to accept Mr. Faulkner's testimony that he communicated in a confidence with GRIFFIS for the purpose of obtaining such advice regarding the

subject transaction, establishes that GRIFFIS had an attorney-client relationship with the CLIENTS. It is my expert opinion, held to a reasonable degree of professional certainty, that his breaches of duty outlined above occurred within the scope of and grew out of the attorney-client relationship between GRIFFIS and the CLIENTS, as did the damages they suffered as a proximate result of those breaches.

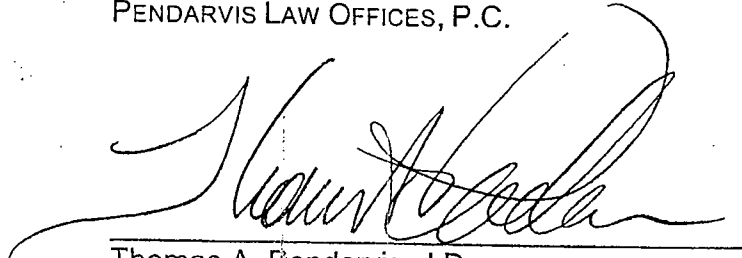
4. I have reviewed documentary evidence from the foregoing lawsuit, which includes the kinds of factual sources and legal authorities customarily relied upon by experts in the field of legal ethics, attorney malpractice, and the liability of lawyers and law firms, all of which, taken together, support the allegations of the Third-Party Complaint, and the expert opinions I express in this affidavit.
5. My resume is attached as Exhibit A to this Affidavit, and sets forth my experience in the practice of law in South Carolina, including:
 - a. I am an attorney licensed to practice law in the State of South Carolina and in the State of Georgia since 1992.
 - b. I am the sole shareholder of PENDARVIS LAW OFFICES, P.C., located at 500 Carteret Street, Ste. A, Beaufort, South Carolina.
 - c. My areas of practice and expertise are litigation matters, including litigation of legal malpractice claims, other professional malpractice claims, breach of fiduciary duty claims, business tort claims, commercial claims, toxic tort claims, and personal injury claims, and I have been regularly engaged in these areas of practice since 1992.
 - d. I have been retained by Michael W. Mogil, J.D. with offices on Hilton Head Island, South Carolina, as an Expert Witness in this matter on behalf of

Third-Party Plaintiffs, CHERRY HILL ESTATES, L.L.C. and Ronald Faulkner.

- e. My expert opinions are based upon the evidence available to me at this time and are subject to expansion and modification as further evidence or issues develop.

The affiant sayeth further not.

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis, J.D.
Affiant

SWORN to before me this 11th day of November, 2010

Jennifer A. Clark (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires July 8, 2015.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Cynthia Griffis

Plaintiff

v.

Cherry Hill Estates, LLC, Eugene O' Neil
and Ronald Faulkner

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2009-CP-07-06054

AFFIDAVIT OF RONALD FAULKNER

2009 JUN 18 PM 12:07

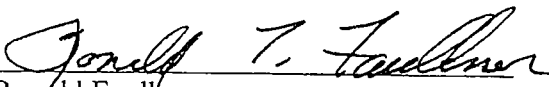
THE UNDERSIGNED, upon being duly sworn, hereby declares and affirms that:

1. I am a resident of Annapolis, Maryland and a Defendant in the above captioned matter.
2. I was, prior to 2007 and during all of the events and transactions that give rise to Plaintiff's claim, a client of the law office of Anthony E. Griffis, both individually and as a member of various corporate business entities that Mr. Griffis either set up or counseled us relating to.
3. Cynthia Griffis was the spouse of Anthony Griffis and worked as an employee within the law office of Anthony Griffis. She was the paralegal for many of the transactions handled by the law firm.
4. I met with Cynthia Griffis, within the law office of Anthony Griffis, one at least one occasion to discuss both the subject transaction with she and her husband and prior business transactions.
5. I did not attend the loan closing with Woodlands Bank and Cynthia Griffis. The Griffis' chose Jack Qualey to supervise the closing and act as settlement agent. Because I could not be in South Carolina on the designated day, I gave Power of Attorney to Jack Qualey, Esq. to execute the loan documents on my behalf. I did not review or see the note with Ms. Griffis before closing, nor any of the other material loan documents.
6. Prior to closing, I was not informed, nor did I understand, that I was executing a short term, two year note with Ms. Griffis.
7. Further, I was not informed by Ms. Griffis, my paralegal, nor her husband, that the subject property appraised for a price that was materially lower than the loan amounts and purchase price.
8. Further, I did not understand, or have actual knowledge, that I was entering into a short term, two year note obligation with Plaintiff which could be potentially construed as unconditional and not dependent on the sale or refinance of the subject land.
9. I believe that Ms. Griffis required me to be a loan guarantor because she learned of my financial situation and his strengths, weaknesses and personal affairs in her unique position as an employee of her husband's law practice, and through her personal dealings with me in the law offices.
10. At no point in the discussions prior to the loan closing did Ms. Griffis or her husband advise

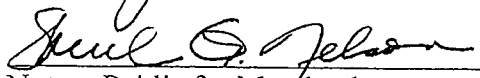
me to seek independent legal counsel to evaluate the proposed transaction and my liabilities and obligations attendant to the transaction. In agreeing to purchase their property, I relied on Ms. Griffis and Mr. Griffis, being my lawyer and his staff, to give me objective advice regarding the propriety of the transaction and my rights, obligations and liabilities thereunder. At no point did Ms. Griffis, or Mr. Griffis, advise me that I was executing a two year term note, or that the transaction had been changed at the last minute to include that two year term note.

11. I did not agree to execute a note with Ms. Griffis under the terms of the note that is attached to her Complaint. I did not agree, and would not have agreed, to execute a two year term note with Ms. Griffis.

12. In addition to becoming personally liable to Ms. Griffis as a result of the loan she engineered, I am now personally obligated to Woodlands Bank for a sum that exceeds the market value of the property Cherry Hill Estates purchased.


Ronald Faulkner

Sworn to before me this 14th
Day of June, 2010.


Notary Public for Maryland
My Commission Expires: 8-5-2012

SHIRL G. NELSON
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires August 5, 2012

CONTRACT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT made this 31st day of August, 2007, by and between

CHERRY HILL ESTATES, LLC BY EUGENE O'NEIL, AUTHORIZED MEMBER ("Buyer"),
and ANTHONY E. GRIFFIS AND CYNTHIA GRIFFIS ("Seller").

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:
Section I. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "Broker(s)" shall mean:

N/A NONE ("Listing Agency"),
N/A NONE ("Listing Agent"),
Acting as: Seller's Agent Dual Agent
and NONE ("Buyers Agency"),
NONE ("Buyers Agent"),
Acting as: Buyer's Agent Seller's (Sub) Agent Dual Agent

(b) "Closing" shall occur on or before SEPTEMBER 21, 2007, unless extended pursuant to this contract

(c) "Earnest Money" shall mean FIVE HUNDRED DOLLARS AND NO CENTS Dollars (\$ 500.00)
terms as follows: ALL EARNEST MONEY DEPOSITS SHALL APPLY TO PURCHASE PRICE AT CLOSING.

Upon acceptance of this contract, the Earnest Money shall be held by ANTHONY E. GRIFFIS, to be applied as part of the purchase price of the property at the time sale is closed. Anthony E. Griffis may pay any earnest money deposit to SunTrust Mortgage towards the mortgage on subject property until closing.

(d) "Examination Period" shall mean BUYER HAS INVESTIGATED THE FEASIBILITY OF THE INTENDED USE OF THE PROPERTY PRIOR TO THIS CONTRACT.

(e) "Intended Use" shall mean the use of the Property for the following purpose: FUTURE DEVELOPMENT

(f) "Property": (Address) APPROX 27.1 ACRES (with improvements), LOCATED AT 1721 CHERRY HILL ROAD, JASPER COUNTY, SOUTH CAROLINA, SEE EXHIBIT A

"Property" is for land only, and does not include any improvements such as the barn, driveways, septic tanks, mobile home.

Said improvements shall be removed from the property at time of payoff of seller financing, unless agreed to by the parties at that time.

(g) "Purchase Price" shall mean the sum of THIRTY THOUSAND DOLLARS PER ACRE, PLUS IMPROVEMENTS VALUED AT \$200,000.00 FOR A TOTAL PURCHASE PRICE OF 1,013,000.00 *the lesser of (1) or (2) the bank appraised value for the land plus improvements.*
payable on the following terms:

(i) Cash in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) AT CLOSING.

(ii) Notes in the total amount of \$513,000.00 secured by a SECOND mortgage, payable: \$200,000.00 to Cynthia Griffis to be personally guaranteed; balance (after closing costs) to Anthony E. Griffis to be nonrecourse.

(h) "Seller's Notice Address" shall be as follows:

Anthony E. Griffis, 1533 Fording Island Rd #322, Hilton Head Island, SC 29926
TEL. 843-837-3777 FAX. 843-837-3778
E-Mail: griffis@harqav.com

except as same may be changed pursuant to Section 13.

(i) "Buyer's Notice Address" shall be as follows:

Eugene O'Neil, 5 Big Oak, Hilton Head Island, SC 29926
E-Mail: epo2@Harqav.com

except as same may be changed pursuant to Section 13.

(j) "Official Contract Date" The official starting date of the contract shall be from date of the signing of the seller.

Section 2. Proration of Expenses Payment of Costs. Seller and Buyer agree that property taxes shall be prorated as of the date of closing. Seller shall pay deed stamps and other conveyance fees or taxes, and Buyer shall pay recording costs, and all costs associated with the purchase loan (such as appraisal, survey, title searches and title insurance).

Section 3. Survey. Buyer agrees to obtain a survey, at Buyer's expense, of the subject property if required.

Initials

Initials

Section 4. Payment of Purchase Price. Buyer shall pay the Purchase Price in accordance with all the terms and conditions of this contract.

Section 5. Title. Seller agrees to convey fee simple marketable title to the Property by general warranty deed, subject only to the exceptions hereinafter described. Seller represents and warrants that Seller is the fee simple owner of the property, and at Closing, Seller shall deliver to Buyer good and marketable fee simple title to said Property, free and clear of all liens, encumbrances and defects of title other than zoning ordinances affecting the Property, utility easements of record serving the Property, taxes not yet due and payable, road right-of-ways of record and those other encumbrances, reservations, restrictions and easements and other exceptions set forth on Exhibit C attached hereto ("Permitted Exceptions").

Section 6. Conditions. This agreement and the rights and obligations of the parties under this agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer) of the following conditions:

(a) Examination. After the date of execution of this Agreement by Seller, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period, as defined in Section 1(d). In the event that such title examination shall show that Seller's title is not good, marketable, fee simple and insurable, then the Buyer shall immediately notify the Seller in writing of all such title defects and exceptions, as of the date Buyer learns of the title defects and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, the Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). From the date of notice, all deposits and/or contract dates and monies are suspended. The contract will remain in force until title is cleared by Seller. If Buyer is to purchase title insurance, the Insuring company must be licensed to do business in the state in which the property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

The examination period consists of the performance of boundary survey, topographic survey, aerial survey, wetland delineation, environmental reports, soil borings, county approvals, appraisal, analysis of sewer and water feasibility, timber cruise, historic reports, title examination, department of transportation review. Buyer shall maintain ownership of the above plats and reports. In the event of default by Buyer, Seller has the right of disclosure and receipt of one copy of information prepared.

(b) Intended Use. Seller represents and warrants that, to the best of Seller's knowledge, use of the Property for its Intended Use will not violate any private restrictions or governmental regulations. If Buyer determines, prior to the date of Closing, that use of the Property for its Intended Use will violate any such private restrictions or governmental regulations, then Buyer may terminate the agreement by written notice and receive a return of the Earnest Money and neither party shall then have any further obligations in connection with this Agreement.

(c) Same Condition. If the Property is not in substantially the same condition as of the date of the offer, reasonable wear and tear, and any change of condition caused by or attributed to the acts of the Buyer, its employees, agents or independent contractors engaged by it excepted, then the Buyer may terminate the Agreement and receive return of the Earnest Money.

(d) Inspections. Buyer, its agents or representatives, at Buyer's expense and at a reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, conducting timber cruises, and surveying the Property. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Paragraph and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. Except as provided in Section 6(c) above, Buyer shall have from the date of acceptance through the end of the closing period to perform the above inspections, examinations and testing to determine if the Property is suitable for the Intended Use. If, prior to the expiration of the examination period, Buyer determines that the Property is unsuitable, at Buyer's sole discretion, and provides written notice to Seller thereof, then this Agreement shall be terminated and Buyer shall receive a return of the Earnest Money; otherwise, after such examination period, the Earnest Money is deemed earned and shall be payable to Seller. In the event of such termination, Buyer shall restore the property to substantially the condition existing prior to the making of any such examinations and inspections.

(e) Reservations. Buyer, at its sole discretion has the right to show the Property and obtain non-binding reservations prior to closing. Said reservations are not a legal binding contract enforceable by the party making the reservation upon the Buyer or Seller. Buyer has the right to erect signage on the property for bureaucratic announcements, reservations, and/or community communication.

(f) Seller Representations of Property. As of the date of this execution Seller hereby makes the following representations and warranties to and covenants with Buyer, each of which shall be deemed material and to have been remade as of the date of Closing:

- (1) Seller warrants that there are no gravesites or areas containing Native American artifacts exist on this site.
- (2) Seller warrants that there are no Historical sites existing on this property.
- (3) Seller warrants that there are no organized trash disposal or otherwise existing on the property.

If the representations listed above are misrepresented or misinformation by Seller then (1) Buyer has the right to call the contract null and void, (2) Buyer has the right to receive return of all deposits, (3) Seller has no grounds for dispute upon written notice from Buyer.

(g) Rezoning. Buyer shall have the right to apply for rezoning to another classification according to the Zoning Ordinance of the City and the County in which the property is located. Seller agrees to enter into and assist in any way reasonably necessary for such rezoning, without any cost to Seller.

(h) Other: After all investigations have been completed, Seller shall have 15 days to respond to any concerns of Buyer.

Section 7. Environmental. Seller represents and warrants that it has no actual knowledge of the presence or disposal within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a "hazardous substance" pursuant to Section 331 of the Clean Water Act, 33 U.S.C. Sec. 1251, et. seq. (33 U.S.C. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Sec. 1371), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et. seq. (42 U.S.C. Sec. 6903) or (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, et. seq. (42 U.S.C. 9601). Seller further states that it has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts, and it has no reason to suspect that such use or disposal has occurred, either during or prior to its ownership of Property.

Prior to Closing Buyer will have a Phase 1 Environmental Assessment done on the Subject Property. Should the assessment discover any item that would require further study and/or clean up, Seller shall have the option of (a) resolving the items, (b) providing for their resolution or (c) refusing to resolve them. If Seller elects not to resolve the items, then Buyer shall have the option of (d) accepting the Property in its present condition or (e) terminating this contract, in which case the Deposit(s) shall be refunded to Buyer with no further obligation on the part of either party.

Section 8. Eminent Domain. If prior to Closing all or any part of the Subject Property is taken by eminent domain or if condemnation proceedings are commenced, Buyer, or its assigns, shall have the option, by written notice to Seller, to terminate this contract and receive an immediate refund of the Deposit(s). If Buyer does not elect to terminate this contract, it shall remain in full force and effect and Seller shall assign, transfer and set over to Buyer at the Closing all of the Seller's right, title and interest in and to any awards that may be made for such taking.

Section 9. Risk of Loss/Damage/Repair. Until the Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. In the event the Property is damaged so that the Property cannot be conveyed in substantially the same condition as it was prior to Closing, Buyer may elect to terminate this Agreement and the Earnest Money shall be returned to the Buyer. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement. Upon acceptance of this contract, the Earnest Money shall be held by the escrow agent until the sale is closed or until the contract is otherwise terminated and it is disbursed in accordance with the provisions of this contract. Provided, however, that any earnest money

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

CONTRACT FOR REAL ESTATE

Eugene O'Neil ("Buyer") hereby agree to purchase from Anthony E. Griffis and Cynthia Griffis ("Sellers") 5.66 acres of property located at 1721 Cherry Hill Road, Ridgeland, South Carolina (see plat of 27.1 acres attached, subject property identified as "proposed lot" of 5.66 acres), on the following terms:

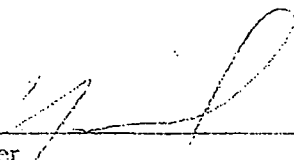
Sales Price: \$325,500.00

Down Payment: 500.00 payable upon execution of this Contract

Balance at Closing: \$325,000/00, payable by a Promissory Note to Cynthia Griffis at closing for \$325,000.00, secured by a first mortgage, with 10% annual interest, payable in full within two years of closing. Buyer to execute and deliver a Deed for the subject property at closing, said Deed may be recorded in lieu of foreclosure should Buyer default on said Promissory Note. Cynthia Griffis shall have the right to occupy said property until said Promissory Note is paid in full, at no cost whatsoever to Cynthia Griffis.

Buyer accepts the property in an "as is" condition. Sellers to provide good, clear and marketable title. This sale is for land only; all improvements may be removed by Sellers within 90 days of payment of the Promissory Note.

All property taxes and any other pre/post-paid items to be pro-rated at closing.


Buyer _____ 12/23/07
Date

Date


Seller _____ 12/23/07
Date


Seller _____ 12/23/07
Date



CONTRACT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT made this 29 day of March, 2007, by and between

CHERRY HILL ESTATES, LLC BY EUGENE O'NEIL, AUTHORIZED MEMBER ("Buyer"),
and ANTHONY E. GRIFFIS AND CYNTHIA GRIFFIS ("Seller").

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:
Section I, Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "Broker(s)" shall mean:

N/A NONE ("Listing Agency"),
N/A NONE ("Listing Agent"),
Acting as: Seller's Agent Dual Agent
and NONE ("Buyers Agency"),
NONE ("Buyers Agent"),
Acting as: Buyer's Agent Seller's (Sub) Agent Dual Agent

(b) "Closing" shall occur on or before APRIL 6, 2007, unless extended pursuant to this contract.

(c) "Earnest Money" shall mean FIVE HUNDRED DOLLARS AND NO CENTS Dollars (\$ 500.00)
terms as follows: ALL EARNEST MONEY DEPOSITS SHALL APPLY TO PURCHASE PRICE AT CLOSING.

Upon acceptance of this contract, the Earnest Money shall be held by ANTHONY E. GRIFFIS, to be applied as part of the purchase price of the property at the time sale is closed. Anthony E. Griffis may pay any earnest money deposit to SunTrust Mortgage towards the mortgage on subject property until closing.

(d) "Examination Period" shall mean BUYER SHALL HAVE until March 31st 2007 TO INVESTIGATE THE FEASIBILITY OF THE INTENDED USE OF THE PROPERTY.

(e) "Intended Use" shall mean the use of the Property for the following purpose: FUTURE DEVELOPMENT

(f) "Property": (Address) APPROX 27 ACRES, LOCATED AT 1721 CHERRY HILL ROAD, JASPER COUNTY, SOUTH CAROLINA, SEE EXHIBIT A
"Property" is for land only, and does not include any improvements such as the barn, driveways, septic tanks, mobile home. Said improvements shall be removed from the property at time of payoff of seller financing, unless agreed to by the parties at that time.

(g) "Purchase Price" shall mean the sum of THIRTY THOUSAND DOLLARS PER ACRE, TOTAL PRICE TO BE ADJUSTED AFTER SURVEY

payable on the following terms:

- (i) Cash in the amount of THREE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$ 350,000.00), to payoff existing Suntrust mortgage with excess cash payable to Sellers as they agree.
- (ii) Note in the amount of \$325,000 secured by a FIRST mortgage on 5.66+ acres, per survey acceptable to Cynthia Griffis, payable to Cynthia Griffis, with 10% annual interest and principal payable in full on or before March 31, 2009. Cynthia Griffis shall have the right to occupy the 5 acres rent free until said Note is paid in full. Should Buyer default on said Note, Buyer agrees that a Deed (in lieu of foreclosure) shall be recorded to Cynthia Griffis for the 5 acres. Said Deed shall be executed at closing and held in the file of Cynthia Griffis' attorney until default, then may be recorded at any time at Cynthia Griffis' option.
- (iii) Balance in a second mortgage (behind the first mortgage of Lowcountry National Bank) on the remaining 22 acres payable to Anthony E. Griffis, upon terms to be agreed on by March 31, 2007. The parties agree that the first mortgage loan from Lowcountry National Bank shall be in an amount sufficient to cover the \$350,000, plus anticipated development costs (such as loan interest carry costs) for 24 months.

(h) "Seller's Notice Address" shall be as follows:

Anthony E. Griffis, 1533 Fording Island Rd #322, Hilton Head Island, SC 29926
TEL. 843-837-3777 FAX. 843-837-3778
E-Mail: griffis@harcav.com

except as same may be changed pursuant to Section 13.

(i) "Buyer's Notice Address" shall be as follows:

Eugene O'Neil, 5 Big Oak, Hilton Head Island, SC 29926
E-Mail: epo2@harcav.com

Initials

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except as same may be changed pursuant to Section 13.

(j) "Official Contract Date" The official starting date of the contract shall be from date of the signing of the seller.

Section 2. Proration of Expenses Payment of Costs. Seller and Buyer agree that property taxes shall be prorated as of the date of closing. Seller shall pay deed stamps and other conveyance fees or taxes, and Buyer shall pay recording costs, and all costs associated with the Lowcountry National Bank loan (such as appraisal, survey, title searches and title insurance).

Section 3. Survey. Buyer agrees to obtain a survey, at Buyer's expense, of the subject property showing 2 parcels: the 5 acres for the first mortgage to Cynthia Griffith, and the 22 acres for the first mortgage to Lowcountry National Bank, including any access easements, no later than March 26, 2007.

Section 4. Payment of Purchase Price. Buyer shall pay the Purchase Price in accordance with all the terms and conditions of this contract.

Section 5. Title. Seller agrees to convey fee simple marketable title to the Property by general warranty deed, subject only to the exceptions hereinafter described. Seller represents and warrants that Seller is the fee simple owner of the property, and at Closing, Seller shall deliver to Buyer good and marketable fee simple title to said Property, free and clear of all liens, encumbrances and defects of title other than zoning ordinances affecting the Property, utility easements of record serving the Property, taxes not yet due and payable, road right-of-ways of record and those other encumbrances, reservations, restrictions and easements and other exceptions set forth on Exhibit C attached hereto ("Permitted Exceptions").

Section 6. Conditions. This agreement and the rights and obligations of the parties under this agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer) of the following conditions:

(a) Examination. After the date of execution of this Agreement by Seller, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period, as defined in Section 1(d). In the event that such title examination shall show that Seller's title is not good, marketable, fee simple and insurable, then the Buyer shall immediately notify the Seller in writing of all such title defects and exceptions, as of the date Buyer learns of the title defects and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, the Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). From the date of notice, all deposits and/or contract dates and monies are suspended. The contract will remain in force until title is cleared by Seller. If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

The examination period consists of the performance of boundary survey, topographic survey, aerial survey, wetland delineation, environmental reports, soil borings, county approvals, appraisal, analysis of sewer and water feasibility, timber cruise, historic reports, title examination, department of transportation review. Buyer shall maintain ownership of the above plats and reports. In the event of default by Buyer, Seller has the right of disclosure and receipt of one copy of information prepared.

(b) Intended Use. Seller represents and warrants that, to the best of Seller's knowledge, use of the Property for its Intended Use will not violate any private restrictions or governmental regulations. If Buyer determines, prior to the date of Closing, that use of the Property for its Intended Use will violate any such private restrictions or governmental regulations, then Buyer may terminate the agreement by written notice and receive a return of the Earnest Money and neither party shall have any further obligations in connection with this Agreement.

(c) Same Condition. If the Property is not in substantially the same condition as of the date of the offer, reasonable wear and tear, and any change of condition caused by or attributed to the acts of the Buyer, its employees, agents or independent contractors engaged by it excepted, then the Buyer may terminate the Agreement and receive return of the Earnest Money.

(d) Inspections. Buyer, its agents or representatives, at Buyer's expense and at a reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, conducting timber cruises, and surveying the Property. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Paragraph and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. Except as provided in Section 6(c) above, Buyer shall have from the date of acceptance through the end of the closing period to perform the above inspections, examinations and testing to determine if the Property is suitable for the Intended Use. If, prior to the expiration of the examination period, Buyer determines that the Property is unsuitable, at Buyer's sole discretion, and provides written notice to Seller thereof, then this Agreement shall be terminated and Buyer shall receive a return of the Earnest Money; otherwise, after such examination period, the Earnest Money is deemed earned and shall be payable to Seller. In the event of such termination, Buyer shall restore the property to substantially the condition existing prior to the making of any such examinations and inspections.

(e) Reservations. Buyer, at its sole discretion has the right to show the Property and obtain non-binding reservations prior to closing. Said reservations are not a legal binding contract enforceable by the party making the reservation upon the Buyer or Seller. Buyer has the right to erect signage on the property for bureaucratic announcements, reservations, and/or community communication.

(f) Seller Representations of Property. As of the date of this execution Seller hereby makes the following representations and warranties to and covenants with Buyer, each of which shall be deemed material and to have been remade as of the date of Closing:

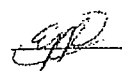
- (1) Seller warrants that there are no gravesites or areas containing Native American artifacts exist on this site.
- (2) Seller warrants that there are no historical sites existing on this property.
- (3) Seller warrants that there are no organized trash disposal or otherwise existing on the property.

If the representations listed above are misrepresented or misinformation by Seller then (1) Buyer has the right to call the contract null and void, (2) Buyer has the right to receive return of all deposits, (3) Seller has no grounds for dispute upon written notice from Buyer.

- (g) Rezoning. Buyer shall have the right to apply for rezoning to another classification according to the Zoning Ordinance of the City and the County in which the property is located. Seller agrees to enter into and assist in any way reasonably necessary for such rezoning, without any cost to Seller.
- (h) Other. After all investigations have been completed, Seller shall have 15 days to respond to any concerns of Buyer.

Section 7. Environmental. Seller represents and warrants that it has no actual knowledge of the presence or disposal within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a "Hazardous substance" pursuant to Section 331 of the Clean Water Act, 33 U.S.C. Sec. 1251, et. seq. (33 U.S.C. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Sec. 1371), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et. seq. (42 U.S.C. Sec. 6903) or (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, et. seq. (42 U.S.C. 9601). Seller further states that it has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts, and it has no reason to suspect that such use or disposal has occurred, either during or prior to its ownership of Property.

Prior to Closing Buyer will have a Phase 1 Environmental Assessment done on the Subject Property. Should the assessment discover any item that would require further study and/or clean up, Seller shall have the option of (a) resolving the items, (b) providing for their resolution or (c) refusing to resolve them. If Seller elects not to resolve the items, then Buyer shall have the option of (d) accepting the Property in its present condition or (e) terminating this contract, in which case the Deposit(s) shall be refunded to Buyer with no further obligation on the part of either party.


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Section 8. Eminent Domain. If prior to Closing all or any part of the Subject Property is taken by eminent domain or if condemnation proceedings are commenced, Buyer, or its assigns, shall have the option, by written notice to Seller, to terminate this contract and receive an immediate refund of the Deposit(s). If Buyer does not elect to terminate this contract, it shall remain in full force and effect and Seller shall assign, transfer and set over to Buyer at the Closing all of the Seller's right, title and interest in and to any awards that may be made for such taking.

Section 9. Risk of Loss/Damage/Repair. Until the Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. In the event the Property is damaged so that the Property cannot be conveyed in substantially the same condition as it was prior to Closing, Buyer may elect to terminate this Agreement and the Earnest Money shall be returned to the Buyer. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement. Upon acceptance of this contract, the Earnest Money shall be held by the escrow agent until the sale is closed or until the contract is otherwise terminated and it is disbursed in accordance with the provisions of this contract. Provided, however, that any earnest money deposit may be paid to SunTrust Mortgage towards the subject property's mortgage, subject to reimbursement of same to Buyer should this contract be validly terminated by Buyer.

In the event this offer is not accepted, or in the event that any of the conditions hereto are not satisfied, or in the event of a breach of this Agreement by Seller, then the earnest money shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach.

Section 11. Defaults and Remedies. In the event of a default or breach by Seller of any of the covenants, conditions or obligations of the Seller under this contract, then Buyer shall all rights available to it at law or in equity including a suit for damages or an action for specific performance or Buyer has the right to terminate this contract by giving written notice of such termination to Seller addressed as in Section 1(h), whereupon the Deposit(s) shall be refunded to the Buyer.

The parties hereto acknowledge that in the event of a default or breach by the Buyer or its assigns, of any of the covenants, conditions or obligations of Buyer under this contract, the damages to the Seller would be speculative and difficult, if not impossible, to determine. Therefore the parties hereto agree that in such event, Seller shall be entitled to receive the Deposit(s) as full and complete liquidated damages as its sole remedy.

Section 12. Closing. The Closing shall consist of the execution and delivery by Seller to Buyer of a General Warranty Deed and other documents customarily executed by a seller in similar transactions, including without limitation, an owner's affidavit, lien waiver forms and a non-foreign affidavit, and the payment by Buyer to Seller of the Purchase Price in accordance with the terms of the Purchase Price. At Closing, the Earnest Money shall be applied as a part of the Purchase Price or as otherwise provided in Section 1(c). The Closing shall be held at the office of Buyer's attorney or such other place as the parties hereto may mutually agree.

Section 13. Notices. Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date delivered in person or deposited in the United States mail, registered or certified, return receipt requested, or via electronic mail, or by facsimile, to the addresses set out in Section 1(h) as to the Seller and in Section 1(i) as to the Buyer, or at such other addresses as specified by written notice delivered in accordance herewith.

Section 14. Entire Agreement. This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.

Section 15. Adverse Information Compliance with Laws.

(a) **Seller knowledge.** Seller has no knowledge of (i) condemnation(s) or assessments(s) affecting or contemplated with respect to the Property, (ii) actions, suits or proceedings pending against the Property, (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property.

(b) **Compliance.** To the best of Seller's knowledge and belief, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, or constitute any default under or result in the imposition of, any lien or encumbrance upon the Property under any Agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceeding pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

(c) **Disclosure.** There is no significant adverse fact or condition known to Seller relating to the Property or the Intended Use, which has not been specifically disclosed in writing by Seller to Buyer.

Section 16. Survival of Representations and Warranties. All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 17. Applicable Law. This Agreement shall be construed under the laws of the United States in which the Property is located.

Section 18. Compliance with IRS Code. Seller will inform Buyer, if any owner, who will receive monies from this transaction is a foreign national, or resident alien, in order to insure compliance with Section 1445 of the Internal Revenue Code of 1954, as amended.

Section 19. Tax-Deferred Exchange. In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 20. Assignment. Buyer may assign its rights and delegate its obligations hereunder. If the Buyer assigns its interest to an assignee, the assignee shall assume the obligations and liabilities of the Buyer under this Agreement and such modification to the representations and warranties set forth in this Agreement as are reasonably acceptable to the Seller shall be made as are required because of the nature of such assignee. Such assignment shall relieve and discharge Buyer of all obligations hereunder or under the agreement to be executed by Buyer.

Section 21. Delivery of Documents. Immediately after execution of this contract by the parties, Seller shall deliver to Buyer all engineering reports, surveys, topos, plats, permits, governmental approvals, studies, brochures, marketing reports, and other miscellaneous documentation and information which Seller has in its possession and which Seller is legally entitled to deliver to third parties provided that they can be delivered without additional cost to Seller. Any items so delivered are without any representation or warranty on the part of Seller as to the accuracy thereof or as to whether Buyer can utilize such information. In the event, Buyer does not close the transaction as herein contemplated, except for default by Seller, Buyer shall furnish to Seller, without charge to Seller, the results of any and all examinations, surveys or inspections made upon the property, including, but without limitation, environmental audits, surveys of the property, wetlands delineation surveys, soil test borings and subdivision or planned unit development plans, and Seller shall be deemed owner of all such reports, results, plans and lists and entitled to the use of the same.

Section 22. Arbitration. All claims and disputes between Buyer and Seller shall be arbitrated under the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless Seller and Buyer agree in writing to another method of settlement. Arbitration proceedings under this Article shall be limited to Seller, Buyer, and those whose presence is essential to a complete resolution of the matter in dispute and who have a substantial interest in that matter. Any consent to arbitration requiring the presence of an additional person or persons shall be limited to the matter in dispute and the parties described in the consent. This agreement to arbitrate and any additional agreement or consent to arbitrate approved by Seller and Buyer shall be enforceable under the prevailing arbitration law. The award of the arbitrators shall be final and any court having jurisdiction may enter a judgment on it.


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Initials

The party demanding arbitration shall give notice to the opposite party, the American Arbitration Association, and Architect within a reasonable time after the matter in dispute has arisen. In no event, however, shall a written notice of demand for arbitration be given after the date on which a legal action concerning the matter in dispute would be barred by the appropriate statute of limitations.

Attorney's Fees: In the event any party must bring legal action to enforce the terms of this Agreement, the prevailing party in such legal action, suit, or arbitration shall be entitled to collect from the non prevailing party all its reasonable attorneys' fees and court costs, both prior to and on appeal.

Section 23. Termination Clause. Buyer has ten (10) business days (no weekends) from the end of the exam period and/or the closing period in addition to any extensions to perform on contract.

Section 24. Confidentiality. Seller acknowledges that the information contained in this document is confidential information to the Buyer, the disclosure of which would cause irreparable harm to the Buyer, and further covenants and agrees to maintain that confidentiality and not to disclose any information herein except with the prior written consent of the Buyer.

Section 25. Brokers. Buyer and Seller each represent and warrant to the other that the real estate agent(s) involved in this Agreement is/are as stated in Section 1. (a). Each party agrees to indemnify and hold the other harmless from any loss or claim resulting from the inaccuracies of these representations and warranties. Seller agrees to pay a commission to the Agency/Agencies calculated at the rate of 8 percent of the total purchase price and equally distributed between agencies if applicable. The commission may be deemed earned and payable upon closing and payment of the respective purchase price to Seller.

Section 26. Survival of Indemnification. All indemnification and hold harmless agreements herein given shall survive any assignment and shall survive closing, whether or not assigned.

Section 27. Counterparts. This contract may be executed in separate counterparts, which when executed by all parties, shall constitute one entire agreement. Facsimile transmission of original signatures shall be deemed original signatures.

THIS DOCUMENT IS A LEGAL DOCUMENT. EXECUTION OF THIS DOCUMENT HAS LEGAL CONSEQUENCES THAT COULD BE ENFORCEABLE IN A COURT OF LAW. NO PARTY MAKES ANY REPRESENTATIONS CONCERNING THE LEGAL SUFFICIENCY, LEGAL EFFECT OR TAX CONSEQUENCES OF THIS DOCUMENT OR THE TRANSACTION TO WHICH IT RELATES. EACH PARTY REPRESENTS THAT SHE HAS BEEN ADVISED TO SEEK INDEPENDENT LEGAL REPRESENTATION AND HAS HAD THE OPPORTUNITY FOR INDEPENDENT LEGAL REPRESENTATION.

BUYER:

CHERRY HILL ESTATES, LLC
(Name of Firm)

By: [Signature] (SEAL)

EUGENE O'NEIL:

Date: 3/29/07

Witness: [Signature]

SELLER:

[Signature] (SEAL)
CYNTHIA GRIFFIS

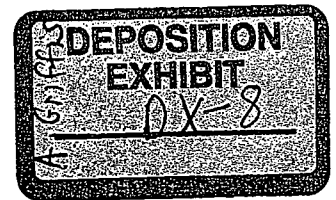
[Signature] (SEAL)
ANTHONY E. GRIFFIS

Date: 3/29/07

Witness: [Signature]

Initials

Initials



Anthony E. Griffis

Attorney at Law

1533 Fording Island Road #322
(322 Moss Creek Village Drive)
Hilton Head Island, South Carolina 29926

(843) 837-3777

Fax: (843) 837-3778

E-mail: griffis@hargray.com

February 22, 2007

CONFIDENTIAL MEMORANDUM

To: Eugene O'Neil

From: Anthony E. Griffis

Re: 1721 Cherry Hill Rd, Ridgeland, SC **LETTER OF INTENT**

Date: 2/22/2007

This is to summarize our discussions regarding development of our 27+ acres located at 1721 Cherry Hill Road, Ridgeland, SC

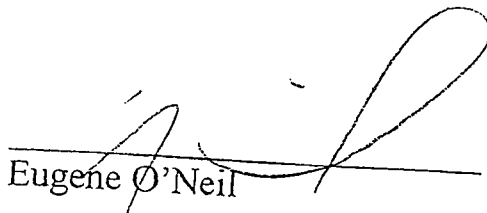
1. We will form an LLC (Cherry Hill Plantation, LLC) for the purpose of holding title to the land for development;
2. We will transfer approx 22 acres to the LLC (after surveying out the existing residential property);
3. The LLC will mortgage the 22 acres for a loan in an amount sufficient to pay:
 - a. \$350,000 to Griffis, for payoff of Suntrust mortgage, and other misc obligations.
 - b. enough cash reserve to pay initial development costs (surveys, etc), and interest carry costs for up to 18 months. This cash reserve shall be maintained in an account requiring joint signatures for all disbursements, except the automatic debits for interest payments.You will be responsible for securing all financing necessary for the development; if required, you will obtain Ron Faulkner's participation for financial guarantees for the LLC loans.
4. The difference in the purchase price shall be financed by Seller (2nd mortgage), with full payment of principal and accrued interest when the development phase commences (18-24 months).
5. The LLC shall have the option to purchase the other (residential) property, if necessary for the development plans. We (Griffis) shall have the right to exchange the residential property for other property in the

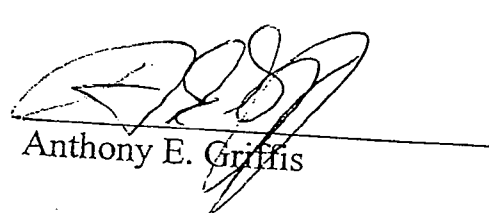
development. The LLC shall be responsible for all costs of moving/relocating the mobile home, up to a distance of 100 miles (Branchville SC). The LLC will pay the value of the land (\$30,000.acre min), plus replacement cost of the barn (about \$200,000), and other improvements (2 septic tanks, well, driveways, etc). Alternatively, the existing residence could be conformed to meet the development standards, and the seller financing could be used to pay for replacing or modifying the existing residence. All construction costs shall be at actual (out of pocket) cost to the LLC.

6. We agree to immediately move forward by:
- obtaining a survey of the property showing the residential property to be retained, and the remaining property to be conveyed to the LLC
 - your submitting any required application and financial documentation to Lowcountry Nations Bank for loan approval.

Upon obtaining a survey and loan approval, we would then finalize the terms of the purchase, any contingencies, and the terms of the LLC.

We understand that this Letter of Intent is not binding, but simply an expression of our good faith intent to go forward with this transaction.


Eugene O'Neil


Anthony E. Griffis

Preliminary LLC terms:

50/50 ownership between O'Neil and Anthony Griffis; spouses shall not have any ownership interest; typical operating agreement shall be executed, with buyout provisions in event of death, etc

Griffis shall not be required to personally guarantee any LLC loans; O'neil secures financing, Griffis is providing the land equity for collateral.

If required for LLC financing, Ron Faulkner will be admitted as a member upon terms to be negotiated.

AGREEMENT REGARDING
CHERRY HILL ESTATES, LLC

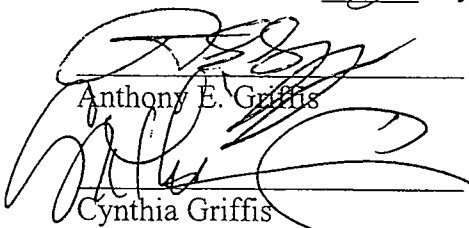
This Agreement is entered into this 8 day of October, 2007, between Cynthia Griffis and Anthony Griffis ("Sellers") and Ronald Faulkner and Eugene O'Neil ("Buyers").

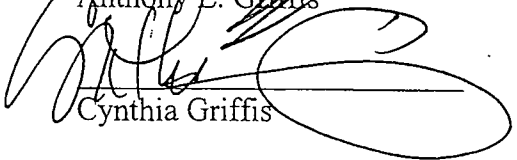
WHEREAS, the parties hereby desire to formalize their agreement regarding disbursement of the proceeds from the sale of 27+ acres located at 1721 Cherry Hill Road, Ridgeland, SC.

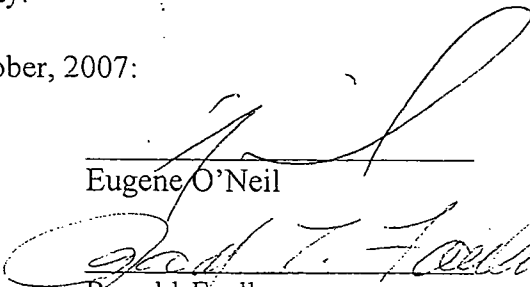
NOW THEREFORE, the parties agree as follows:

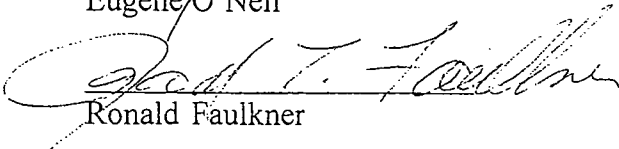
1. Cynthia Griffis shall receive a Promissory Note guaranteed by Ron Faulkner and Eugene O'Neil for \$200,000.00 secured by a second mortgage on the subject property and shall be payable in full no later than two (2) years, with 5% annual interest, from date of sale. Cynthia Griffis shall have free rent on the property, and all other expenses to be paid by Anthony Griffis, until the \$200,000.00 mortgage note is paid, at which time Sellers shall relocate the mobile home at the property within 60 days notice from payoff of said mortgage.
2. Anthony Griffis shall receive \$50,000, plus the difference between the payoff of Seller's mortgage to SunTrust Bank and \$300,000. For example, if the payoff is \$288,000, Anthony Griffis shall receive another \$12,000.
3. The additional excess closing proceeds (from buyers' loan) shall be reinvested for development purposes in Cherry Hill Estates, LLC, a SC limited liability company whose members are Ron Faulkner and Eugene O'Neil. Anthony E. Griffis shall receive a 1/3rd interest in Cherry Hill Estates, LLC, for his investment. Cynthia Griffis shall receive \$150,000.00 from Buyers simultaneously upon delivery of the net proceeds check to Buyers.
4. \$119,000 of the excess loan proceeds shall be escrowed and used for interest payments on Buyer's loan. Anthony E. Griffis shall be entitled to the tax deduction related to said business interest.
5. Any other disbursement of the excess sales/loan proceeds shall be disbursed for any purpose as approved by the majority vote of the members of Cherry Hill Estates, LLC.
6. If the excess proceeds are disbursed for any purpose other than development of the subject property, then Cherry Hill Estates, LLC shall give a Promissory Note to Anthony Griffis for said amount (nonrecourse as to any LLC member) secured by a (third) mortgage on the subject property.

AGREED TO this 8 day of October, 2007:


Anthony E. Griffis


Cynthia Griffis


Eugene O'Neil


Ronald Faulkner

AGREEMENT REGARDING
CHERRY HILL ESTATES, LLC

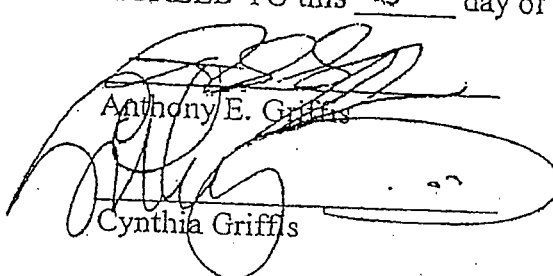
This Agreement is entered into this 5 day of October, 2007, between Cynthia Griffis and Anthony Griffis ("Sellers") and Ronald Faulkner and Eugene O'Neil ("Buyers").

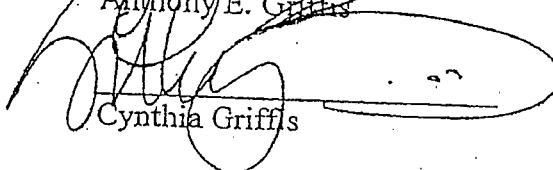
WHEREAS, the parties hereby desire to formalize their agreement regarding disbursement of the proceeds from the sale of 27+ acres located at 1721 Cherry Hill Road, Ridgeland, SC.

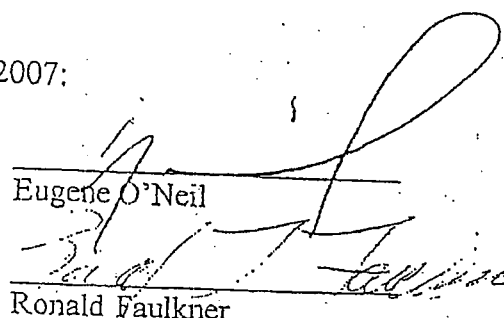
NOW THEREFORE, the parties agree as follows:

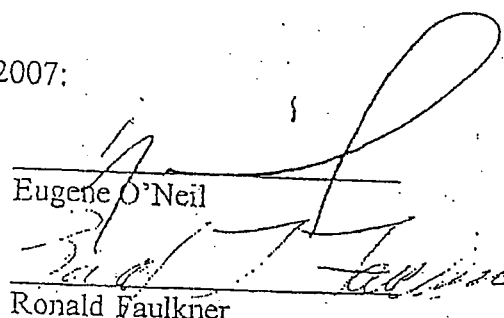
1. Cynthia Griffis shall receive a Promissory Note guaranteed by Ron Faulkner and Eugene O'Neil for \$200,000.00 secured by a second mortgage on the subject property and shall be payable in full no later than two (2) years, with 5% annual interest, from date of sale. Cynthia Griffis shall have free rent on the property, and all other expenses to be paid by Anthony Griffis, until the \$200,000.00 mortgage note is paid, at which time Sellers shall relocate the mobile home at the property within 60 days notice from payoff of said mortgage.
2. Anthony Griffis shall receive \$50,000, plus the difference between the payoff of Seller's mortgage to SunTrust Bank and \$300,000. For example, if the payoff is \$288,000, Anthony Griffis shall receive another \$12,000.
3. The additional excess closing proceeds (from buyers' loan) shall be reinvested for development purposes in Cherry Hill Estates, LLC, a SC limited liability company whose members are Ron Faulkner and Eugene O'Neil. Anthony E. Griffis shall receive a 1/3rd interest in Cherry Hill Estates, LLC, for his investment. ~~Cynthia Griffis shall receive \$150,000.00 from Buyers simultaneously upon delivery of the net proceeds check to Buyers.~~ *\$159,000 paid directly by Anthony E. Griffis*
4. \$119,000 of the excess loan proceeds shall be escrowed and used for interest payments on Buyer's loan. Anthony E. Griffis shall be entitled to the tax deduction related to said business interest.
5. Any other disbursement of the excess sales/loan proceeds shall be disbursed for any purpose as approved by the majority vote of the members of Cherry Hill Estates, LLC.
6. If the excess proceeds are disbursed for any purpose other than development of the subject property, then Cherry Hill Estates, LLC shall give a Promissory Note to Anthony Griffis for said amount (nonrecourse as to any LLC member) secured by a (third) mortgage on the subject property.

AGREED TO this 5 day of October, 2007:


Anthony E. Griffis


Cynthia Griffis


Eugene O'Neil


Ronald Faulkner

0210

000002

AGREEMENT REGARDING
CHERRY HILL ESTATES, LLC

This Agreement is entered into this 13 day of September, 2007, between Cynthia Griffis and Anthony Griffis ("Sellers") and Ronald Faulkner and Eugene O'Neil ("Buyers").

WHEREAS, the parties hereby desire to formalize their agreement regarding disbursement of the proceeds from the sale of 28+ acres located at 1721 Cherry Hill Road, Ridgeland, SC.

NOW THEREFORE, the parties agree as follows:

1. Cynthia Griffis shall receive \$150,000.00 cash at closing, plus a Promissory Note guaranteed by Ron Faulkner and Eugene O'Neil for \$200,000.00 secured by a second mortgage on the subject property and shall be payable in full no later than two (2) years from date of sale. Cynthia Griffis shall have free rent on the property until the property is ready for development (expected to be 1-2 years), at which time Sellers shall relocate the mobile home at the property within 60 days notice from Buyer.
2. Anthony Griffis shall receive \$50,000, plus the difference between the payoff of Seller's mortgage to Bank of America and \$300,000. For example, if the payoff is \$288,000, Anthony Griffis shall receive another \$12,000.
3. The additional excess closing proceeds (from buyers' loan) shall be reinvested for development purposes in Cherry Hill Estates, LLC, a SC limited liability company whose members are Ron Faulkner, Eugene O'Neil and Anthony E. Griffis.
4. \$119,000 of the excess loan proceeds shall be escrowed and used for interest payments on Buyer's loan. Anthony E. Griffis shall be entitled to the tax deduction related to said business interest.
5. Any other disbursement of the excess sales/loan proceeds shall be disbursed for any purpose as approved by the majority vote of the members of Cherry Hill Estates, LLC.
6. If the excess proceeds are disbursed for any purpose other than development of the subject property, then Cherry Hill Estates, LLC shall give a Promissory Note to Anthony Griffis for said amount (nonrecourse as to any LLC member) secured by a mortgage on the subject property.

AGREED TO this 13 day of September, 2007:

Anthony E. ~~Griffis~~

Cynthia Griffis

Eugene O'Neil

Ronald Faulkner

AGREEMENT REGARDING
CHERRY HILL ESTATES, LLC

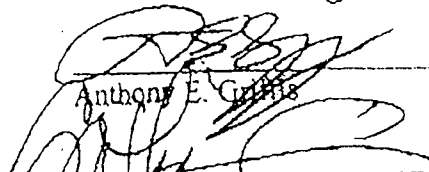
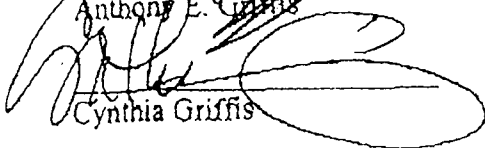
This Agreement is entered into this 8 day of October, 2007, between Cynthia Griffis and Anthony Griffis ("Sellers") and Ronald Faulkner and Eugene O'Neil ("Buyers").

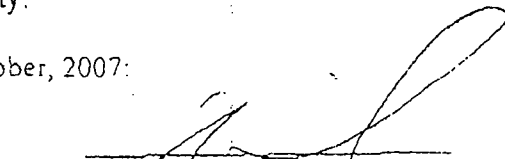
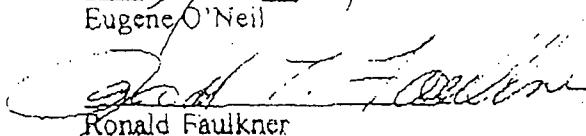
WHEREAS: the parties hereby desire to formalize their agreement regarding disbursement of the proceeds from the sale of 27+ acres located at 1721 Cherry Hill Road, Ridgeland, SC.

NOW THEREFORE, the parties agree as follows:

1. Cynthia Griffis shall receive a Promissory Note guaranteed by Ron Faulkner and Eugene O'Neil for \$200,000.00 secured by a second mortgage on the subject property and shall be payable in full no later than two (2) years, with 5% annual interest, from date of sale. Cynthia Griffis shall have free rent on the property, and all other expenses to be paid by Anthony Griffis, until the \$200,000.00 mortgage note is paid, at which time Sellers shall relocate the mobile home at the property within 60 days notice from payoff of said mortgage.
2. Anthony Griffis shall receive \$50,000, plus the difference between the payoff of Seller's mortgage to SunTrust Bank and \$300,000. For example, if the payoff is \$288,000, Anthony Griffis shall receive another \$12,000
3. The additional excess closing proceeds (from buyers' loan) shall be reinvested for development purposes in Cherry Hill Estates, LLC, a SC limited liability company whose members are Ron Faulkner and Eugene O'Neil. Anthony E. Griffis shall receive a 1/3rd interest in Cherry Hill Estates, LLC, for his investment. Cynthia Griffis shall receive \$150,000.00 from Buyers simultaneously upon delivery of the net proceeds check to Buyers.
4. \$119,000 of the excess loan proceeds shall be escrowed and used for interest payments on Buyer's loan. Anthony E. Griffis shall be entitled to the tax deduction related to said business interest.
5. Any other disbursement of the excess sales/loan proceeds shall be disbursed for any purpose as approved by the majority vote of the members of Cherry Hill Estates, LLC.
6. If the excess proceeds are disbursed for any purpose other than development of the subject property, then Cherry Hill Estates, LLC shall give a Promissory Note to Anthony Griffis for said amount (nonrecourse as to any LLC member) secured by a (third) mortgage on the subject property.

AGREED TO this 8 day of October, 2007:


Anthony E. Griffis

Cynthia Griffis


Eugene O'Neil

Ronald Faulkner

A. Settlement Statement

U.S. Department of Housing
and Urban Development

OMB No. 2502-0265



B. Type of Loan			
1. ☐ FHA	2. ☐ FmHA	3. ☒ Conv. Unins.	6. File Number CHERRYHI
4. ☐ VA	5. ☐ Conv. Ins.	7. Loan Number	8. Mortgage Insurance Case Number 88
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for information purposes and are not included in the totals.			
D. Name and Address of Borrower Cherry Hill Estates, LLC 5 Big Oak Street Hilton Head Island, SC 29926		E. Name and Address of Seller Anthony E. Griffis Cynthia Griffis 1721 Cherry Hill Road Ridgeland, SC 29936	
		F. Name and Address of Lender Woodlands Bank 135 Canal Street Pooler, GA 31322	
G. Property Location 1721 Cherry Hill Road Ridgeland, SC 29936 27.098 Acres Jasper County, SC		H. Settlement Agent QUALEY LAW FIRM, P.A. Place of Settlement 32 Office Park Rd., Ste. 100 P.O. BOX 10 HILTON HEAD ISL, SC 29938	
		I. Settlement Date 10/10/07	
J. SUMMARY OF BORROWER'S TRANSACTION:		K. SUMMARY OF SELLER'S TRANSACTION:	
100. GROSS AMOUNT DUE FROM BORROWER		400. GROSS AMOUNT DUE TO SELLER	
101. Contract sales price	1,013,000.00	401. Contract sales price	1,013,000.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	17,449.05	403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. Rental Taxes to		406. Rental Taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	1,030,449.05	420. GROSS AMOUNT DUE TO SELLER	1,013,000.00
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER		500. REDUCTIONS IN AMOUNT TO SELLER	
201. Deposit or earnest money		501. Excess Deposit (see instructions)	
202. Principal amount of new loan(s)	850,000.00	502. Settlement charges to seller (line 1400)	2,280.00
203. Existing loan(s) taken subject to		503. Existing loans taken subject to	
204.		504. Payoff of first mortgage loan	287,090.73
		SunTrust Bank	
205.		505. Payoff of second mortgage loan	
206. Second Mortgage	200,000.00	506. Second Mortgage	200,000.00
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. Rental Taxes to		510. Rental Taxes to	
211. County taxes 01/01 to 10/10	169.92	511. County taxes 01/01 to 10/10	169.92
212. Assessments to		512. Assessments to	
213.		513.	
214. Mobil Home Taxes	295.27	514. Mobil Home Taxes	295.27
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY / FOR BORROWER	1,050,465.19	520. TOTAL REDUCTION AMOUNT DUE SELLER	489,835.92
300. CASH AT SETTLEMENT FROM OR TO BORROWER		600. CASH AT SETTLEMENT TO OR FROM SELLER	
301. Gross amount due from borrower (line 120)	1,030,449.06	601. Gross amount due to seller (line 420)	1,013,000.00
302. Less amounts paid by/for borrower (line 220)	1,050,465.19	602. Less reduction amount due to seller (line 520)	489,835.92
303. CASH TO BORROWER	20,016.13	603. CASH TO SELLER	523,164.08

In the event a re-proration of the taxes is necessary when the tax bills for 2007 are prepared, the parties agree to handle said re-proration between themselves. SUBSTITUTE FORM 1099 SELLER STATEMENT: The information contained herein is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported. The Contract Sales Price described on Line 401 above constitutes the Gross Proceeds of this transaction.

0213

L. SETTLEMENT CHARGES:				PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700.	TOTAL SALES/BROKER'S COMMISSION based on price \$			@	=
Division of commission (line 700) as follows:					
701.	\$	to			
702.	\$	to			
703.	Commission paid at Settlement				
704.					
800.	ITEMS PAYABLE IN CONNECTION WITH LOAN			P.O.C.	
801.	Loan Origination Fee	%	Woodlands Bank		8,500.00
802.	Loan Discount	%			
803.	Appraisal Fee	to	Lowcountry Appraisals	2100.00\$	
804.	Credit Report	to	Woodlands Bank		17.00
805.	Lender's Inspection Fee	to			
806.	Administrative Fee	to			
807.	Underwriting Fee	to			
808.	Flood Certification		CBCInnovis		13.00
809.	Processing Fee				
810.	Lender Doc. Prep. Fee		Woodlands Bank		125.00
811.					
812.					
813.					
814.					
815.					
900.	ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE				
901.	Interest from	to	@ \$ / day		
902.	Mortgage Insurance Premium	to			
903.	Hazard Insurance Premium	1 yrs. to	BB&T Carswell Insurance Services		2,110.46
904.					
905.					
1000.	RESERVES DEPOSITED WITH LENDER FOR				
1001.	Hazard Insurance	mo. @ \$	/ mo.		
1002.	Mortgage Insurance	mo. @ \$	/ mo.		
1003.	City property taxes	mo. @ \$	/ mo.		
1004.	County property taxes	mo. @ \$	/ mo.		
1005.	Annual Assessments	mo. @ \$	/ mo.		
1006.		mo. @ \$	/ mo.		
1007.		mo. @ \$	/ mo.		
1008.	Aggregate Reserve for Hazard/Flood Ins, City/County Prop Taxes, Mortgage Ins & Annual Assessments				
1100.	TITLE CHARGES				
1101.	Settlement or closing fee	to			
1102.	Abstract or title search	to	Freelance Abstracting		175.00
1103.	Title examination final update	to	Freelance Abstracting		45.00
1104.	Title insurance binder	to	Plantation Title Agency, Inc.		75.00
1105.	Document preparation	to			
1106.	Notary fees	to			
1107.	Attorney's fees	to	Qualey Law Firm, P.A.		500.00
			(includes above item No:)		
1108.	Title insurance	to	Plantation Title Agency, Inc.		1,819.50
			(includes above item No: Due to CTIC: \$727.80)		
1109.	Lender's coverage	850,000.00 --	75.00		
1110.	Owner's coverage	1,013,000.00 --	1,744.50		
1111.	Doc. Prep. For Second Mortgage		Qualey Law Firm, P.A.		200.00
1112.					
1113.					
1200.	GOVERNMENT RECORDING AND TRANSFER CHARGES				
1201.	Recording fees	Deed \$ 10.00 ; Mortgage \$ 25.00 ; Releases \$ 5.00		35.00	5.00
1202.	City/county/stamps	Deed \$; Mortgage \$			
1203.	State tax/stamps	Deed \$ 3,748.10 ; Mortgage \$		3,748.10	
1204.					
1205.					
1300.	ADDITIONAL SETTLEMENT CHARGES				
1301.	Survey	to			
1302.	Termite Inspection	to			
1303.	Courier, Copy, Phone, Fax		Qualey Law Firm, P.A.	50.00	
1304.	Overnight Loan Pkg. & Payoff		Qualey Law Firm, P.A.	25.00	25.00
1305.	Survey		Sea Island Land Survey, LLC		2,250.00
1306.	Record Second Mortgage		Jasper County ROD	11.00	
1307.					
1308.					
1400.	TOTAL SETTLEMENT CHARGES (enter on lines 103 and 502, Sections J and K)			17,449.06	2,280.00

Cherry Hill Estate, LLC

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Eugene O'Neil, Managing Member

Ronald T. Faulkner, Member

Anthony E. Grillis

Cynthia Grillis

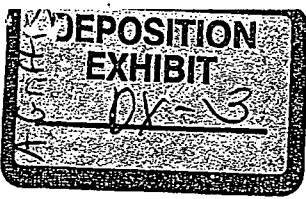
The HUD-1 Settlement Statement, which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

QUALEY LAW FIRM, P.A.

Date

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

0214



**BILL OF SALE OF
1/3rd MEMBERSHIP INTEREST IN
CHERRY HILL ESTATES, LLC**

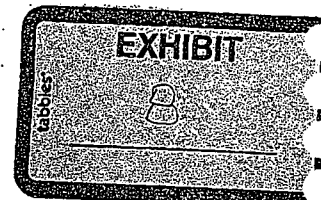
Pursuant to the Agreement Regarding Cherry Hill Estates, LLC entered into between Anthony E. Griffis and Cynthia Griffis, and Eugene O'Neil and Ronald Faulkner, on October 8, 2007, the undersigned hereby conveys and transfers 1/3rd membership (ownership) interest in Cherry Hill Estates, LLC to Anthony E. Griffis, his heirs and assigns. This Bill of Sale shall be evidence of this transfer of ownership in Cherry Hill Estates, LLC to Anthony E. Griffis. This transfer of membership interest of Cherry Hill Estates, LLC shall be made on the LLC records and transfer books. A new membership certificate (if desired) evidencing ownership of this interest in said LLC may be issued, but is not required. It is agreed by the undersigned that the ownership in said LLC shall be equal 1/3rd interests between Anthony E. Griffis, Eugene O'Neil, and Ronald Faulkner. It is further understood that the capital contributions of the members are (1) the loan guarantees of Ronald Faulkner and Eugene O'Neil (\$850,000 to Woodlands Bank and \$200,000 to Cynthia Griffis), and (2) the cash contribution of Anthony E. Griffis of the excess proceeds from the sale of the subject property (less \$150,000 to Cynthia Griffis and \$50,000 to Anthony E. Griffis per October 8, 2007 Agreement).

Executed this 10 day of October, 2007:

Eugene O'Neil
Individually and as Managing Member

Anthony E. Griffis

Ronald Faulkner



PURCHASE MONEY PROMISSORY NOTE

\$200,000.00

Date: October 10, 2007

1. Obligation. For value received and intending to be legally bound, CHERRY HILL ESTATES, LLC, whose address for notices hereunder is 5 Big Oak Street, Hilton Head Island, SC 29926 (collectively the "Borrower") hereby promise to pay to the order of CYNTHIA GRIFFIS (the "Lender"), whose address is 1533 Fording Island Road #322, Hilton Head Island, SC 29926, the principal sum of Two Hundred Thousand Dollars (\$200,000.00) in lawful money of the United States of America.
2. Principal and Interest Payment. The outstanding balance of the loan shall bear interest at the rate of five percent (5%) per annum. Principal and interest shall be due and payable by Borrower to Lender on or before October 10, 2009 (the "Maturity Date"), at which time a balloon payment will be due comprised of the remaining unpaid balance of principal and interest.
3. No Prepayment Penalty. Borrower may prepay all or any portion of the principal amount of this Note at any time without penalty.
4. Place of Payment. The principal, interest and all other Amount Due pursuant to this Note or otherwise, shall be payable at 5:00 P.M., on the day when due, to Lender in U.S. Dollars in immediately available funds, at the address of Lender set forth in Section 1 hereof, or at such other place as Lender, from time to time, may designate in writing.
5. Default; Acceleration; Remedies.
 - a. Should there occur any Default (as defined below in Section 5b), then Lender, at her option and without notice to Borrower, may declare immediately due and payable the entire unpaid balance of principal due hereunder.
 - b. As used in this Note, "Default" shall occur immediately upon the happening to or by Borrower of any of the following events:
 - (1) Any default in the payment of interest or principal due hereunder within ten (10) days after the due date thereof; or
 - (2) Any default in the performance of any of the agreements, conditions, covenants or provisions of this Note, the Mortgage which secures it, or any other agreement in favor of or with Lender, which is not cured within ten (10) days after Borrower receives written notice of that default from Lender.

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6. Remedies Cumulative, Etc.

a. The remedies of Lender provided herein shall be cumulative and concurrent, may be pursued singly, successively, or together at the sole discretion of Lender, and may be exercised as often as occasion hereafter shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

b. The exercise by Lender of its rights and remedies and the entry of any judgment by Lender shall not adversely affect in any way the interest rate payable hereunder on any amounts due to Lender but interest shall continue to accrue on such amounts at the rates specified herein.

c. Borrower agrees that Lender may release, compromise, forbear with respect to, waive, suspend, extend or renew any of the terms of this Note (and Borrower hereby waives any prior notice of any of the foregoing), that Lender may resort to any collateral in such order and manner as it may think fit, or accept the assignment, substitution, exchange or pledge of any other collateral in place of, or release for such consideration, or none, as he may require, all or any portion of any collateral, without in any way affecting the validity of the lien over or other security interest in the remainder of any such collateral (or the priority thereof). Any action taken by Lender pursuant to the foregoing shall in no way be construed as a waiver or release of any right or remedy of Lender, or of any event of default, or of any liability or obligation of Borrower.

7. Waivers and Releases. To the extent permitted by applicable law, Borrower hereby waives and releases all errors, defects and imperfections in any proceedings instituted by Lender under the terms of this Note.

8. Costs and Expenses. Borrower shall pay upon demand all reasonable costs and expenses incurred by Lender in the exercise of any of its rights, remedies or powers under this Note, including but not limited to attorneys fees, title abstract costs, and court costs. Any amount thereof not paid promptly following demand hereafter shall be added to the principal sum hereunder and shall bear interest from the date of such demand at the rate stated in Paragraph 2 above until paid in full.

9. Applicable Law. This instrument shall be governed by and construed according to the laws of the State of South Carolina.

10. Notices. All notices, requests, waivers, demands and other communications hereunder shall be in

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writing and shall be deemed to have been duly given, made and received when hand delivered against receipt, or on the day after it is sent by United States certified or registered mail, postage prepaid, return receipt requested, by nationally recognized overnight courier service, or by fax, to the parties at the addresses contained in Paragraph 1 above, or such other address as shall be specified from time to time (in compliance with the requirements of this Section for the giving of notice) by the parties entitled to receive such notices.

IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has caused this Note to be duly executed the day and year first above written.

WITNESSES:

Bloodie A. Brown

BORROWER:

CHERRY HILL ESTATES, LLC

By: Eugene O'Neil

Name: Eugene O'Neil

Title: Managing Member

John P. Gualuz

Gunn A. Egant

GUARANTY

Payment of the above-referenced indebtedness is personally, unconditionally, jointly and severally guaranteed by the undersigned.

Eugene O'Neil

Social Sec. No. 579-86-3819

Ronald T. Faulkner by John P. Gualuz, his attorney in fact

RONALD T. FAULKNER

Social Sec. No. 037-24-2721

GUARANTY

Effective as of October 10, 2007, in consideration of and as an inducement to financial accommodations made or to be made by CYNTHIA GRIFFIS (the "Lender") to CHERRY HILL ESTATES, LLC, a South Carolina limited liability company (the "Borrower"), and other good and valuable consideration the receipt of which is acknowledged, EUGENE O'NEIL and RONALD FAULKNER (individually, jointly and severally and collectively, "Guarantors") hereby unconditionally, jointly and severally guarantee to Lender the prompt payment and performance of the following (hereinafter collectively referred to as the "Obligations"): (i) the Promissory Note made by Borrower to Lender's order of even date herewith in the original principal amount of Two Hundred Thousand Dollars (\$200,000.00) (the "Note"); and (ii) the Mortgage from Borrower in favor of Lender of even date herewith (the "Mortgage"); and as to all of the foregoing, including any amendments, modifications, or superceding documents to each of the foregoing; and all charges, expenses, fees, including but not limited to reasonable attorneys' fees, and any other sums chargeable to Borrower under or as to any of the Obligations.

A. Notices. All notices, demands, requests, consents or approvals and other communications required or permitted hereunder will be in writing and will be conclusively deemed to have been received by a party hereto and to be effective if delivered personally to such party, or by overnight courier service, or by certified or registered mail, return receipt requested, postage prepaid, addressed to such party at the address set forth below or to such other address as any party may give to the other in writing for such purpose:

To Lender:

Cynthia Griffis
1533 Fording Island Rd. #322
Hilton Head Island, SC 29926

To
Guarantors:

Eugene O'Neil
5 Big Oak Street
Hilton Head Island, SC 29926
Ronald T. Faulkner
P.O. Box 3441
Annapolis, MD 21403

All such communications, if personally delivered, will be conclusively deemed to have been received by a party hereto and to be effective when so delivered, or if sent by overnight courier service, on the first business day after deposit thereof with such service, or if sent by certified or registered mail, on the third business day after the day on which deposited in the mail.

B. Governing Law.

(1) This Guaranty will continue until all of the Obligations have been indefeasibly paid in full.

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(2) Notwithstanding the immediately preceding Section B (1), this Guaranty has been delivered and accepted at and will be deemed to have been made at Beaufort County, South Carolina and will be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of South Carolina, without regard to conflicts of law principles.

C. Addresses and Tax Identification Numbers. Guarantors represent that his address for purposes hereof and his Social Security Number is as set forth below his signature.

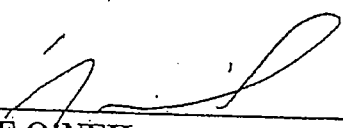
D. Miscellaneous.

- (1) This is a guaranty of payment and not of collection. This is an absolute, unconditional, primary, and continuing obligation and will remain in full force and effect until the first to occur of the following all of the Obligations have been indefeasibly paid in full.
- (2) This Guaranty will not be affected by any delay, failure or omission of Lender in exercising any right, power or remedy with respect to any of the Obligations or any guaranty or other liability or any collateral held by it for any of the Obligations, by any delay, failure, or omission of Lender to take any steps to perfect or maintain its lien or security interest in or to preserve its rights to, or insure or protect any collateral for any of the Obligations or any guaranty or other liability for any of the Obligations, or by any irregularity, unenforceability or invalidity of any of the Obligations or any part thereof or any security or other guaranty or liability therefor.
- (3) This Guaranty will not be affected by: (i) any dissolution of Borrower or any Guarantors or any other party to a related agreement, or the combination or consolidation of Borrower or any Guarantors or any other party to a related agreement into or with another entity, or any transfer or disposition of any assets of Borrower or any Guarantors or any other party to a related agreement; (ii) the existence, addition, modification, termination, reduction or impairment of value, or release of any guaranty (or security therefor) of any Obligation; and (iii) any other circumstance whatsoever (with or without notice to or knowledge of any Guarantors) that may or might in any manner or to any extent vary the risks of such Guarantors, or might otherwise constitute a legal or equitable defense available to, or discharge of, a surety or a Guarantors, including without limitation any right to require or claim that resort be had to Borrower or any other Guarantors or to any collateral in respect of the Obligations.
- (4) Unless otherwise expressly required by applicable law, notice of acceptance of this Guaranty, notice of extensions of credit to Borrower from time to time, notice of default, diligence, presentment, protest, demand for payment, notice of demand or protest, and any defense based upon a failure of Lender to comply with the notice requirements of the applicable version of Uniform Commercial Code Section 9-611 or other applicable law are hereby waived.

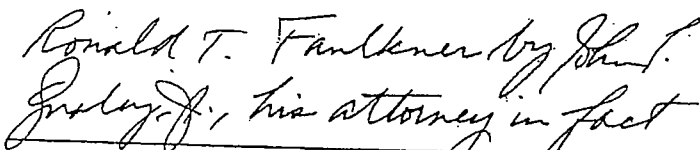
- (5) Lender at any time and from time to time, without the consent of or notice to Guarantors, and without impairing or releasing, discharging or modifying the liabilities of Guarantors hereunder, may in its sole discretion (i) change the manner, place or terms of payment or performance of or interest rates on, or change or extend the time of payment or performance of, or other terms relating to any of the Obligations, (ii) renew, increase, substitute, modify, amend or alter, or grant consents or waivers relating to any of the Obligations, any other guarantees or other liabilities, or any collateral for any Obligations or guarantees or other liabilities, (iii) apply any and all payments from any source whatsoever including any proceeds of any collateral, to any Obligations of Borrower in any order, manner and amount, (iv) deal or refrain from dealing with any person or entity, in its sole discretion, with respect to any Obligations in such manner as Lender deems appropriate in its sole discretion, and/or (v) accept, sell, substitute, exchange, compromise, release, surrender, offset, realize upon or otherwise deal with in any manner and in any order any of the Obligations, any guaranty or other liability for any of the Obligations, or any collateral for any of the Obligations or for any guaranty or other liability relating to any of the Obligations. Irrespective of the taking or refraining from taking of any of the foregoing actions, the obligations of Guarantors will remain in full force and effect and will not be affected, impaired, discharged, or released in any manner. Lender in its sole discretion may determine the reasonableness of the period which may elapse prior to the making of demand for any payment upon Borrower and it need not pursue any of its remedies against Borrower, any other Guarantors or other person, or any collateral before having recourse against any Guarantors under this Guaranty.
- (6) The books and records of Lender will be prima facie evidence of the Obligations and binding on Guarantors absent manifest error.

Executed effective as of the date first written above.

GUARANTORS:


EUGENE O'NEIL

SS#: 579-86-3819


RONALD T. FAULKNER

SS#: 037-24-2721

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Woodlands Bank
10220 Ford Ave Suite 101

GUARANTY

Richmond Hill
(City)

Georgia
(State)

October 10, 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce _____
Woodlands Bank
(herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of _____
Cherry Hill Estates, LLC

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

- A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: Promissory Note #4009300465 In The Amount Of \$950,000.00 Dated 10/10/07 and any extensions, renewals or replacements thereof hereinafter referred to as the "Indebtedness").
- B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s): _____

The Undersigned further acknowledges and agrees with Lender that:

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

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

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

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 950,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

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

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

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

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

Ronald T. Froelking

Rogald T. Froelking

Undersigned shall refer to all persons who sign this guaranty, separately and jointly.

ADDITIONAL PROVISIONS

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

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

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

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

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

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

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

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

R.T. Foy

GUARANTY

Woodlands Bank
10220 Ford Ave Suite 101

Richmond Hill
GA

Georgia
State

October 10, 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce

Woodlands Bank
(herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of

Cherry Hill Estate, LLC

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

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: Promissory Note #4000000465 In The Amount Of \$859,000.00 Dated 10/10/07 and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

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

The Undersigned further acknowledges and agrees with Lender that:

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

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

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

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 859,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, effect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

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

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

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

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

Eugene O'Neil

ADDITIONAL PROVISIONS

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

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

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

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

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

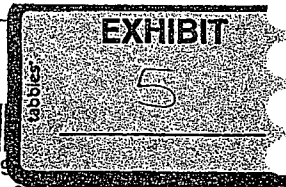
11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize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

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

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

After Recording Return to:
Qualey Law Firm
P.O. Box 10
Hilton Head, SC 29938
(843) 785-3525

200700006091 10/18/2007 AT 06
OR Volume 0598 Page 0173 - 0174
Filed for Record in JASPER COUNTY
Power Of Attorney Fee: \$15.00



DEED BOOK: 0598 PAGE: 256
DATE: 10/18/2007 11:59:30 AM
Hazel Holmes / EM
AUDITOR JASPER COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) SPECIFIC POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that I, RONALD T. FAULKNER, an individual over the age of eighteen (18) years and a resident of the State of South Carolina, have made, constituted and appointed, and by these presents do make, constitute and appoint JOHN P. QUALEY, JR., as my true and lawful attorney-in-fact to act for me individually, and as a Member of Cherry Hill Estates, LLC only in connection with the following three transactions: (1) the purchase of the property briefly described as 1721 Cherry Hill Road, 27.098 Acres, Ridgeland, Jasper County, South Carolina (the "Property"); (2) the mortgage loan financing of such purchase provided by Woodlands Bank (the "Lender") in the approximate amount of Eight Hundred Fifty Thousand Dollars (\$850,000.00), which is to be secured by a first priority mortgage on the Property; and (3) a second mortgage loan from Cynthia Griffis, which is to be secured by a second mortgage covering the Property in the approximate amount of Two Hundred Thousand Dollars (\$200,000.00). In such capacity, my attorney-in-fact is hereby authorized to execute on my behalf and in my place and stead all necessary or appropriate legal documents in connection with such purchase and such mortgage loans, including but not limited to Promissory Notes, Personal Guarantys, Mortgages covering the Property, a Security Agreement, UCC Financing Statements, a Settlement Statement, Loan Applications, and any other documents required by the Lender or by Cynthia Griffis in connection with the two mortgage loans.

GIVING AND GRANTING unto my said attorney-in-fact full power and authority to do and perform all and every act, deed, matter, and thing whatsoever, in and about my estates, properties, and affairs, as fully and effectively to all intents and purposes that I might or could do if personally present, and I do hereby ratify all that my said attorney-in-fact shall lawfully do or cause to be done by virtue of these Presents.

000008 022

The within Power of Attorney may be revoked by a written instrument recorded in the Office of the Register of Deeds for Jasper County, South Carolina, but all acts and things done by my attorney-in-fact pursuant hereto will remain in full force and effect as long as such acts and things were done prior to revocation as hereinabove provided. I hereby declare that any act or thing lawfully done hereunder by said attorney-in-fact shall be binding on my and my heirs, legal and personal representatives, successors and assigns.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 10th day of October, 2007.

WITNESSES:

Bredlee A. Brown
Witness #1

Nemica J. Chandler
Notary Public

Ronald T. Faulkner
RONALD T. FAULKNER, individually and
as Member of Cherry Hill Estates, LLC

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY that on this 10th day of October, 2007, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared RONALD T. FAULKNER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Specific Power of Attorney, who acknowledged the due execution thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Nemica J. Chandler
Notary Public for South Carolina
My Commission Expires: _____

My Commission Expires
December 23, 2012

000009

0227

Danielle Leary

Subject: FW: Griffis v. Cherry Point et al, 2009-CP-07-6054, Order on Motion to Dismiss 3rd Party Complaint
Attachments: Proposed Order on Motion to Dismiss.pdf; Proposed Order on Motion to Dismiss.wpd; _Certification_.htm

From: Michael Mogil [<mailto:mmogil@mogillaw.com>]
Sent: Tuesday, October 26, 2010 10:19 AM
To: 'Dukes, Marvin'
Cc: 'McLeod, Heather'; 'Jim Hale'; 'Robin Brown'; 'Tony Griffis'
Subject: Griffis v. Cherry Point et al, 2009-CP-07-6054, Order on Motion to Dismiss 3rd Party Complaint

Dear Judge Dukes,

Following our hearing on October 14, attached in wordperfect and in PDF is the proposed Order for your review. I started the 30 days running the date after the hearing, and not today.

Michael W. Mogil
Law Office of Michael W. Mogil PA
2 Corpus Christie Place, Ste. 303
303 Professional Building
Hilton Head Island, SC 29928
Tel 843-785-8110
Fax 843-785-9676

This E-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521 and may contain attorney-client privileged and confidential information or attorney work product, and is intended only for the use of the individual or entity named above as the addressee. If the reader of this E-mail and any attachments is not the intended recipient, the retention, dissemination, distribution or copying of this E-mail and any attachments is prohibited and violates applicable law. Please reply to sender if this E-mail is received in error.

) IN THE COURT OF COMMON PLEAS

) CASE NO.: 2010-CP-27-00637

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ed

That I have paid out and disposed of the proceeds of said sale as follows, to wit:

To the Master in Equity, the Master's Commission of \$1,572.50, according to the schedule hereto annexed.

To the Plaintiff, Bank of the Ozarks f/k/a Woodlands Bank, the sum of \$157,250.00, according to the schedule hereto annexed, including amounts applied to mortgage principal, late charges and accrued interest, attorney's fees and costs and expenses.

That from the statement hereto annexed will appear the amounts expended by me and for which I hold receipts on file in my office, the amounts credited to Plaintiff's Judgment.

The description of the real property referred to at the March 5, 2012 Sale and in this Report is set forth below:

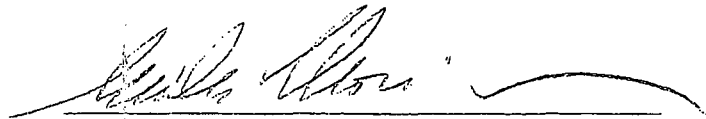
ALL that certain piece, parcel, or tract of land containing 27.098 acres, more or less, situated, lying and being in the State of South Carolina, County of Jasper, and being more particularly described by that certain plat prepared by Forrest F. Baughman, R.L.S., dated November 30, 1989, and recorded in the office of the Register of Deeds for Jasper County, South Carolina in Plat Book 18 at Page 439.

Tax Map Reference: 083-00-02-001.

All of which is respectfully submitted,

HARTWELL, South Carolina

Date: JUNE 15, 2012


Mills Lane Morrison
Special Referee

McNair Law Firm, P.A.
R. Nicholas Felix, Esquire
Post Office Drawer 3
Hilton Head Island, SC 29938
(843) 815-2171

201200003365 07/13/2012 AT 11:49 AM
OR Volume 0830 Page 0910 - 0913
Filed for Record in JASPER COUNTY ROD
Deed Fee: \$10.00

TMS No.: 083-00-02-001

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF JASPER	)	CASE NO.: 2010-CP-27-00637
	)	
BANK OF THE OZARKS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CHERRY HILL ESTATES, LLC, RONALD	)	MASTER'S DEED
T. FAULKNER, EUGENE O'NEIL and	)	
CYNTHIA GRIFFIS,	)	
	)	
Defendants.	)	

I, MILLS LANE MORRISON, SPECIAL REFEREE IN AND FOR THE COUNTY
AFORESAID SEND GREETINGS:

WHEREAS, Bank of the Ozarks, on or about September 28, 2010, exhibited its Complaint in the Court of Common Pleas, for the County aforesaid, against Defendants Cherry Hill Estates, LLC, Ronald T. Faulkner and Eugene O'Neil, demanding judgment in relation to the foreclosure of a lien on real property hereinafter mentioned and described; and the cause being at issue, came on to be heard on Friday, February 10, 2012, and such proceedings were had therein as resulted in an Order of Foreclosure and Sale and a Master's Notice of Sale (dated March 13, 2012) of the said Court, whereby it was adjudged and decreed that the said real property hereinafter mentioned and described be sold by the Special Referee in and for the County aforesaid on the terms and for the purposes mentioned in the said Judgment of Foreclosure and Sale as by reference thereto on file in said Court, will appear; and the said Special Referee after having duly advertised the said real property for sale by public outcry on April 2, 2012, did then openly and publicly, and according to the custom of auctions, sell and dispose of the same unto Bank of the Ozarks, for the sum of \$157,250.00, being the price of the highest bidder therefore.

NOW, THEREFORE, KNOWN ALL MEN BY THESE PRESENTS, that I, MILLS LANE MORRISON, as Special Referee in and for the County of Jasper, in consideration of the sum of \$1,572.50 to me paid by **Bank of the Ozarks**, the receipt whereof is hereby acknowledged, HAVE GRANTED, bargained, sold, and released, and by these presents, DO GRANT, bargain, sell and release, subject to the easements, restrictions, reservations and conditions set forth in the legal description below, unto **Bank of the Ozarks**, its successors and assigns forever, the following described real property to wit:

ALL that certain piece, parcel, or tract of land containing 27.098 acres, more or less, situated, lying and being in the State of South Carolina, County of Jasper, and being more particularly described by that certain plat prepared by Forrest F. Baughman, R.L.S., dated November 30, 1989, and recorded in the office of the Register of Deeds for Jasper County, South Carolina in Plat Book 18 at Page 439.

Tax Map Reference: 083-00-02-001

Subject to all other applicable matters of record.

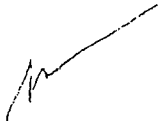
This deed was prepared by the MCNAIR LAW FIRM, P.A., Post Office Drawer 3, Hilton Head Island, South Carolina 29938, by R. Nicholas Felix, Esquire.

Grantee's Address:
Bank of the Ozarks
P. O. Box 8811
Little Rock, AR 72223

This being the same property conveyed to Cherry Hill Estates, LLC by Deed of Anthony E. Griffis and Cynthia Griffis, dated October 10, 2007, and recorded October 18, 2007, in the office of the Register of Deeds, Jasper County, South Carolina, in Deed Book 0598 at Page 0175.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining; and all the estate, right, title, claim, and interest whatsoever of the parties to the cause aforesaid, and each of them, in and to the same, and of all persons rightfully claiming, from, under, or by these or any of them.

TO HAVE AND TO HOLD, all and singular, the premises before mentioned, unto **Bank of the Ozarks**, its successors and assigns forever, subject, however, to the rights, conditions and restrictions that constitute covenants running with the land which are set forth or referred to herein or which may otherwise appear of record.



IN WITNESS WHEREOF, I, the Special Referee appointed for this matter in and for the County aforesaid, under and by virtue of the aforesaid Judgment, have hereunto set my hand and seal, this the 15th day of May, 2012.

Signed, Sealed and Delivered

in the Presence of

Leon M. Mott
Witness

[Signature]
Witness

[Signature] (L.S.)
Mills Lane Morrison
Special Referee for Jasper County, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT
under SC Code §30-5-30(C)

I Patricia L. Stephens, do hereby certify that Mills Lane Morrison, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of June, 2012.

[Signature] (SEAL)
Notary Public for South Carolina
My Commission Expires: 04-19-2020

TATE OF SOUTH CAROLINA

COUNTY OF JASPER

)
) AFFIDAVIT OF CONSIDERATION
)

PERSONALLY, appeared before me the undersigned, who duly sworn, deposes and says:

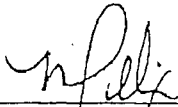
The property located at 27.098 acres, more or less, bearing Jasper County Tax Map Number 083-00-02-001 was transferred by (Grantor) Cherry Hill Estates to (Grantee) Bank of the Ozarks on May 15, 2012.

The transaction was (check one):

1. _____ an arm's length real property transaction and the sales price is to be paid in money or money's worth was \$ _____.
2. _____ not an arm's length real property transaction and the fair market value of the property is \$ _____.
3. X the above transaction is exempt, or partially exempt, from the recording fee as set forth in SC Code Section 12-24-10 (13).

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Attorney for the Grantee, Bank of the Ozarks.

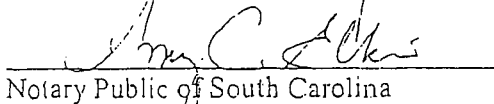
I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and upon conviction, must be fined not more than one thousand dollars imprisoned not more than one year or both.



R. Nicholas Felix, Esquire
McNair Law Firm, P.A.
Post Office Drawer 3
Hilton Head Island, SC 29938
(843) 815-2171

SWORN TO BEFORE ME THIS:

13 day of July 2012.


Notary Public of South Carolina

My commission expires Amy C. Elkins
~~My Commission Expires~~
October 29, 2014

McNair Law Firm, P.A.
R. Nicholas Felix, Esquire
The Plaza at Belfair
4 Clarks Summit Drive, Suite 200
Bluffton, SC 29910
(843) 815-2171

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER) CASE NO. 2010-CP-27-00637

BANK OF THE OZARKS,

Plaintiff,

v.

CHERRY HILL ESTATES, LLC, RONALD
T. FAULKNER, EUGENE O'NEIL and
CYNTHIA GRIFFIS,

Defendant(s).

RELEASE OF MORTGAGE LIEN BY
FORECLOSURE

RE: Mortgage of CHERRY HILL ESTATES, LLC, to BANK OF THE OZARKS, recorded
in Mortgage Book 0598, at Page 0178, Register of Deeds, Jasper County, South Carolina

The lien of the above-described Mortgage was released by sale under foreclosure ~~March 5, 2012.~~ *April 2, 2012*

WITNESSES:

Leanne Harte

By:

Mills Lane Morrison
Mills Lane Morrison
Special Referee for Jasper County, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT
under SC Code §30-5-30(C)

Patricia Y. Stephens, do hereby certify that Mills Lane Morrison as Special Referee
personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15 day of June, 2012.

Patricia Y. Stephens (SEAL)
Notary Public for South Carolina
My Commission Expires: 04-19-2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2009-CP-07-6054
Appellate Case No. 2013-001407

Cynthia Griffis,		Plaintiff,
	v.	
Cherry Hill Estates, LLC, Eugene O'Neil and and Ronald Faulkner,		Defendants,
Of whom Cherry Hill Estates, LLC and Ronald Faulkner are		Appellants.
Cherry Hill Estates, LLC and Ronald Faulkner,		Third Party Plaintiffs,
	v.	
Anthony E. Griffis,		Respondent.

CERTIFICATE OF COUNSEL

I, Michael W. Mogil, the undersigned counsel to the Appellants Cherry Hill Estates, LLC and Ronald Faulkner, hereby certify that the Record on Appeal contains all documents proposed to be included by any of the parties and not any other material. One document that was designated by Appellants – “Answer to Motion to Dismiss, dated May 20, 2011” – is omitted from the Record on Appeal because upon further review of Beaufort County Court records, no such document was filed.

December 3, 2013
Hilton Head Island, SC



Michael W. Mogil (SC Bar #11933)
Mogil Law Firm
2 Corpus Christie Place, Ste. 303
Hilton Head Island, SC 29928
Tel. (843)785-8110
Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2009-CP-07-6054
Appellate Case No. 2013-001407

Cynthia Griffis,

Plaintiff,

v.

Cherry Hill Estates, LLC, Eugene
O'Neil and and Ronald Faulkner,

Defendants,

Of whom Cherry Hill Estates, LLC
and Ronald Faulkner are

Appellants.

Cherry Hill Estates, LLC and
Ronald Faulkner,

Third Party Plaintiffs,

v.

Anthony E. Griffis,

Respondent.

FINAL BRIEF OF APPELLANTS

Michael W. Mogil
Mogil Law Firm
2 Corpus Christie Place, Ste. 303
Hilton Head Island, SC 29928
(843)785-8110

Attorney for Appellants

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FINDING THAT AN EXPERT AFFIDAVIT WAS NECESSARY TO SUPPORT APPELLANTS' CLAIMS FOR NEGLIGENCE AND BREACH OF FIDUCIARY DUTY?
2. DID THE TRIAL COURT ERR IN FINDING THAT THE STATUTE OF LIMITATIONS WAS TRIGGERED ON THE CLOSING DATE, AS OPPOSED TO A LATER DISCOVERY DATE?
3. DID THE TRIAL COURT ERR IN FAILING TO APPLY THE RELATION-BACK DOCTRINE, AND IN DETERMINING THAT THE APPELLANTS' AMENDED COMPLAINT AND EXPERT AFFIDAVIT WERE TIME-BARRED BY THE STATUTE OF LIMITATIONS?
4. DID THE TRIAL COURT ERR IN FAILING TO FOLLOW THE "LAW OF THE CASE"?
5. DID THE TRIAL COURT ERR IN DISALLOWING THE APPLICATION OF EQUITABLE TOLLING?
6. DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT ON APPELLANTS' CLAIM FOR BREACH OF FIDUCIARY DUTY?

STATEMENT OF THE CASE

Appellants filed their Third Party Complaint in this matter asserting the subject professional negligence claims, and other causes of action, against their former attorney, Anthony E. Griffis, on or about June 20, 2010. (R. pp. 111-117). The issues before the Court were first raised in Respondent's Motion to Dismiss filed on or about September 20, 2010. (R. pp. 98-99). That motion was argued on October 14, 2010 and an Order granting the Motion was entered on October 27, 2010. (R. pp. 10-11). That Order granted Appellants thirty days, or until November 14, 2010, to serve an Amended Third Party Complaint to include the supporting affidavit of an expert. *Id.* Appellants timely served their Amended

Third Party Complaint with a supporting affidavit on November 14, 2010. (R. pp. 84-97).

Respondent filed his second Motion to Dismiss and for Summary Judgment on December 28, 2010. (R. pp. 79-80). The Motion was argued on or about March 28, 2011 before the Honorable Marvin H. Dukes III, with a supplemental hearing by telephone on May 5, 2011. Thereafter Judge Dukes instructed Appellants' counsel to prepare an Order denying summary judgment on the subject negligence claim(s). Said Order was prepared and tendered to the Court, but not entered.¹

After counsel for the Appellants became aware that the Order denying summary judgment had not been formally entered, counsel contacted the Court and a supplemental status conference was held, which resulted in Judge Dukes entering an Order denying Respondent's Motion to Dismiss and for Summary judgment on or about August 6, 2012. (R. pp. 8-9).

On August 12, 2012 Respondent filed a Motion to Reconsider the Court's Order of August 6, 2012. (R. pp. 35-40). The parties argued the Motion to Reconsider before Judge Dukes on October 15, 2012. On March 5, 2013 Judge Dukes entered an Order granting Respondent's Motion to Reconsider and entering summary judgment for Respondent on the negligence causes of action, based on the statute of limitations. (R. pp. 5-7).

On March 18, 2013 Appellants filed their Motion to Reconsider the Order granting summary judgment on the negligence claim(s). (R. pp. 27-34). The parties argued the Motion

¹ On or about March 21, 2011 the parties herein and Cynthia Griffis agreed to a Consent Order Bifurcating the first party action brought by Ms. Griffis, in part to accommodate Mr. Hale's schedule due to his health. Ms. Griffis' first party case against the Appellant(s) herein was tried on May 25 and May 26, 2011 and ultimately, a Consent Order resulted in the entry of a judgment by settlement on January 20, 2012, the entry of judgment itself being delayed by Mr Hale's declining health and subsequent passing.

to Reconsider before Judge Dukes on April 18, 2013. On May 16, 2013 Judge Dukes entered his Order denying Appellants' Motion to Reconsider, and the within Appeal followed. (R. pp. 3-4). Appellants seek damages in excess of One Million Dollars, the exact amount of which to be determined at trial.

STATEMENT OF THE FACTS

In or around January, 2007, attorney Anthony E. Griffis and his estranged wife and paralegal assistant, Cynthia Griffis, began discussions with Mr. Griffis' client, Eugene O'Neil, to sell the Griffis' former marital residence and surrounding property, being twenty-seven (27) acres in Okatie, South Carolina, to a new entity. The twenty- seven (27) acre tract will be referred to hereafter as the "Cherry Hill Estates" property. The sale was structured to both generate proceeds sufficient to settle the Griffis' divorce and associated property settlement matters, and to pay off a SunTrust note and mortgage secured by the Cherry Hill Estates property, which note was in default by early 2007. (R. pp. 201-202). In mid 2007, Mr. Griffis and/or Mr. O'Neil solicited Ronald T. Faulkner, a resident of Maryland, to involve in the proposed transaction. Faulkner was also at that time a client of Mr. Griffis, inasmuch as Mr. Griffis acted as settlement agent for several real estate transactions in which Mr. Faulkner was a principal including the purchase of Faulkner's residence on Hilton Head Island in 2007. Faulkner was also a close social friend and historical business associate of Mr. O'Neil—they were involved together in at least one other South Carolina real estate venture together known as Buckingham Development, LLC, for which Mr. Griffis served as corporate and tax counsel. Faulkner was specifically solicited by Griffis and O'Neil for his

perceived financial strength—it was believed and determined a more credit-worthy guarantor was required to achieve a purchase money mortgage loan in an amount sufficient to generate proceeds at closing to meet Griffis and O’Neil’s intended purpose for the transaction. (R. p. A2, lines 3-21). It is not clear from the facts developed thus far in the case when, exactly, Faulkner agreed to participate in the Cherry Hill Estates project, but discovery and testimony in the first party action herein and in a related third party action, Bank of the Ozarks v. Cherry Hill Estates, LLC et al, C/A No. 2010-CP-07-0637, reflect that Faulkner’s financial information was in fact provided to Woodlands bank in connection with the Cherry Hill Estates project and loan, by persons and means not completely certain.

Ultimately, a sales contract entitled Contract for Real Estate was drafted by Mr. Griffis and executed by Mr. Griffis and Mr. O’Neil on or about August 30, 2007. (R. p. 197). The contract conveyed the Cherry Hill Estates property to Cherry Hill Estates, LLC, a limited liability company formed by Mr. Griffis, for a stated purchase price of One Million and Thirteen Thousand (\$1,000,013.00) Dollars. *Id.* The Contract for Real Estate was presented to Woodlands Bank in connection with a request for a purchase money first mortgage in the amount of Eight Hundred Fifty Thousand (\$850,000.00) Dollars. Neither the Contract for Real Estate, nor any other document subsequently presented to Woodlands Bank, suggested or stated that Mr. Griffis was intended to be a member in Cherry Hill Estates, LLC or that Mr. O’Neil or Cherry Hill Estates, LLC would receive a portion of the contemplated sales proceeds. The Contract for Real Estate, and all prior contracts, were executed by Mr. O’Neil on behalf of Cherry Hill Estates, LLC without the benefit of separate representation.

During the five weeks subsequent to the tender of the Contract for Sale, Mr. Griffis,

Mr. O'Neill, Ms. Griffis and Mr. Faulkner engaged in a number of discussions and meetings in person or by phone which resulted in Mr. Griffis drafting an "Agreement Regarding Cherry Hill Estates," dated September 13, 2007 (the "September Agreement," R. p. 211), and a subsequent document, the "Agreement Regarding Cherry Hill Estates" dated October 8, 2007 (the "October Agreement," R. p. 209), which was the day before the intended closing date for the Cherry Hill Estates transaction. The October Agreement added a provision whereby Mr. O'Neil and Mr. Faulkner would personally guarantee a second mortgage loan to Ms. Griffis. (R. p. 209, lines 7-13). Mr. Griffis and Ms. Griffis have testified that this provision reflects their intent and agreement at the time. Mr. O'Neil and Mr. Faulkner have testified that it was not their intent or agreement to personally guarantee a second mortgage to Ms. Griffis, and that their attorney added that provision without explaining it to them. The October Agreement also added the following provisions:

"3. The additional excess closing proceeds (from buyers' loan) shall be reinvested for development purposes in Cherry Hill Estates, LLC, a SC limited liability company whose members are Ron Faulkner and Eugene O'Neil. Anthony E. Griffis shall receive a 1/3rd interest in Cherry Hill Estates, LLC, for his investment. \$150,000 paid directly by Anthony E. Griffis (handwritten amendment).

"4. \$119,000 of the excess loan proceeds shall be escrowed and used for interest payments on Buyer's loan. Anthony E. Griffis shall be entitled to the tax deduction related to said business interest."

(R. p. 209, lines 17-25).

On some date prior to closing, Mr. O'Neil was referred to John P. Qualey, Esq. to be retained as settlement agent for the contemplated transaction. The file and record in this case reflect that Mr. Faulkner did visit Mr. Qualey's office on one occasion and executed a Power of Attorney drafted by Mr. Qualey which gave Mr. Qualey authority to execute necessary

) documents in connection with the Cherry Hill Estates transaction. Neither Woodlands Bank's
) files, Mr. Qualey's files, nor any other documents or testimony generated in the first party
) action, this action, nor the related foreclosure action described below, reflect that the October
) Agreement was provided to the Woodland Bank or to Mr. Qualey. Thus, the transaction
) proceeded without the lender or settlement agent having knowledge that (a) Mr. Griffis, the
) seller, was intended to own an interest in the purchasing entity, or (b) that the purchasing
) entity and/or Mr. O'Neil and/or Mr. Faulkner would be receiving sales proceeds at closing,
) funded entirely by the purchase money mortgage loan, as the purchaser was not investing any
) funds at closing.

) On October 10, 2007, the transaction closed with Mr. Qualey acting as the settlement
) agent. The property was purchased by Cherry Hill Estates, LLC for the sum of \$1,000,013
) and financed by a loan from Woodlands Bank in amount of \$850,000 and a second mortgage
) note given to Cynthia Griffis in amount of \$200,000. (R. pp. 213-214). The second mortgage
) note term expired in 2009. The transaction, as structured by Mr. Griffis, required Mr. O'Neil
) and Mr. Faulkner, through his Power of Attorney, Mr. Qualey, to give personal guarantees
) for both promissory notes. Although Mr. Griffis structured the transaction to grant himself a
) one-third ownership interest in Cherry Hill Estates, LLC, Mr. Griffis did not personally
) guarantee either purchase money note. Both Mr. Faulkner and Mr. O'Neil testified at
) deposition that they did not understand that they were being asked to personally guarantee
) Ms. Griffis' second mortgage note, but rather that they thought Ms. Griffis would be paid if
) and when the land was sold or developed. (Faulkner Deposition, R. pp. 177-183, 186-189,
) A6-A7; O'Neil Deposition, R. pp. 155-156, 164-167). Mr. Faulkner, Mr. O'Neil and Cherry

Hill Estates, LLC were not represented by separate counsel during the negotiation phase of the transaction, or prior to or during the event when they executed a number of sales contracts and separate side agreements, in Mr. Griffis' office. Mr. Griffis did not issue any written instruction to either Mr. Faulkner or Mr. O'Neil that they should retain separate advice of counsel prior to entering into the Contract for Sale or the Agreement(s) Regarding Cherry Hill Estates.

On October 10, 2007, after the closing, Mr. O'Neil executed in Mr. Griffis' law office a document entitled "Bill of Sale," which was prepared by Mr. Griffis and which conveyed a one-third interest in Cherry Hill Estates, LLC to Mr. Griffis. (R.p. 215). At the same meeting, Mr. Griffis tendered a check from Mr. Griffis to "Eugene O'Neill, for Cherry Hill Estates, LLC" in the amount of Three Hundred Twenty Thousand (\$320,000) Dollars.

In December, 2009 Cynthia Griffis filed the first-party action against Cherry Hill Estates, LLC, Ronald Faulkner and Eugene O'Neil, alleging breach of contract and seeking collection of \$200,000 allegedly owed under the second mortgage promissory note, plus interest and fees. Appellants filed a Motion for Leave to Amend their Answer and to Assert Third Party Complaint against Mr. Griffis on May 25, 2010, and said Motion was granted on June 18, 2010. Cherry Hill Estates, LLC and Mr. Faulkner served the Third Party Complaint on June 22, 2010. (R. pp. 111-117). The Third Party Complaint alleged, *inter alia*, causes of action for breach of fiduciary duty, professional negligence and indemnification against Mr. Griffis, claiming that he failed to properly refer his clients to separate counsel prior to engaging in personal business transactions with them, and that he unfairly took advantage of his clients to his benefit and their detriment.

In or around December, 2009, the Woodlands note went into default. The successor in interest to Woodlands, Bank of the Ozarks, initiated a foreclosure action in case 2010-CP-27-0637, Bank of the Ozarks v. Cherry Hill Estates, LLC, et al., which resulted in the foreclosure and sale of the subject property on April 2, 2012, and ultimately in a deficiency judgment against Cherry Hill Estates, LLC, Mr. Faulkner and Mr. O'Neil in amount of Nine Hundred and One Thousand Thirteen and 44/100 (\$901,013.44) Dollars. Thus the property that the Respondent sold to the Appellants for more than one million dollars (\$1,013,000) in 2007 was resold for One Hundred Fifty Seven Thousand Two Hundred and Fifty (\$157,250.00) Dollars in April, 2012.

ARGUMENT

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard that governs the trial court under Rule 56(c), SCRCP. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Id. In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004).

A. An Expert Affidavit May Not Have Been Necessary to Support the Negligence and Breach of Duty Claims asserted.

The trial court granted summary judgment based on S.C. Code of Laws, Section 15-36-100, which generally requires that claims sounding in professional negligence be supported by the contemporaneous filing of an affidavit by an expert. At the outset, Appellants note that Section 15-36-100(C)(2) eliminates the contemporaneous filing requirement where “the subject matter lies within the ambit of common knowledge and experience, such that no special learning is needed to evaluate the conduct of the defendant.” The Amended Third Party Complaint herein alleged facts which violate generally understood rules requiring professionals to disclose conflicts of interest to their clients, and also alleges that Mr. Griffis advised Appellants to enter into a transaction involving a refund or “kickback” of seller proceeds to the purchaser entity without disclosure of that event to the lender or settlement agent. Appellants assert that if these refunds of sales proceeds were disclosed to the lender prior to closing or at closing, then the lender would have canceled the transaction. Mr. Griffis structured and drafted the agreement(s) that resulted in these events and had the parties execute those agreement(s) in his office, unbeknownst to the settlement agent or to the bank. Thus, the Amended Third Party Complaint alleges errors within the ambit of common knowledge and experience, such that no professional affidavit was needed to support the claims of breach of duty of care or breach of fiduciary duty. Clearly, the law does not contemplate that an expert opinion be required to support a claim against one’s lawyer for structuring and participating in a transaction that would not close if it was properly and fully disclosed to the purchase money mortgage lender, in addition to the other one-sided

aspects of the transaction as set forth above.

B. The Discovery Rule Extended the Applicable Limitations Period in this Case.

The trial court ultimately determined in its Order granting summary judgment that an expert affidavit was in fact required by Section 15-36-100 and that the Amended Third Party Complaint with supporting expert affidavit was time-barred by approximately thirty-four days, because those documents were served and filed three years and thirty-four days after the closing of the subject transaction. Appellants dispute that the trial court properly applied the law regarding limitations of actions. Specifically, South Carolina follows the discovery rule, which states that the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist. In Abba Equipment, Inc. v. Thomason, 517 S.E.2d 235, 335 S.C. 477 (S.C.App. 1999) (citing Mills v. Killian, 254 S.E.2d 556, 273 S.C. 66 (S.C. 1979)) our Court of Appeal held that the “discovery rule” specifically applied to causes of action under a theory of professional negligence.

i. Appellants did not discover facts underlying cause of action until January, 2010

The discovery rule triggers the statute of limitations in this case on or after January 11, 2010, when Mr. Faulkner was served with the lawsuit by Cynthia Griffis which demanded recovery on the \$200,000 second mortgage promissory note. The Amended Third Party Complaint, accompanied by Mr. Pendarvis’ affidavit, was served less than eleven months after that discovery. In actuality, Respondents learned of the lawsuit and its underlying claims after it was filed in December, 2010, but the distinction between December 2010 and January, 2011 is not material for the discovery rule analysis herein.

Despite Respondent's testimony regarding when it/he actually learned about the guarantees on the second mortgage and note, the trial court found that the statute of limitations began to run on the date of closing, being October 10, 2007, when Eugene O'Neil executed settlement and closing documents on behalf of Cherry Hill Estates, LLC and himself, and John P. (Jack) Qualey executed loan guarantees for Mr. Faulkner through his Power of Attorney. However, the fact record developed in this case, as well as the associated first party action, reflected that as of October 2007, Mr. Faulkner did not know of the events that formed the basis for the Appellants' causes of action for professional negligence. As of the closing date, Mr. Faulkner did not know that he was being bound to guarantee a second loan to Ms. Griffis. (R. pp. 177, lines 16-24; pp. 195-196). Mr. Faulkner did not know that Mr. Griffis would obtain an ownership interest in Cherry Hill Estates without a corresponding requirement that he guarantee the loan(s) taken to enable the transaction. (R. p. 188). Finally, as of the closing date, Mr. Faulkner was unaware that structure of the transaction, which involved the refund of Seller proceeds at closing to the purchaser entities, and third parties, without disclosure to the first mortgage lender, rendered the transaction in contravention of existing lending and legal protocols. The statute of limitations for the third party negligence claims therefore could not have triggered until Mr. Faulkner and/or the entity discovered these matters, in December, 2009 or in January, 2010.

ii. Mr. Qualey had no relevant knowledge to impute on Appellants

The trial court further erred in finding that Mr. Qualey's knowledge of the closing and the documents and obligations therein were imputed to Mr. Faulkner. Mr. Qualey's deposition testimony reflected the following:

- i) that Mr. Qualey, the settlement agent for the transaction in question, is not certain he ever met with or talked to Mr. Faulkner before the closing (R. pp.170-171);
- ii) that Mr. Qualey is not certain he spoke with Mr. Faulkner after the transaction, and if he did, does not recall the substance of the conversation (R. p. 171);
- iii) that the standard procedure for explaining the Power of Attorney would have been delegated to a paralegal named Brooke (R. p. 172);
- iv) that Brooke Brown would have been the party communicating with Mr. Faulkner relating to the closing and Power of Attorney (R. p. 175); and
- v) that Mr. Qualey's file did not have the Agreement Regarding Cherry Hill Estates dated October 8, 2007, and that he had not "heard" of the document prior to the deposition (R. p. 176).

The above-referenced testimony reflects that Mr. Qualey's knowledge, if any, of the events and documents at closing which give rise to the claims herein could not be imputed to Mr. Faulkner for the purpose of triggering a statute of limitations as found by the trial court. Without communication, knowledge could not be adequately conveyed, or imputed. Further, and most importantly, the Appellants contend that a central element of their claims relating to professional negligence arise from negotiations and documents of which Mr. Qualey was unaware. Thus, what Mr. Faulkner knew or understood of these negotiations and/or documents, their meaning, and legal consequence, is a fact issue that must be determined by the trial court prior to ruling on whether the statute of limitations was triggered

Mr. Griffis' contention that Mr. Faulkner (and Cherry Hill Estates, LLC) were put on constructive notice by Mr. Griffis' fax transmission on October 9, 2007 to settlement agent

Qualey regarding the existence of the personal guarantees on the second mortgage note, does not support summary judgment against Mr. Faulkner individually, because Mr. Faulkner testified that he did not believe Mr. Qualey was his attorney, that he had not hired Mr. Qualey or had a personal communication with Mr. Qualey before closing, and that he [Mr. Faulkner] did not recall the substance of any conversation or communication with Mr. Qualey, and had not spoken to him or retained him for any purpose after the closing, and that in Mr. Faulkner's view, Mr. Qualey was simply acting as his attorney in fact to sign documents. (R. p. 178, lines 2-21). Mr. Faulkner's sworn testimony in this regard creates a genuine fact issue that cannot be resolved at the summary judgment level in this jury-demand case.

The alleged professional negligence and breach of duty alleged in this matter transcend the existence of the personal guarantees on the second mortgage note. Mr. Pendarvis' affidavit states Mr. Griffis breached the standard of care when he failed to instruct his clients, in writing, to obtain separate counsel, and of the potential conflicts of interest, prior to entering into the separate side agreements of September 13, 2007 and October 8, 2007. (R. pp. 191-192). These side agreements, which formed the basis of the transaction, and which induced Ms. Griffis and Mr. Griffis and Mr. O'Neil's to proceed, involved significant deviations from the transaction as it was represented to Mr. Qualey and Woodlands Bank, i.e. the refund of Sellers's proceeds to Mr. O'Neil and Cherry Hill Estates, LLC which is not depicted on the HUD 1 settlement statement, and were not shown to Mr. Qualey, were not in Mr. Qualey's file, and prior to his deposition were unknown to Mr. Qualey. (R. pp. 173-174, 176). Thus, there is no possibility that Mr. Qualey in a capacity as

agent for Mr. Faulkner could have had actual or constructive notice of the acts that are being alleged as professional negligence—those acts were concealed from him. The transaction as structured and implemented is void against public policy because ultimately it involved a kickback of seller proceeds, financed by a bank loan, without disclosure to the lending institution, and the vesture of an ownership interest in the Purchaser, to one of the Selling parties, Mr. Griffis, without full disclosure to the lender.

Moreover, under the discovery rule, when the date on which a statute of limitations commences is in dispute, it is fact issue for the jury to determine. Manios v. Nelson, Mullins, Riley & Scarborough, LLP, 389 S.C. 126, 697 S.E.2d 644 (S.C. App. 2010). Therefore, summary judgment is premature in this matter.

C. The Relation-Back Doctrine Preserves the Amended Third Party Complaint and Expert Affidavit Within the Limitations Period.

South Carolina Rule of Civil Procedure Rule 15(c) codifies the common law “relation back” doctrine. The test to be used in determining whether or not an amendment should be allowed to relate back under Rule 15(c) to the date of the original pleading to avoid statute of limitations is found in the language of the Rule; specifically, whether the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth in the original pleading. Thomas v. Grayson, 318 S.C. 82, 456 S.E. 2d 377 (1995). Applied to the instant case, Rule 15 (c) and the relation back doctrine require that the date for tolling of the statute of limitations relate back to the filing date for the initial Third Party Complaint, being June 22, 2010, since that Third Party Complaint put Mr. Griffis on specific notice of the breach of duty and professional negligence claims against him.

Under the relation-back doctrine, the Amended Third Party Complaint with supporting expert affidavit was filed within the three year period after the earliest conceivable date for triggering the statute of limitations, being the date of closing, October 10, 2007, because the underlying Third Party Complaint was served June 20, 2010, well within the three year period using any reasonable interpretation of when the statute began to run. The filing on November 14, 2010 of the expert affidavit was responsive to an Order by the trial court granting the Appellants thirty days, or until November 14, 2010, to perfect their Complaint by obtaining such an affidavit, which they did, and that filing relates back to the date of the filing of the Third Party Complaint in June, 2010, within even the trial court's view of the statute of limitations.

There is no evidence in reported cases or legislative history suggesting that Section 15-36-100 was intended to abrogate the relation back doctrine for amended pleadings.

D. Statutory Construction and the Law of the Case Compel denial of Summary Judgment.

The plain language of Section 15-36-100 (C) grants the trial judge discretion to grant leave to amend a pleading to include the expert affidavit if "justice requires." After lengthy argument at the motion hearing on October 14, 2010, the trial court granted the Appellants leave to refile their Third Party Complaint as reflected in the October 26, 2010 Order. (R. pp. 10-11). The Appellants complied with the terms of the trial court's Order and filed their Amended Complaint, with supporting affidavit, within 30 days.

Section 15-36-100 (D) plainly states that " if the affidavit is filed within the period

specified in this section, the filing of the affidavit after the expiration of the statute of limitations is considered timely and provides no basis for the statute of limitations defense.” In the instant case, the trial Court initially and properly exercised its discretion to extend the time for the Appellants to obtain and file a timely expert affidavit, and the Appellants complied with the Order. The trial Court’s reversal of its own Order, in granting the Motion for Summary judgment, results in the trial Court both ignoring Rule 15(c), and Section 15-36-100 (D). Equally significant, the reversal of position and grant of summary judgment by the trial court renders the trial court’s Order of October 26, 2010 ineffective and violates the “law of the case” doctrine. Where a litigant fails to appeal a ruling on a particular issue, that ruling becomes law of the case. See Resolution Trust Corp. v. Eagle Lake & Golf Condominiums, 310 S.C. 473, 475, 427 S.E.2d 646, 648 (1993) (finding an unappealed ruling is law of the case).

Here, Respondent did not contest or appeal the grant of thirty days leave to re-file when it was ordered. Thus, under the “law of the case” doctrine, the extension of the limitations period granted by the trial Court’s Order of October 27, 2010 controls the matter.

E. Equitable Tolling Precludes Application of the Limitations Period to Bar Appellants Claims for Professional Negligence

The doctrine of equitable tolling, and equity itself, compels a finding that Appellants’ negligence claims are not time barred. Equitable tolling was recognized by our Supreme Court in Hooper v. Ebenezer Services and Rehabilitation Center, 386 S.C. 108, , 687 S.E.2d 29, (SC 2009). There the Court found that:

[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations." 54 C.J.S. *Limitations of Actions* § 115 (2005). " Equitable tolling is a nonstatutory tolling theory which suspends a limitations period." *Ocana v. Am. Furniture Co.*, 135 N.M. 539, 91 P.3d 58, 66 (2004).

Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. *Rodriguez v. Superior Court*, 176 Cal.App.4th 1461, 98 Cal.Rptr.3d 728 (2009). " Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period ' to ensure fundamental practicality and fairness.' " *Id.* at 736 (citation omitted).

(Hooper at 32-34). The Court in Hooper cited a number of non-exclusive instances where equitable tolling had been applied to serve the interests of justice, many of which are immediately applicable in the case *sub judice*:

It has been observed that " [e]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control." *Ocana*, 91 P.3d at 66. However, jurisdictions have considered tolling in a variety of contexts and have developed differing parameters for its application. See, e.g., *Irby v. Fairbanks Gold Mining, Inc.*, 203 P.3d 1138, 1143 (Alaska 2009) (" Under the doctrine of equitable tolling, when a party has more than one legal remedy available, the statute of limitations is tolled while the party pursues one of the possible remedies."); *Abbott v. State*, 979 P.2d 994, 998 (Alaska 1999) ("Federal precedent equitably tolls the limitations period in three circumstances: (1) where the plaintiff has actively pursued his or her judicial remedies by filing a timely but defective pleading; (2) where extraordinary circumstances outside the plaintiff's control make it impossible for the plaintiff to timely assert his or her claim; or (3) where the plaintiff, by exercising reasonable diligence, could not have discovered essential information bearing on his or her claim." (footnotes omitted)); *Kaplan v. Morgan Stanley & Co.*, __ Vt. __, __, __ A.2d __, __ (2009) (2009 WL 2401952) ("Equitable tolling applies either where the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering the facts essential to the filing of a timely lawsuit, or where the plaintiff has timely raised the same claim in the wrong forum.") (citing *Beecher v. Stratton Corp.*, 170 Vt. 137, 743 A.2d 1093, 1098 (1999)); cf. *Machules v. Dep't of Admin.*, 523 So.2d

1132, 1134 (Fla.1988) (stating the doctrine of equitable tolling, unlike equitable estoppel, does not require deception or misrepresentation by the defendant; rather, it serves to ameliorate the harsh results that sometimes flow from a strict, literalistic application of administrative time limits).

(Hooper at 32-34).

In the case *sub judice*, foremost, Appellants timely filed their Third Party Complaint, alleging professional negligence and breach of fiduciary duty under any asserted interpretation of “timely” as it relates to this matter. Appellants’ pleading was deemed defective, however, because it failed to include an expert affidavit in support. They timely cured this defect within the period established by the trial court within its own order.

In addition, the underlying facts of this case compel the application of equitable tolling. Foremost, Appellant Faulkner had no reason to believe that he had personally guaranteed the loan to Ms. Griffis for the two years subsequent to the October 10, 2007 closing, as there were no payments due Ms. Griffis during that period. It was not until Ms. Griffis filed suit against the Appellants and Mr. O’Neil, in or around December, 2009, that Mr. Faulkner realized the full extent of the damages he was facing as a result of the Cherry Hill Estates transaction and the loan guaranty that his agent had executed for him. This event was nearly twenty-six months after closing. Seven months later, after filing an Answer to Ms. Griffis’ action and after much negotiation and discussion between Ms. Griffis, Mr. Griffis and the Appellants and their counsel in the normal course, the Appellants filed their Third Party Complaint against Mr. Griffis. Thereafter, Mr. Griffis, communicating through counsel who ultimately did not appear in the case, requested an extension of time to respond, which Appellants granted. (R. p. 17).

Thus, after filing their Third Party Complaint, prior to the Motion to Dismiss, and

prior to the expiration of the statute of limitations imposed by the trial court in its Order, the Appellants extended Mr. Griffis' own time to respond as a courtesy, and thus did not have the opportunity review Mr. Griffis' Motion to Dismiss until it was ultimately served and filed with his first responsive pleadings on September 20, 2010. A hearing was expedited to October 14, 2010, and ultimately, the Court found that an expert affidavit was required to support the claims (but see argument in Section A, *infra*, for Appellants' argument that the affidavit might not be necessary) and ordered the Appellants to comply with the affidavit by a date which ultimately the Court determined was after the limitations period expired.

Under the facts of this case, equitable tolling is appropriate to deny summary judgment on the limitations issue because: a) no party is unduly prejudiced or harmed by the trial court's initial Order extending the limitations period; b) there are fact disputes and issues of law as to when the limitations period began to run; c) the Appellants complied with the trial court's Order extending the applicable limitations period; d) the Appellants themselves extended a courtesy extension to the Respondent, which contributed to the delay in the adjudication of the limitations issue beyond the earliest possible expiration date; and e) the subject matter herein and the magnitude of the loss sustained by the Appellants compel a trial on the merits of the causes of action. Appellants should not be punished when they complied with the trial court's order, particularly in a case such as this, where the interests of justice require that this case be tried on the merits. It is not equitable that the Respondent be the beneficiary of the drastic consequences of dismissal based on an alleged technical timing violation of Section 15-36-100. Unlike the parallel doctrine of equitable estoppel, equitable tolling does not require *per se* that the party invoking the doctrine be induced to delay by the

party seeking to bar its claim. Magnolia North Property Owners' Ass'n, Inc. v. Heritage Communities, Inc., 725 S.E.2d 112, 397 S.C. 348 (S.C.App. 2012).

F . The Trial Court Erred in Granting Summary Judgment on Appellants' Claim for Breach of Fiduciary Duty.

The trial court granted summary judgment on Appellants' claim against Respondent for Breach of Fiduciary Duty because the trial court determined that any duty owed by the Respondent would arise from the professional relationship between the parties, and thus Section 15-36-100 would serve to bar the claim for breach of fiduciary duty as well.

Appellants assert that the trial court's ruling grant of summary judgment on this point was premature. Although the primary historical relationship between Respondent and Mr. Faulkner was that of attorney and client, there are factual circumstances where a fiduciary duty can exist beyond the scope of a professional-client relationship, such as where one party is in a superior position to the other and as such that position enables him to exert influence over one who reposes a special trust and confidence in him. See Burwell v. South Carolina National Bank, 288 S.C. 34, 340 S.E. 2d 786 (S.C. 1986)(decided on other grounds). Thus, where a seller of real estate has basically exclusive control of the information relating to the proposed transaction, such as appraisals, contract documents, etc., that seller owes a duty to the purchaser and third parties who act in reliance on that trust. Here, Mr. Griffis, acting as seller, had primary control over the drafting and editing of key documents governing the transaction and also assisted with the procurement of a number of pre-closing appraisals with knowledge that the purchaser entity as buyer, and ultimately Mr. Faulkner as guarantor,

would rely on those documents and their trust in Mr. Griffis in deciding to proceed with the transaction. Due to the motion practice involving the negligence claims, no discovery has proceeded in this case since May, 2011, and thus Mr. Griffis' role, if any, in the procurement of the appraisal used by Woodlands Bank in underwriting its purchase money loan has not been determined. Ultimately, the property sold for \$157,250.00 at foreclosure sale in April 2012, a sum \$901,034 less than the then existing loan balance and less than twenty percent of the anticipated appraised values in 2007, which Appellants presume Woodlands Bank relied upon when lending \$850,000.00 to the Appellants, and which Mr. O'Neil relied upon when binding Cherry Hill Estates, LLC to the loan. Until Mr. Griffis' role in the procurement of the 2007 loan and appraisals is fully examined through discovery, summary judgment on the breach of fiduciary duty claim is premature.

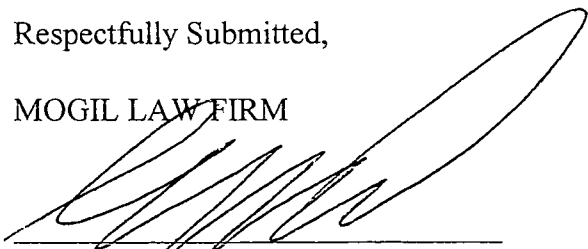
CONCLUSION

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

Dated: December 20, 2013

Respectfully Submitted,

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THE STATE OF SOUTH CAROLINA
Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court Of Common Pleas

The Honorable Marvin H. Dukes, III

Trial Court Case No. 2009-CP-07-06054
Appellate Case No. 2013-001407

Cynthia Griffis, Plaintiff,

v.

Cherry Hill Estates, LLC, Eugene O'Neil, and Ronald Faulkner;
Defendants,

Of Whom Cherry Hill Estates, LLC and Ronald Faulkner are Appellants.

Cherry Hill Estates, LLC and Ronald Faulkner, Third Party Plaintiffs,

v.

Anthony E. Griffis, ...Respondent

BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in dismissing Appellants' First, Second and Third Causes of Action,
because Appellants failed to timely obtain the expert affidavit as required by S.C. Code
Ann. §15-36-100(F)?

STATEMENT OF THE CASE

On October 10, 2007, Cynthia Griffis and Respondent Anthony E. Griffis, sold approximately 27 acres of property in Jasper County, to Appellants. (HUD Settlement Statement, R. p. 213). As part of the consideration, Cynthia Griffis received a \$200,000.00 Purchase Money Promissory Note due on October 10, 2009, said Note containing the personal guarantees of Eugene O'Neil and Appellant Ronald Faulkner. (Note, R. pp. 216-218). Additionally, a separate "Guaranty" was executed by Eugene O'Neil and Appellant. (Guaranty, R. pp. 219-221). Appellant Ronald T. Faulkner appointed John P. Qualey, Esq., as his attorney-in-fact, who executed said personal guarantees on behalf of Ronald Faulkner. (Power of Attorney, R. pp. 226-218). John P. Qualey, Esq., was also the settlement agent/attorney for the Appellants in the closing.(HUD Settlement Statement, R. p. 213).

Following default on the Note by Appellants, Cynthia Griffis brought action to collect said Note and to enforce the personal guarantees of Eugene O'Neil and Ronald Faulkner. As part of this litigation, Cherry Hill Estates, LLC and Ronald Faulkner as Third Party Plaintiffs, filed a Third Party Complaint against Anthony E. Griffis (Third Party Complaint, R. pp. 111-117). The Complaint alleged a pre-existing attorney-client relationship between Anthony E. Griffis and the Third Party Plaintiffs, and that Anthony E. Griffis was negligent and breached his ethical and fiduciary duties to Third Party Plaintiffs related to the sale of the property. (Amended Third Party Complaint, pp 4-7; R. pp.87-89). The Complaint alleges that Anthony E. Griffis did not advise Appellants, in writing, to obtain independent legal counsel (Complaint, p 2, #7; p. 4, # 17,18; p. 6, # 25; R. pp. 87-89). However, Appellants were represented at closing by independent counsel, John P. "Jack" Qualey, Esq., (Qualey deposition, p. 9, lines 10-13; p. 10, lines 21-22;R. pp.168-169).

On September 17, 2010, Anthony E. Griffis served an Answer and Counterclaim, in response to Third Party Plaintiff's Complaint, which Answer denied the substantive

allegations of negligence and breach of fiduciary duty made by Third Party Plaintiffs.(Answer, R. pp. 100-110). Contemporaneously with the filing of his Answer and Counterclaim, Anthony E. Griffis filed a Motion to Dismiss pursuant to Rule 12(b), SCRCF, and S.C. Code Ann. §15-36-100 (Supp. 2010), for the failure of Appellants to include the required expert affidavit with the Third-Party Complaint. (Motion, R. pp. 98-99).

On October 14, 2010, the trial court ruled that the First, Second, and Third Causes of Action of the Third-Party Complaint were dismissed without prejudice, and allowed Third-Party Plaintiff until November 14, 2010 to serve another Complaint "supported by the affidavit of an expert witness as required by S.C. Code Ann. Section 15-36-100 or to re-plead these matters so as not to require an expert affidavit". (Order dated October 26, 2010; R. pp. 10-11). On November 15, 2010, Third-Party Plaintiff/Appellants filed the "Amended Third-Party Complaint", which included a purported expert affidavit notarized on November 11, 2010 (Amended Complaint and Affidavit, R. pp. 84-97). On December 23, 2010, Third-Party Defendant/Respondent moved for dismissal of the said causes of action based on S.C. Code Ann. §15-36-100(F) because the expert affidavit was not obtained within the statute of limitations (Motion dated December 23, 2010; R. pp. 79-80). This motion was denied on August 3, 2012, in which the court applied "equitable tolling" to allow Appellants to file the required expert affidavit outside the applicable limitations period (Order dated August 3, 2012; R. pp. 8-9).

On August 13, 2012 Respondent filed a Motion to Reconsider the Order dated August 3, 2012 (Motion dated August 13, 2012; R. pp. 35-40). On March 5, 2013, the lower court entered an Order granting Respondent's Motion to Reconsider and entered

summary judgment for Respondent on the First, Second and Third Causes of Action of Appellants' Complaint, based on S.C. Code Ann. §15-36-100(F). (Order dated February 20, 2013; R. pp. 5-7).

Appellants filed a Motion to Reconsider the summary judgment Order dated February 20, 2013, on March 18, 2013. The lower court denied this motion on May 16, 2013, (R. pp. 3-4) and this appeal followed.

ARGUMENT

I. The First, Second and Third Causes of Action of Appellants' Complaint are within the coverage of S.C. Code Ann. §15-36-100 (Supp. 2010).

S.C. Code Ann. §15-36-100 mandates the filing of an affidavit of an expert witness contemporaneous with the filing of the complaint, if the complaint is alleging negligence against a licensed professional as listed in the statute. S.C. Code Ann. §15-36-100 (G)(2) includes attorneys at law in the professions covered by the contemporaneous filing requirement.

In the instant case, all of Appellants' causes of action are alleging a breach of duty based upon an alleged attorney-client relationship (Amended Third Party Complaint, , p. 4, #16; p. 6, #25, 28; R. pp.87, 89). Thus, Appellants were required to file an expert affidavit with the Complaint, not only to support the negligence/malpractice claim (Third Cause of Action), but also the breach of fiduciary duty claims (First and Second Causes of Action).

Appellants do not have any valid claims against Respondent, except for the allegation of a pre-existing attorney-client relationship and the breach of the duty arising from that relationship. In *RFT Mgmt Co. v. Tinsley and Adams*, 732 S.E.2d 166 (S.C. 2012) our court held that all claims arising out of the "attorney-client" relationship should

be merged with the malpractice claim (which would be subject to S.C. Code §15-36-100), even if pled as "breach of fiduciary duty" against the attorney. Here, as in *RFT Mgmt Co.*, Appellants do not (in their Amended Complaint) "set forth specific facts that demonstrate their breach of fiduciary duty claim is distinguishable because it arises out of a duty *other than* one created by the attorney-client relationship or that it is based on a different set of facts", *RTF Mgt Co.*, at p. 173.

In its first Order (Order dated October 26, 2010, R. pp. 10-11) the lower court held that the "breach of fiduciary duty" claims, as pled, would require the expert affidavit; however the court gave the Appellants the option to either obtain the expert affidavit "as required by S.C. Ann. Section 15-36-100 or to re-plead these matters so as not to require an expert affidavit". Appellants did not elect to "re-plead these matters so as not to require an expert affidavit" but simply repeated the identical allegations in their amended Complaint. (compare Complaint, pp.3-5, with Amended Complaint, pp. 4-7; R. pp.113-115 with R. pp. 87-90).¹ Although Appellants are now arguing (Appellants Brief, p. 13) that an expert affidavit is not necessary where "the subject matter lies within the ambit of common knowledge and experience....", they elected not to properly plead such facts and have now waived any objections to the lower court's Order of October 26, 2010, requiring the expert affidavit. Appellants never objected at the lower court nor perfected this issue for appeal.

**II. The statute of limitations for obtaining the expert affidavit expired
on October 9, 2010.**

The undisputed relevant facts are:

¹ Appellants never objected to the lower court's holding that the breach of fiduciary duty claims would also have to be supported by an expert affidavit as required by S.C. Code Ann. §15-36-100, and did not preserve this issue for appeal.

1. Ronald Faulkner signed agreements dated September 13, 2007, and October 8, 2007, containing the language "Cynthia Griffis shall receive a Promissory Note guaranteed by Ron Faulkner and Eugene O'Neil for \$200,000.00" (Agreement dated September 13, 2007, R. p.211, and Agreement dated October 8, 2007, R. p. 209)
2. John P. Qualey, Jr., Esq., represented the Appellants in the closing of the subject property as their attorney/agent:
 - a. Ronald Faulkner asserted an "attorney-client privilege" in the deposition of Mr. Qualey (Qualey deposition, p.9, lines 2-9, R. p.168);
 - b. Mr. Qualey was paid an attorney's fee of \$500.00 by Appellants at the closing on October 10, 2007 (line 1107 of the Settlement Statement, HUD; R. p. 214);
 - c. Mr. Qualey testified in his deposition that he represented the Appellants in the closing on October 10, 2007 (Qualey deposition: p 9, lines 10-12; p. 10, lines 21-22, R. pp.168-169; p 55-56;; R. p. A4.
3. John P. Qualey, Jr. was the agent/attorney-in-fact for Ronald Faulkner in the closing under the recorded Power of Attorney executed on October 10, 2007 (Power of Attorney, R. pp. 226-227);
4. John P. Qualey, Jr. prepared the Note with personal guaranties, and the Guaranty agreement (Note, R. pp. 216-218); Guaranty, R. pp.219-221; Deposition of Qualey, p. 35, lines 20-25; p. 36, lines 1-4, R. p.171; p. 56, lines 20-25, R. p. A4)
5. John P. Qualey, Jr., as agent and attorney-in-fact for Ronald Faulkner, executed the personal guaranties (Note and Guaranty) on October 10, 2007 (Note, R. pp.

216-218; Guaranty, R. pp. 219-221)

6. Third-Party Plaintiffs did not have the expert affidavit until at least November 11, 2010, the date of notarization of said affidavit (Expert Affidavit, R. p. 97).

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that summary judgment “shall be rendered forthwith where there is no genuine issue as to any material fact, and the moving party is entitled to a judgment as a matter of law”. The undisputed fact in this case is that John P. Qualey was the agent for Third-Party Plaintiffs, either as their attorney and/or as the attorney-in-fact. Even if Third-Party Plaintiffs maintain that they did not “discover” the liability under the guaranty on the subject loans until being sued by Cynthia Griffis, it is undisputed that their agent, John P. Qualey, had notice of the guaranty no later than October 10, 2007 (when he prepared and signed the guaranty as attorney-in-fact), and under well settled agency law, said “notice” is imputed to Third-Party Plaintiffs for purposes of starting the period of limitations. It is also undisputed that Third-Party Plaintiffs did not have the required expert affidavit (notarized on November 11, 2010) within the applicable limitations period, which expired on October 9, 2010. When there is no conflicting evidence or only one reasonable inference can be drawn from the evidence (as in this case), the determination of when a party knew or should have known that he had a claim becomes a matter of law to be decided by the trial court. *Turner v. Milliman*, 381 S.C. 101, 671 S.E.2d 636, 641 (S.C. App. 2009), citing *Arant v. Kressler*, 327 S.C. 225, 229, 489 S.E.2d 206, 208 (1997).

The three-year statute of limitations period applies to these causes of action. S.C. Code Ann. §§ 15-3-530 (1) & (5). See generally *Manios v. Nelson, Mullins, Riley & Scarborough, LLP*, 389 S.C. 126, 697 S.E.2d 644 (S.C. App. 2010) at page 654. The

“discovery rule” also applies, which states that the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence that a cause of action might exist. *Manios v. Nelson, Mullins, Riley & Scarborough, LLP, supra.*

The essential element in all of Third-Party Plaintiffs' (Appellants') causes of action is the liability imposed by the personal guaranty on the purchase money notes - for without the personal guaranties Third-Party Plaintiffs would have no damages under any of the causes of actions.² Indeed, in all of the subject causes of action, Third-Party Plaintiffs allege the guaranty as an essential part of its causes of action and damages (See Amended Third Party Complaint, p. 3, #8, 9, 11, R. p.86; p. 5, #20, 22, 23, R. p. 88; p. 6, #26, 31; R. p. 89). Commencement of the period of limitations begins when Plaintiff “could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.” *Dorman v. Campbell*, 331 S.C. 179, 500 S.E.2d 786 (S.C. App. 1998) at page 789. In the instant case, the commencement of the period begins on the date that Appellants, or their agent, knew that a personal guaranty was required on the loans (on or before date of closing on October 10, 2007).

It is undisputed that Third-Party Plaintiff Ronald Faulkner executed two Agreements, dated September 13, 2007, and October 8, 2007, containing the following language:

“Cynthia Griffis shall receive a Promissory Note guaranteed by Ron Faulkner and Eugene O’Neil for \$200,000.00 ...” (Agreements of 9/13/07 and 10/8/07, R. p.211 and R. p.209)

² Except for the personal guarantees, Appellants would have been enriched by at least the \$20,000+ received at closing (per HUD closing statement, line 303, R. p.139), and thereby would suffer no damages.

In spite of the plain language of the above, Ron Faulkner maintains that he did not know or understand that he would be guarantying the loan to Cynthia Griffis, and it is this lack of knowledge of his personal guaranty on which he bases all of his claims and defenses. Regardless of his position, if he had exercised "reasonable diligence", he "could or should have known" about his guaranty obligation when he signed the first agreement on September 13, 2007.

However, knowledge of the "personal guaranty" issue to Third-Party Plaintiffs is more easily determined, as an indisputable fact and as a matter of law, under agency law. It is well settled that "notice to the agent is notice to the principal", *Citizen's Bank v. Heyward*, 135 S.C. 190, 133 S.E. 709 (1925)³. It is undisputed that Third-Party Plaintiffs were represented by John P. Qualey, Jr., Esq., at closing, as both the Plaintiffs' closing attorney⁴ and as the attorney in fact.⁵ John P. Qualey, Jr. prepared the Promissory Note with personal guaranties, and a separate personal Guaranty document, which he executed for Ronald Faulkner as his attorney-in-fact on October 10, 2007 (Promissory Note, R. pp. 216-218; and Guaranty, R. pp.219-221). According to the testimony of John P. Qualey, Jr., Esq., he had actual knowledge of the personal guaranties on October 9, 2007, and he understood the legal liability to his client, as a result of the guaranties which he prepared and executed as attorney-in-fact for Third-Party Plaintiffs⁶. As the Court in *Dorman*,

3 Bank President was deemed the "agent" for the bank

4 Deposition of John P. Qualey, Esq., December 10, 2010, p 9, lines 10-12, R. p. 168; p 55-56. (R. p. A4)

5 Ronald T. Faulkner executed a Power of Attorney to John P. Qualey, Jr., recorded in Jasper County ROD in DB 598 at P 256, under which John P. Qualey, Jr. acted as Faulkner's agent/attorney-in-fact at the closing, and executed all closing documents including the closing statement, Promissory Notes with personal guarantees, and separate Guaranty, on October 10, 2007 (, Power of Attorney, R. pp.226-227).

6 Qualey deposition, pages 58-59 ; R. p.A5; Mr. Qualey further stated, p 58, lines 9-16; R. p.A5, that there "is no question in my mind that I had that (express) authorization" to execute the guarantees to Cynthia Griffis and to Woodlands Bank on Ronald Faulkner's behalf."

supra at 789, in addressing the limitations period issue, stated “Nevertheless, the question of whether they actually received the letter is irrelevant, for knowledge of the information in Buist’s letter was imputed to the Dormans through their agent, attorney C.J. Manos.” The Court, citing *Crystal Ice Co. v. First Colonial Corp.*, 273 S.C. 306 (1979) stated “It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority”, and further, citing *Faulkner v. Millar*, 319 S.C. 216 (1995) reaffirmed that “notice to an attorney is notice to the client”⁷. In *Crystal Ice Co.*, the court even stated that “The relation of agency need not depend upon express appointment, and acceptance thereof, but may be, and frequently is, implied from the words and conduct of the parties and circumstances of the particular case ... notwithstanding a denial by the alleged principal and whether or not the parties understood it to be an agency”, *Crystal Ice Co.*, 257 S.E.2d at p 497. In the instant case, there was an express appointment by Ronald Faulkner of John P. Qualey, Esq., through the recorded Power of Attorney – so the issue of “agency” in the instant case is undisputed (regardless of what Mr. Faulkner may allege). (See Power of Attorney, R. pp. 226-227)

Therefore, regardless of Third-Party Plaintiff’s/Appellants’ position that he did not know that he would be personally guarantying the Note, he is bound by the notice to his agent, John P. Qualey, Jr., on October 9, 2007⁸, and by the execution of the personal guaranties by John P. Qualey, Jr., as attorney-in-fact, on October 10, 2007. The three year

⁷ In *Faulkner*, *fn 1*, notice to the Seller’s real estate agent, Dale Dawson, was also deemed to be effective notice to the Seller

⁸ Qualey deposition, p 58, lines 22-25; p. 59, lines 1-6; R. p.A5: Q:” Is there any doubt in your mind that as of October 9, 2007, you as the attorney and later as the attorney in fact had notice that there were personal guarantees required for the \$200,000 Note given to Cynthia Griffis? Qualey’s answer: “You put me on notice of that requirement.” Q: “On October 9, 2007?”; A: “Correct”

statute of limitations expired on October 9, 2010, and Third-Party Plaintiff did not obtain the expert affidavit until after November 11, 2010 (see date of expert affidavit, R. p. 97). Therefore, Third-Party Plaintiff's First, Second, and Third Causes of Action must be dismissed pursuant to S.C. Code Ann. §15-36-100(F)⁹.

III. There are no exceptions for Appellants to file an expert affidavit obtained after expiration of the statute of limitations.

A. No Statutory Exceptions:

S. C. Ann. § 15-36-100(F) provides, in pertinent part:

[I]f a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time pursuant to this section..." (**emphasis added**)

There are no exceptions under S.C. Code Ann. §15-36-100 available to Appellants for the late filing of the expert affidavit outside the limitations period:

(a) §15-36-100(C) does not apply because the Plaintiff did not allege in his original Complaint (filed June 23, 2010), (Complaint, R. pp.111-117), that the required affidavit could not be acquired before expiration of the period of limitations.

(b) §15-36-100(D) does not apply because it refers to the late filing exception contained in §15-36-100(C) and does not over-ride the mandatory filing requirement of §15-36-100(B) and the mandatory requirements of §15-36-100(F).

Statutory interpretation is a question of law. *City of Newberry v. Newberry Elec. Co-op, Inc.*, 387 S.C. 254, 256, 692 S.E.2d 510, 512 (2010). The primary rule of statutory

⁹ Even the hearing on October 14, 2010, and the resulting Order dated October 26, 2010 (R. pp.10-11) are outside the period of limitations which expired on or before October 10, 2010. The Court cannot extend an expired period of limitations.

construction is to ascertain and give effect to the intent of the legislature. *Ranucci v. Crain*, 723 S.E.2d 242, 244 (S.C. App. 2012); *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. *Id.* When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).

In *Ranucci*, this Court held that the expert affidavit filed pursuant to section 15-36-100 is "part of the complaint" and is a pleading for the purpose of the circuit court's evaluation of motions and the merits of the plaintiff's case for granting summary judgment under Rule 56(c), SCRCP. *Rannuci, supra*, at p. 247. The *Rannuci* concurring opinion states "To the majority's analysis, I would add that section 15-36-100 does not ever toll the statute of limitations", citing section 15-36-100(D) which specifically provides "[t]his section does not extend an applicable period of limitations." *Ranucci, supra*, at p. 248.

Therefore, the "relation back" doctrine of Rule 15(c), SCRCP, does not apply to S.C. Code §15-36-100(F) - which clearly states that, if a complaint is filed without the required affidavit, it "is not subject to renewal after the expiration of the applicable statute of limitations..."

B. No Equitable Exceptions:

1. As acknowledged in the Order dated August 3, 2012, "there was certainly no deception or allegations of deception by the Defendant". (Order dated August 3, 2012, R. p. 9)
2. The sole basis for the lower court in invoking equitable tolling, in its Order of

August 3, 2012 (R. p. 9) is that the Order itself “misleads the Plaintiff on the issue of deadlines”. This is error because:

(a) Appellants' attorney, Michael Mogil, actually prepared the proposed Order which was adopted by the Court on October 27, 2010, (Email from Michael Mogil to Marvin Dukes dated October 26, 2010; R. p.228) without change. It is hard to conclude that the Order itself “misleads the Plaintiff” when it was prepared by the Plaintiff/Appellant, with no objections from Defendant or changes by the Court.

(b) The Order of October 27, 2010, did not expressly grant Appellants an extension to obtain the required expert affidavit by November 14, 2010 – but rather an extension to file an Amended Complaint supported by the expert affidavit “as *required* by S.C. Code Section 15-36-100”. The *requirement* of the statute is that the expert affidavit must be *obtained* within the period of limitations. Arguably, the requirement of the statute would have been met if the amended Complaint was filed (after the period of limitations) with an expert affidavit obtained/dated before October 10, 2010 – but the expert affidavit was not timely obtained and Appellants’ claims must be dismissed.

(c) There can be no “detrimental reliance”, by the Plaintiff/Appellants on the Order or any arguments that the Order misleads Plaintiff on the issue of deadlines (which is an issue of law from which (i.e. the ignorance thereof) there should not be an excuse, because the “deadline” had already lapsed on the date of the hearing (October 14, 2010) and the resulting Order dated October 26, 2010. Further, at the hearing on October 14, 2010, Respondent had no knowledge whether Appellants actually had obtained the expert affidavit prior to October 9, 2010, and was under no obligation to inquire of such matter at that time. However, if Appellants had admitted that the expert affidavit had not been

obtained at that hearing, the Court should have dismissed the Appellants' claims at that time pursuant to S.C. Code Ann. Section 15-30-100(F).

(d) "Ignorance of the law" is no excuse for Appellants to be allowed an extension to obtain the expert affidavit outside the expiration of the period of limitations, contrary to the requirements of S.C. Code Section 15-36-100(F). The "issue of deadlines" is expressly set out in the statute and there is no one to blame except Appellants for failure to read and understand the statute. Appellants filed the original Complaint in June, 2010, and had from then until October 9, 2010, to comply with the statute by obtaining an expert affidavit. It is rarely that a mistake in point of law can afford ground for relief, *Colburn v. Holland*, 35 S.C. Eq. 176 (S.C. App. Eq. 1868). A court of equity will not, in the absence of fraud or undue influence, grant relief from the consequence of a mistake of law. "Relief will not be granted where the complaining party took measure to secure knowledge as to the state of the law and, being misinformed, placed himself in the prejudicial situation of which he later complains. Everyone is presumed to have knowledge of the law and must exercise reasonable care to protect his interests." 27A Am.Jur.2d *Equity* § 7 (1996); *Smothers v. U.S. Fidelity and Guar. Co.*, 322 S.C. 207, 470 S.E.2d 858 (Ct.App.1996) *Id.*, 322 S.C. at 210-211, 470 S.E.2d at 860. *Estate of Holden*, 539 S.E.2d 703, 343 S.C. 267 (S.C. 2000).

(e) The Court should not, *of its own motion*, invoke equitable tolling. In *Hooper v. Ebenezer Senior Services and Rehabilitation Services*, 368 S.C.108 (SC 2009) the Court stated that "the party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use". The Court further stated that the "party who seeks to invoke equitable tolling bears the devoir of persuasion and must, therefore,

establish a compelling basis for awarding such relief”. In this case, Appellants never filed any Motion or otherwise argued in any way for the application of equitable tolling.

Further, there are no “compelling” grounds for equitable tolling, such as deceptive acts of Defendant. As stated in *Hooper*, “equitable tolling applies where the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering facts essential to the filing of a timely lawsuit”. In this case, there are no compelling reasons to apply equitable tolling, and Appellants never made any request or Motion for such equitable tolling relief, much less established any compelling reason for such relief.

(f) As stated in *Hooper*, equitable tolling is a doctrine that should be used sparingly and only when there are compelling equitable considerations. In the instant case, there are no “compelling equitable considerations”, other than the Appellants’ ignorance of the statutory requirement that the expert affidavit be obtained within the period of limitations. Our court has refused to apply equitable tolling based upon *Hooper*, even upon Motion of the Plaintiff and with arguably some equitable grounds (which are totally absent here). In *Kimmer v. Wright*, 719 S.E.2d 265 (S.C. App. 2011), the Court stated “we are mindful the supreme court cautioned the doctrine of equitable tolling was to be used sparingly. We find application of the doctrine is not justified under the circumstances of this case”. In *Kimmer*, there was a tolling agreement between the parties, to allow a workman’s compensation claim to be pursued – but the court rejected this as a ground to apply equitable tolling. In *Holmes v. Marion School District*, 093011 SCDC (US District Court, Florence Division, September 30, 2011) the court stated that “*Hooper* is inapposite to the facts here because *Hooper* involved the question of whether equitable tolling should be applied in limited circumstances such as when a defendant fails to properly list its

registered agent for service with the South Carolina Secretary of State, as required by state law. *Hooper*, 687 S.E.2d at 32-34. The South Carolina Supreme Court noted equitable tolling 'should be used sparingly'. *Id* at 33."

IV. Rebuttal to Appellants' Arguments:

A. An Expert Affidavit was necessary to support the Negligence and Breach of Duty Claims. (See Appellants' Brief, p. 13).

As noted in the appealed Order (Order dated February 20, 2013; R. pp.5-7), all of these claims arise out of a duty created by the attorney-client relationship, and as such required a supporting expert affidavit pursuant to S.C. Code §15-36-100. See generally *RFT Mgmt Co. v. Tinsley and Adams*, 732 S.E.2d 166 (S.C. 2012).

Appellants had the opportunity, pursuant to the lower court's Order dated October 26, 2010, which findings are not the subject of this appeal (Order dated October 26, 2010, R. pp.10-11), to "re-plead these matters so as not to require an expert affidavit", but elected not to "re-plead these matters" in their amended Third Party Complaint, and have thereby waived any such right and/or arguments regarding this issue now. Appellants cannot "appeal" an issue never raised or objected to at the lower court.

B. Regarding the "discovery rule", Appellants are bound by their agent's actual notice on October 10, 2007, and the statute of limitations expired on October 9, 2010. (See Appellants' Brief, pp 14-18)

Regardless of Third-Party Plaintiff's/Appellants' position that he did not know that he would be personally guarantying the Note, he is bound by the notice to his agent, John P. Qualey, Jr., on October 9, 2007, and by the execution of the personal guaranties by John P. Qualey, Jr., as attorney-in-fact, on October 10, 2007. *Crystal Ice Co. v. First Colonial*

Corp. 272 S.C. 306 (1979).

C. The "relation-back" doctrine does not apply to S.C. Code §15-36-100. (See Appellants' Brief, pp. 18-19).

The plain language of section 15-36-100(F) states that, if the required expert affidavit is not filed with the complaint, "the complaint is not subject to renewal after the expiration of the applicable period of limitation"... See generally *Ranucci v. Crain*, 723 S.E.2d 242, 244 (S.C. App. 2012).

D. Appellants' "law of the case" argument is without merit. (See Appellants' Brief, pp. 19-20)

"The law of the case" argument of Appellants is without merit in that, contrary to Appellants' argument that the Order expressly allowed the Third Party Plaintiffs until November 14, 2010, to file an Amended Complaint with the necessary affidavit, the Order states that the amended complaint must be supported by the affidavit of an expert witness "as required by S.C. Code Section 15-36-100".¹⁰ This statutory "requirement" is that the Plaintiffs must have the requisite affidavit prior to expiration of the period of limitations – which they did not. Further, regardless of Appellants' interpretation of the "law of the case", a court does not have the power to change the plain meaning of a statute unless there are equitable exceptions. *Sloan v. Hardee*, 371 S.C. 495, 498 (2007). Certainly, a court should not, of its own motion, extend an expired period of limitations (thereby overriding the statute).

E. Equitable Tolling does not apply. (Appellants' Brief, pp 20-24)

Appellants never argued in any way for the application of the "equitable tolling"

¹⁰ Section 15-36-100(D) refers only to the exception contained in 15-36-100(C) and not to the instant facts.

doctrine, and never filed any Motion or memorandum containing such an argument. This is a condition precedent to the application of the doctrine, *Hooper v. Ebenezer Senior Services and Rehabilitation Services*, 368 S.C. 108 (SC 2009). Further, because Appellants never raised this issue at the lower court, it should not be a valid preserved exception on appeal. There are certainly no equitable grounds, as stated in this Court's Order dated August 3, 2012 (R. p. 9): "there was certainly no deception or allegations of deception by the Defendant".

Even if you assume, for the sake of argument, that Appellants are entitled to toll the period of limitations for any extension granted to Respondent to file the Answer, Appellants still would not have obtained the required expert affidavit within such extended/tolled period of limitations. Although the Complaint, dated June 18, 2010, was filed in June, 2010, it was not served until on or about July 30, 2010 (per stipulation by Appellants on page 2, #4, of "Appellants' Return to Respondent's Motion to Correct and Supplement Record on Appeal" dated January 2, 2014). Respondent/defendant would have through August 30, 2010, to file an Answer. The Answer was served on September 17, 2010, which was less than a three (3) week extension.(Answer, R. p. 110) If you add (toll) the period of limitations for three weeks (from October 9, 2010, the original limitations deadline) the "tolled" period of limitations would expire on November 1, 2010. Plaintiffs/Appellants did not "have" the required expert affidavit until November 11, 2010, and still would not meet the requirement of SC Code 15-36-100(F).

Appellants' argument ignores the requirement of S.C. Code 15-36-100 that the original Complaint filed in June, 2010, was required to have the expert affidavit attached as an integral part of the pleadings. This legal requirement is not something that Respondent

should put Appellants on notice of, or educate Appellants as to the law – ignorance of the law is no excuse.

F. An expert affidavit was required to support Appellants claims for Breach of Fiduciary Duty, because the duty arose from the "attorney-client relationship". (See Appellants' Brief pp. 24-25)

Our court in *RFT Mgmt Co. v. Tinsley and Adams*, 732 S.E.2d 166, 173 (S.C. 2012) held that all claims arising out of the “attorney-client” relationship should be "merged" into the malpractice claim and thereby are subject to S.C. Code §15-36-100 even if pled as “breach of fiduciary duty” against the attorney. Further, Appellants waived their right to amend their pleadings "so as not to require an expert affidavit" as provided in the lower court's Order dated October 26, 2010 (R. p.11) - by electing not to re-plead said complaint to allege facts supporting a duty other than one arising from an attorney-client relationship. Further, the Appellants never objected to the lower court's holding that the "breach of fiduciary duty" claims required an expert affidavit, and thereby did not preserve this as an issue on appeal.

V. **Additional Sustaining Grounds.**

Our courts have ruled that our Rules of Professional Conduct do not, in themselves, create a cause of action or establish evidence of negligence per se. The rules are intended for guidance and disciplinary purposes, not to form a basis for civil litigation. *Spence v. Wingate*, 716 SE2d 920 (SC 2011), citing *Smith v. Haynsworth et al*, 472 S.E.2d (1996). A legal malpractice action consists of four elements: (1) attorney-client relationship, (2) breach of duty by the attorney, (3) damage to the client, and (4) proximate cause of the client’s damage by the breach. *Kimmer v. Wright*, 719 S.E.2d 265 (S.C. App 2011). In the

instant case, (1) appellants were represented by attorney Jack Qualey, not respondent, and there was no "attorney-client relationship" between appellants and respondent related to the transaction giving rise to damages to appellants; (2) there was no "duty" between respondent and appellants related to the closing of the transaction, and certainly appellants had no "right to rely" on respondent when appellants had their own independent counsel in the closing of the transaction; (3) all of Appellants' damages arise solely from the personal guarantees, which were prepared and executed (as attorney in fact) by attorney Jack Qualey. Respondent did not "proximately cause" any damage to Appellants -- "but for" the personal guaranties which were prepared by Jack Qualey as Appellants' attorney, and executed by Jack Qualey as attorney-in-fact, there would have been no damages to Appellants.

CONCLUSION

For the reasons stated, this Court should affirm the Order of the circuit court dismissing the Appellants' First, Second, and Third Causes of Action, because Appellants failed to timely obtain the expert affidavit required by S.C. Code Ann. §15-36-100(F).

Respectfully Submitted,



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~~January~~
~~December~~ 9, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2009-CP-07-6054
Appellate Case No. 2013-001407

Cynthia Griffis,		Plaintiff,
	v.	
Cherry Hill Estates, LLC, Eugene O'Neil and and Ronald Faulkner,		Defendants,
Of whom Cherry Hill Estates, LLC and Ronald Faulkner are		Appellants.
Cherry Hill Estates, LLC and Ronald Faulkner,		Third Party Plaintiffs,
	v.	
Anthony E. Griffis,		Respondent.

FINAL REPLY BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL
AS ASSERTED IN APPELLANTS' INITIAL BRIEF

1. DID THE TRIAL COURT ERR IN FINDING THAT AN EXPERT AFFIDAVIT WAS NECESSARY TO SUPPORT APPELLANTS' CLAIMS FOR NEGLIGENCE AND BREACH OF FIDUCIARY DUTY?
2. DID THE TRIAL COURT ERR IN FINDING THAT THE STATUTE OF LIMITATIONS WAS TRIGGERED ON THE CLOSING DATE, AS OPPOSED TO A LATER DISCOVERY DATE?
3. DID THE TRIAL COURT ERR IN FAILING TO APPLY THE RELATION-BACK DOCTRINE, AND IN DETERMINING THAT THE APPELLANTS' AMENDED COMPLAINT AND EXPERT AFFIDAVIT WERE TIME-BARRED BY THE STATUTE OF LIMITATIONS?
4. DID THE TRIAL COURT ERR IN FAILING TO FOLLOW THE "LAW OF THE CASE"?
5. DID THE TRIAL COURT ERR IN DISALLOWING THE APPLICATION OF EQUITABLE TOLLING?
6. DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT ON APPELLANTS' CLAIM FOR BREACH OF FIDUCIARY DUTY?

ADDITIONAL ISSUE RAISED BY RESPONDENT

"Did the trial court err in dismissing Appellants' First, Second and Third Causes of Action, because Appellants failed to timely obtain the expert affidavit as required by S.C. Code Ann. § 15-36-100(F)?"

ARGUMENT

A. NO EXPERT AFFIDAVIT WAS NEEDED TO ALLOW THE JURY TO EVALUATE APPELLANTS' CLAIMS.

Respondent's primary argument, set forth in his Reply Brief and in written and oral argument before the court below, is that Appellants' first, second and third causes of action amounted to a single allegation of attorney malpractice and were therefore improperly pled without an expert affidavit. However, Appellants alleged that Respondent engaged in fraudulent activity and induced the Appellants to participate in a sham transaction that enriched the Respondent and his former wife, required the concealment of material information from a certain lending institution, and resulted in a voidable, and likely illegal set of notes and guarantees. These allegations required no supporting expert affidavit, both because the subject matter falls within the ambit of common knowledge and experience, and because the fiduciary relationship alleged between the parties transcended the attorney-client relationship.

i. No expert affidavit where subject matter lies within the ambit of common knowledge and experience

In their Memorandum in Opposition to Motion for Summary Judgment, Appellants argued that the subject matter at issue in this case lies within the "ambit of common knowledge and experience," such that no special learning is needed to evaluate the Respondent's conduct, and no expert affidavit is required under Section 15-36-100(c)(2). (R. p. 47, lines 1-17). Section 15-36-100 was added to the South Carolina Frivolous Civil Proceedings Sanctions Act in 2005. It generally requires the contemporaneous filing of an

expert witness affidavit in an action alleging professional negligence.¹ Section 15-36-100(C)(2) waives the contemporaneous filing requirement where “a pleaded specification of negligence involve(s) subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.” Id. This exception codifies a standard applied to professional malpractice cases in South Carolina prior to the adoption of Section 15-36-100.

Prior to Section 15-36-100(c)(2), it was well settled that, where the evidence permits the jury to recognize or infer a breach of duty without the aid of expert testimony, such testimony is not required in order for the case to go to the jury. Stallings v. Ratliff, 356 S.E.2d 414, 292 S.C. 349 (S.C.App. 1987). The Stallings Court found: “[t]he issue of breach of duty does not turn on a ritual incantation of certain magic words by an expert witness. Breach of duty is a fact question to be decided by the jury on the evidence presented in each case.” Id.

The application of the common knowledge depends on the particular facts of a case. Sharpe v. South Carolina Dept. of Mental Health, 354 S.E.2d 778, 292 S.C. 11 (S.C.App. 1987) When expert testimony is not required, the plaintiff must offer evidence that rises above “mere speculation or conjecture.” Welch v. Whitaker, 282 S.C. 251, 317 S.E.2d 758 (Ct.App.1984). The majority of South Carolina reported decisions involving the application of the common knowledge exception arose from cases involving allegations of medical malpractice.² Although the subject matter at issue in these cases was medical treatment, the

¹ The expert affidavit is only required to address the breach element of a common law negligence claim, and not causation. Grier v. AMISUB of South Carolina, Inc., 725 S.E.2d 693,697, 397 S.C. 532 (S.C. 2012)

² In Southeastern Housing Foundation v. Smith, 670 S.E.2d 680, 380 S.C. 621 (S.C.App. 2008), this Court

cases are nonetheless instructive as to how the common knowledge exception may be applied here.

In Sharpe, this Court declined to apply the exception where the Appellant had argued at trial that expert scientific knowledge was required to show negligence. Sharpe, *supra*, 292 S.C. 11, 14. Finding both that the Appellant's argument in appeal was inconsistent with his argument at trial, and that the proper treatment of a mental patient and the standard of care required in deciding to discharge him under a plan of outpatient care is not a matter of common knowledge to the average layman, the Court held that the common knowledge exception did not apply. The Welch court declined to apply the exception where the issue was whether the "grinding" of an eye to remove rust particles could increase the damage to a cornea. Welch, *supra*, 317 S.E.2d 758, 762. In Pederson v. Gould, 341 S.E.2d 633, 288 S.C. 141 (S.C. 1986), the South Carolina Supreme Court considered whether damage to the uterus which occurred during a hysterectomy fell under the common knowledge exception. Determining that the activity in question was a complicated surgical procedure, the Court found that the subject matter was not within the ambit of common knowledge and experience. Id.

On the other hand, this Court has found that the common knowledge exception is

wrote that "the standard of care for legal malpractice is outside the ambit of the common knowledge of laypersons." However, the Court did not proffer an explanation as to that reasoning, and Counsel is aware of no other reported concurring precedent. Certainly, the very existence of the common knowledge exception in the statute, as well as the extensive references to the exception in matters involving professional malpractice throughout our jurisprudence, indicate that there are instances where the standard of care for professional malpractice involves subject matter that may fall within the ambit of common knowledge and experience. Appellants aver that this is also true with legal malpractice; that is, if the standard of care for any professional malpractice case may fall within the ambit of common knowledge, then there are instances where the standard of care for legal malpractice falls within the ambit of common knowledge. The present case is one of those instances.

properly applied where the particular facts of a case merit. For instance, in Hickman v. Sexton Dental Clinic, P.A., 367 S.E.2d 453, 295 S.C. 164 (S.C.App. 1988), this Court found: “Hickman's testimony that an unsupervised dental assistant rammed a sharp object into her mouth is evidence rising above mere speculation or conjecture that the clinic failed to exercise due care in rendering professional services.”

Here, the particular facts of this case support the application of the common knowledge exception. The Appellants offered evidence that Respondent used his historic knowledge of Appellants and their financial condition to devise a plan whereby Respondent's divorce settlement would be fully funded through a sale of property at an inflated price, and through which Respondent would benefit both from the sale of the property and by being absolved of any residual liability on the note or guarantee. This evidence rises above speculation and conjecture and would permit the jury to recognize a breach of duty without the aid of expert testimony. The facts as alleged do not engender a nuanced debate as to the legal standard of duty owed from an attorney to his client; the activity alleged so clearly violated that duty that no expert testimony should be required in order for this case to go to the jury.

ii. Allegations for breach of fiduciary duty owed to Ronald Faulkner and breach of fiduciary duty owed to Cherry Hill Estates, LLC involved activity that expanded beyond attorney malpractice and therefore required no affidavit.

Only one of Appellants' six causes of action is limited in scope to a malpractice claim: the Third Cause of Action (professional negligence claimed by Ronald Faulkner and Cherry Hill Estates, LLC). The other causes of action- breach of fiduciary duty owed to

Ronald Faulkner, breach of fiduciary duty owed to Cherry Hill Estates, LLC, unjust enrichment, indemnification, and fraud in the inducement³- all involved allegations that would support claims of attorney malpractice, but which also arose independently from the attorney-client relationship, and therefore needed no expert affidavit in order to be properly pled.

“A claim for breach of fiduciary duty, as a general matter, is distinguishable from a claim for legal malpractice because it can arise in contexts other than one involving an attorney-client relationship.” RFT Management Co., L.L.C. v. Tinsley & Adams L.L.P., 732 S.E.2d 166, 399 S.C. 322 (S.C. 2012). “A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interest of the one imposing the confidence.” Brown v. Pearson, 483 S.E.2d 477, 326 S.C. 409 (S.C.App. 1997). Where there is an ongoing attorney/client relationship, the attorney has a fiduciary duty to deal with the client in good faith; whether the attorney has breached that fiduciary duty is a factual issue for the jury. Hotz v. Minyard, 403 S.E.2d 634, 304 S.C. 225 (S.C. 1991).

Appellants allege that, while Respondent had historically served as an attorney to Eugene O’Neil and Ronald Faulkner for certain transactions, he approached Mr. O’Neil to involve in the subject transaction not just as an attorney, but also as a proposed business partner. Later, Respondent and Mr. O’Neil solicited Mr. Faulkner to participate in the transaction. (R. pp. 85-86). Based upon a prior course of dealing with Respondent, Appellants agreed to involve in a proposed business transaction. Appellant Cherry Hill

³ Appellants’ claim for fraudulent inducement has been dismissed without prejudice.

Estates, LLC, which was managed by Mr. O'Neil, was at some point verbally directed to use Jack Qualey as a settlement agent. There is no record that Mr. Faulkner was directed to use a separate attorney for the transaction, or that he engaged Mr. Qualey other than to execute documents by Power of Attorney. While Respondent, at that point, continued to owe the Appellants legal and ethical duties as an attorney, he simultaneously owed Appellants fiduciary duties as a business associate. He also owed them a duty not to breach a standard of care as regards to those business dealings.

Respondent owed Appellants duty not to engage in self dealing, and a duty to not involve Appellants in a loan transaction which required nondisclosure of material facts, i.e. the refund of sellers' proceeds at closing, to ensure lender participation. Further, he owed them a duty to ensure that the terms of the transaction were materially fair, that the purchase price negotiated and paid was fair, and that his partners' risk was commensurate with their potential gain or return. In fact, the transaction as structured resulted in a closing where in addition to the funds generated to pay Respondent, his wife, and Cherry Hill Estates, LLC, Respondent received a one-third interest in the contemplated Cherry Hill Estates project without any personal liability on the more than One Million Dollars in indebtedness incurred to finance the project. Historically, the subject real property sold at foreclosure for less than Two Hundred Thousand Dollars, a more than eighty percent decrease in value in five years, and the entire deficiency has been borne by Appellants and Mr. O'Neil. Appellants respectfully submit that even were Respondent not their prior attorney, and simply a business partner who structured from and benefited from a deal, they would be asserting a claim for breach of fiduciary duty to recover their losses sustained from this transaction.

iii. No Expert needed where defendant admits the standard of care.

This Court has held that expert testimony is not required in a legal malpractice case where the defendant admits the standard of care that was owed to the plaintiff. Sims v. Hall, 592 S.E.2d 315, 357 S.C. 288 (S.C.App. 2003) (Citing Mali v. Odom, 367 S.E.2d 166, 295 S.C. 78 (S.C.App. 1988)). In the Third Party Answer of Anthony E. Griffis and Counterclaim v. Third Party Plaintiffs ("Third Party Answer and Counterclaim"), Respondent alleged: "Ronald Faulkner and his business partner Eugene O'Neil owed Anthony E. Griffis a fiduciary duty to act in good faith, to be loyal, and to exercise due care regarding the business of Cherry Hill Estates, LLC [...]" (R. p. 106, lines 4-7). This alleged fiduciary duty owed by Mr. Faulkner and Mr. O'Neil to Mr. Griffis requires that there was a fiduciary relationship among said parties. Therefore, in alleging that he was owed a fiduciary duty, Respondent implicitly admits that there was a fiduciary relationship, with attendant duties to act in good faith, to be loyal, and to exercise due care. By this admission, Respondent, a practicing lawyer, established the applicable standard of care, and no additional expert testimony is required. Mali v. Odom, 367 S.E.2d 166, 169, 295 S.C. 78, 81 (S.C.App. 1988).

B. SECTION 15-36-100 GRANTS THE TRIAL COURT DISCRETION TO EXTEND THE DEADLINE FOR FILING OF EXPERT AFFIDAVITS

As set forth in Section A above, Appellants pled facts which fall within the ambit of common knowledge and thus restate their belief that an expert affidavit was not required to support the gravamen of their Complaint. Nonetheless, an affidavit outlining specific breaches of Respondent's duty of due care was readily obtained and attached to the Amended Complaint served November, 14, 2010. (R. pp. 93-97).

Addressing Respondent's arguments in Section III of his initial brief, Appellants note that Section 15-36-100 by its terms confers the trial court with the ability to exercise discretion in these matters in two places. That section provides:

The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires. If an affidavit is not filed within the period specified in this subsection or as extended by the trial court and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim. The filing of a motion to dismiss pursuant to this Section, shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

S.C. Code Ann. Sec. 15-36-100. Thus, the statute grants the trial court clear discretion to extend the time within which the affidavit must be filed if justice requires. In the instant case, Appellants moved at the hearing on October 14, 2010, for leave to amend their Complaint and file an affidavit. The trial court exercised its discretion, and after hearing on the matter, the court did extend the time to serve an affidavit until November 14, 2010, per its Order of October 27, 2010. (R. pp. 10-11). Appellants complied with this time deadline, and this Order and extension of time became the law of the case.

Further, the Statute by its terms notes that upon the filing of a motion to dismiss by the defendant against whom the affidavit should have been filed, the complaint is *subject to* dismissal for failure to state a claim. The Statute does not state that the complaint *shall be* dismissed. Rather, it states that the complaint is "subject to" dismissal. By its terms, the

“subject to” language requires the trial court to make a decision based on the interest of justice, and in this case, the trial court did so, and granted Appellants a short period of time to obtain their expert affidavit, which they did then obtain.

Respondent further argues that the “relation back” doctrine does not toll or extend the limitations period to procure an affidavit required by Section 15-36-100. However, Respondent cites no law or precedent within our jurisprudence to suggest that Section 15-36-100 rescinds the relation back doctrine or overrules South Carolina Rules of Civil Procedure Rule 15(c). Indeed, as Respondent points out, the Ranucci court held that the expert affidavit filed pursuant to Section 15-36-100 is “part of the complaint.” (Resp. Br. p. 15 (citing Ranucci v. Crain, 723 S.E.2d 242, 247 (S.C. App. 2012))). As the affidavit is part of the complaint, it follows logically that the trial court’s Order allowing Appellants until November 14, 2011 to file an amended complaint would also authorize Appellants to file the expert affidavit with the amended complaint, which Appellants did do.

Re-stated, even if this Court were to reject Appellants’ argument that the discovery rule is directly applicable to the Section 15-36-100 affidavit timeline disputed herein, and were to apply a strict event-based statute of limitations triggered by the execution of a loan guaranty by an agent power of attorney, who admits he has had no direct communication with his principal regarding the matter, the fact remains that Respondent was served with a detailed complaint in June, 2010 outlining a number of causes of action well within the limitations period for those causes of action, by any construction of that term. It is simply inequitable to bar the claims sounding in professional negligence because the supporting affidavit was not procured until a date which is arguably one month after the expiration of the

limitations period viewed under the most restrictive interpretation of that term.

C. APPELLANTS' REQUEST FOR EQUITABLE RELIEF WAS PROPERLY PRESERVED

Respondent further argues that the doctrine of equitable tolling does not apply because the Court should not, of its own motion, invoke equitable tolling. However, this argument belies the procedural history of this case. In actuality, Appellants raised equitable issues at every motion hearing in this case, commencing in October 2010 and proceeding through the hearings in 2011, which resulted in denial of summary judgment. Appellants raised equitable theories such as the law of the case, relation back, and interest of justice in their Memorandum in Opposition to Summary Judgment filed March 28, 2011. (R. pp. 41-70). Finally, in their Motion to Reconsider, and at the hearing therein argued on or about April 11, 2013, Appellants argued and introduced evidence, in the form of email correspondence between the undersigned and prospective counsel for Respondent, that Appellants in fact granted Respondent an extension of time to respond to their Third Party Complaint (R. p. 17), and this generosity resulted in Respondent's Motion to Dismiss, which first raised the Section 15-36-100 affidavit requirement, being filed three weeks before Respondent's claimed limitations deadline. Thus, by the time the matter was argued, one month later, at which point the Court ruled that an affidavit was in fact required, the time for filing the affidavit, as argued by Respondent, had theoretically expired. Had Appellants denied Respondent's request for extended time, the Section 15-36-100 matters would have been raised a month earlier, and the pleading corrected within Respondent's construction of the limitations period. Appellants properly argued this matter at the Court below. Equitable

tolling was not invoked by the Court on its own motion—it was raised by Appellants.

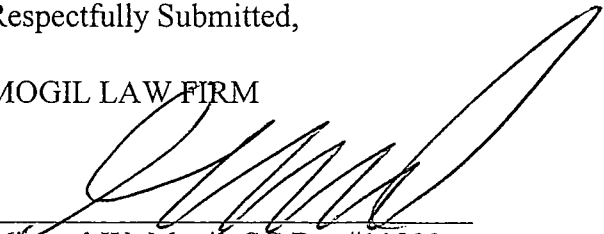
CONCLUSION

Appellants do not dispute that Respondent is entitled to assert the technical defenses he is asserting. In the final analysis, however, Respondent's argument is merely attempt to avoid defending a *per se* negligence case on its merits by invoking a technical argument that the claims asserted required an accompanying expert affidavit, and that the affidavit was submitted past the earliest deadline under a restrictive interpretation. As argued at the trial court below, the interests of justice compel that summary judgment be denied at this juncture and that all causes of action be tried on their merits.

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Respectfully Submitted,

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