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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Kathy Ouzts Rushton, Special Referee

Appellate Case No. 2014-001742

Bernard Loyer, Jr. and Sherry Loyer, Respondents.

v.

S17 Owners Association, Inc.; John L. Avent; Frances Avent; Sylvia S. Berger; Robert J. Berning; Jeanne M. Clavel; Greg Connell; Gerald Crawford; Bruce C. Douglas; Jonathan D. Dunn; Les Galazka; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Laura Linn; Roger McCoig; Charles Wilmont Miller; Michael O'Brien; Carolyn M. Rischbieter; William Satcher and Belinda Smith-Sullivan, Defendants,

OF WHOM S17 Owners Association, Inc.; John L. Avent; Frances Avent; Sylvia S. Berger; Greg Connell; Jonathan D. Dunn; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Michael O'Brien; Carolyn M. Rischbieter; and Belinda Smith-Sullivan, are Appellants.

And Charles Wilmont Miller is a Respondent.

RECORD ON APPEAL

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Sherry Loyer, *pro se*
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Trenton, SC 29847ii

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Attorney for Respondent, C.W. Miller

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STATE OF SOUTH CAROLINA

2019 OCT -5 AM 10:55

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

COUNTY OF EDGEFIELD

Bernard Loyer, Jr. and Sherry Loyer,
Plaintiffs

vs.

S-17 Owners Association, Inc., et al

Defendants.

ORDER
(Continuance)

FILE NO. 09-CP-19-00353

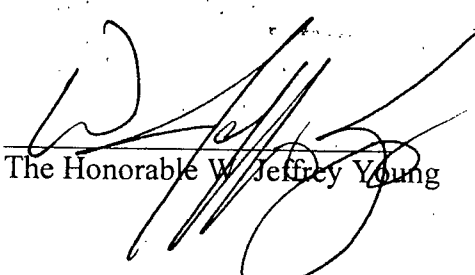
Pursuant to the status conference held at 9:00 a.m. in Chambers at the Edgefield County Courthouse on September 23, 2010 regarding the above captioned case, I hereby make the following Order:

IT IS ORDERED, ADJUDGED AND DECREED that the above captioned case shall be continued and all matters held in abeyance for six months from the date of this Order to allow for Service of Process and Discovery.

IT IS SO ORDERED!

In Chambers

This 28 day of Sept, 2010


The Honorable W. Jeffrey Young

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF EDGEFIELD)

2013 DEC -9 AM 9:47 C/A No.: 09-CP-19-00353

Bernard Loyer and Sherry Loyer,)

Plaintiffs,)

v.)

S-17 Owners Association, Inc.,)
et al.,)

Defendants.)

**ORDER DENYING MOTION TO DISMISS
AND ORDER OF REFERENCE**

This matter comes before me upon the Defendants' Motion to Dismiss. Arguments were made before me. At said arguments, all parties agreed that if the Defendants' motion was denied, all consented to the matter being referred to a Special Referee.

FACTS

This is a foreclosure action on real estate located in both Edgefield and Aiken Counties. The Plaintiffs, husband and wife, are two of twenty-five individuals or entities that loaned a total of \$300,000.00 to S17 Owners Association, Inc. (a/k/a S-17 Owners Association, Inc.) guaranteed by individual notes to the twenty-five lenders and one mortgage, which is the mortgage complained of herein.

The Plaintiffs brought this action in Edgefield County and filed a Lis Pendens in both Edgefield and Aiken counties. The Defendants brought a motion to dismiss.

For the following reasons, the Motion to Dismiss is Denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Venue in Edgefield County

The Defendants first argue in their motion that the within case should be dismissed as "Edgefield County is the improper venue for this action." (Motion to Dismiss, Paragraph #1). As adopted by the South Carolina Supreme Court in Dove v. Gold Kist, Inc., 314 S.C 235, 442 S.E.2d 598 (1994), the Fourth Circuit Court of Appeals pointed out in Driscoll v. New Orleans Steamboat Company, 622 F.2d 1158 (1981):

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The distinction between subject matter jurisdiction and venue is an important one in the law. See Triangle Auto Spring Co. v. Gromlovitz, 270 S.C. 386, 242 S.E.2d 430 (1978) (distinguishing subject matter jurisdiction and venue and effect of each). The terms are not synonymous. Bambrick v. Bambrick, 165 So.2d 449, 455 (Fla.App.1964). Subject matter jurisdiction is "the power to hear and determine cases of the general class to which the proceedings in question belong." Bank of Babylon v. Quirk, 192 Conn. 447, 472 A.2d 21, 22 (1984); accord Balcon, Inc. v. Sadler, 36 N.C.App. 322, 244 S.E.2d 164 (1978) (citing 21 C.J.S. Courts § 23, pp. 36-37). On the other hand, venue is the place or geographical location of trial. Ford v. Valmac Industries, Inc., 494 F.2d 330, 331 (10th Cir.1974); see also In re Asbestosis Cases, 276 S.C. 579, 281 S.E.2d 112 (1981) ("venue" refers to county where action should be brought). The propriety of either is independent of the other. See Driscoll v. New Orleans Steamboat Co., 633 F.2d 1158, 1159 (5th Cir. 1981).

Section 15-7-10, S.C. Code Ann. (1976, as amended) provides that a mortgage foreclosure action must be tried "in the county in which the subject of the action or some part of the property is situated...". Further, "an action to foreclose a mortgage brought in the county in which a part of the property is situated ... gives the court jurisdiction of the whole matter, including judgment for deficiency against a defendant residing and served in another county." Wagener v. Swygert, 30 S.C. 296, 9 S.E. 107.

The Defendants rely on the following language found in the mortgage for their assertion that the case must be dismissed as it was brought in Edgefield county:

The state and local laws applicable to this Mortgage shall be the laws of the State of South Carolina, County of Aiken.

It is quite clear that the Court of Common Pleas, sitting in Edgefield or Aiken has jurisdiction over this matter. Further, as a grounds for dismissal, the Court of Common Pleas, situated in either county, is the proper venue for this action.

II. Multiple Plaintiffs

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p. 2 of 5

The Defendants next rely on Pioneer Savings & Loan Association of Whiteville v. Horry Coastal Enterprises, Inc., 275 S.C. 469, 272 S.E.2d 640 (1980) (hereinafter "Pioneer Savings") for the proposition that the case should be dismissed as the Plaintiffs filed this action without giving fellow lenders the opportunity to join them as Plaintiffs so the full and equitable relief can be granted.

In Pioneer Savings, the Plaintiffs failed to include all real parties in interest – i.e., other co-lenders – in the foreclosure action. Here, in the present case, all co-lenders / co-mortgagees are named parties to the action as defendants, alleging that they should come forward to assert their interests in the property, if any. In Pioneer Savings, the Plaintiffs sued on one single note, not twenty-three different notes as is the case here.¹ Further, all of the co-lenders' notes are for varying amounts ranging from \$5,000.00 to Plaintiffs' combined \$50,000.00.

Finally, Rule 19, SRCP provides:

(a) **Persons to Be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if

(1) in his absence complete relief cannot be accorded among those already parties, or

(2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may

(i) as a practical matter impair or impede his ability to protect that interest or

(ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.

As a practical matter, all necessary co-lenders are made a party to this action, and the facts of this particular case are distinguishable from those in Pioneer Rental.

The Court also takes into consideration Rule 1.7 of the SCRPC:

¹ Although there are twenty-three different promissory notes, two of the notes are made to two co-lenders, thus totaling twenty-five lenders.

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(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client;
or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

a (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

The fact that this matter has been contested for nearly five years clearly shows that the matter is quite "adverse" and concurrent representation of multiple parties could bring up multiple issues with multiple clients claiming differing amounts and differing priorities, asserting claims against one another.

For the reasons stated above, the Motion to Dismiss is **DENIED**.

Further, on motion of counsel for the Plaintiff, with consent of all other counsel, and after review of the pleadings in the Office of the Clerk of Court and pursuant to Rules 53 and 71, SCRCF, this mortgage foreclosure action will be referred for a Hearing in front of the Honorable Kathy Ouzts Rushton, Special Referee, within 180 days of this order. The Special Referee will have the authority to enter a final judgment in this case. Any appeal therefrom shall be directed to the South Carolina Court of Appeals.

Furthermore, the Special Referee shall and must specifically retain jurisdiction to hear and shall and must hear on the merits any issues after sale or judgment, including but not limited

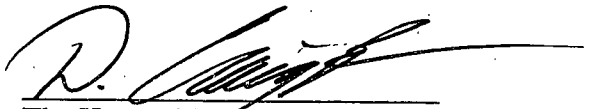
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to issues involving appraisal proceedings under Section 29-3-680, et. seq., and evictions as well as Rule 60 or Rule 61 Motions and/or similar matters including but not limited to the sufficiency of the successful bid as well as the marketability of title and/or matters relating to omitted lienholders or claimants; and with the further authority to sell the subject property at public auction on some convenient sales day hereafter as ordered with any appeal therefrom being directed and mandated to the South Carolina Court of Appeals

IT IS THEREFORE ORDERED that this action be, and the same hereby is, referred to the Special Referee to be heard within 180 days from the date of this order. The Special Referee is to take the testimony arising under the pleadings and to make his/her findings of fact and conclusions of law, with authority to rule on all matters related to this action, including but not limited to, the authority to enter a final judgment in the cause. The Special Referee shall issue a report of his/her findings within 210 days of this order. If this matter is not heard by the Honorable Kathy Ouzts Rushton within 180 days from the date of this order, this action will be dismissed without prejudice.

AND IT IS SO ORDERED.

December 4, 2013
Florence, South Carolina


The Honorable D. Craig Brown

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EDGEFIELD COUNTY
CLERK OF COURT
CAROLYN F. NEWBY
STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD
2011 JUN 11 AM 10:58

Bernard Loyer, Jr., and Sherry Loyer,

PLAINTIFF,

VS.

S17 Owners Association, Inc.; John L. Avent;
Frances Avent; Sylvia S. Berger; Robert J.
Berning; Jeanne M. Clavel; Greg Connell;
Gerald Crawford; Dorothy Crawford; Bruce
C. Douglas; Jonathan D. Dunn; Les Galazka;
Michael V. Goransky; Frank L. Gougher;
David E. Harris; Cathryn A. Knight; John H.
Lacher; Kyle R. Larson; Laura Linn; Roger
McCoig; Charles Wilmot Miller; Michael
O'Brien; Carolyn M. Rischbieter; William
Satcher and Belinda Smith-Sullivan,

DEFENDANTS.

File Number 131003.00140

TO: Michael S. Medlock
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Aiken, SC 29801

S-17 Owners Association, Inc.
85 Rachel Ave
Trenton, SC 29847

William Wesley Johnston, Jr.
900 Elmwood Ave., Ste 200
Columbia, SC 29201

IN THE COURT OF COMMON PLEAS

CASE NO. 2009-CP-19-00353

SPECIAL REFEREE'S
ORDER AND JUDGMENT
OF FORECLOSURE AND SALE

DEFICIENCY DEMANDED AGAINST S17
OWNERS ASSOCIATION, INC.

NOT Subject to Home Affordable
Modification Program

NOTICE: The original of this document was filed in
the office of the Clerk of Court for Edgefield County:

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Robert J. Berning
120 Pine Needle Rd
Aiken, SC 29803

Paul Knapp Simons
111 Park Ave SW
Aiken, SC 29801

Pursuant to Circuit Court Rule 53(b) of the South Carolina Rules of Civil Procedure, the above-entitled matter was referred to the undersigned to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the cause.

Prior to the hearing on this matter, the Court received a Motion to Be Relieved as Counsel from William Wesley Johnston, Jr., Esq., seeking to be relieved as counsel for Robert J. Berning. No party having any objection, the Motion was and **IS HEREBY GRANTED**.

At the trial of the case, John L. Avent; Frances Avent; Sylvia S. Berger; Jeanne M. Clavel; Greg Connell; Gerald Crawford; Dorothy Crawford; Bruce C. Douglas; Jonathan D. Dunn; Les Galazka; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Laura Linn; Roger McCoig; Michael O'Brien; Carolyn M. Rischbieter; William Satcher and Belinda Smith-Sullivan were represented by Ms. Banks. Charles Wilmot Miller was represented by Paul Knapp Simons. Robert J. Berning and S17 Owners Association, Inc., were unrepresented and did not appear. Mr. Medlock represented the Plaintiffs.

Pursuant to the said Order of Reference a hearing was held by this Court. At the hearing, evidence was presented and from the documents and records received into evidence by this Court, I find, conclude and order as follows:

FINDINGS

This Court has jurisdiction over the subject matter of this action and the parties hereto and it is the proper forum for the adjudication of this matter.

1. The Court has determined that Plaintiff has complied with the Administrative Order of the Supreme Court dated May 2, 2011 (2011-05-02-01) and the Administrative Order of the Supreme Court dated May 22, 2009 (2009-05-22-01).

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2. The Lis Pendens, Summons, and Complaint (and any amendments thereto or joinders thereto) as well as service affidavits for all defendants have been filed with the Clerk of Court for this county.

3. No Defendants are in default as shown by the Certificate filed herein.

4. The Defendants and/or all attorneys of record making either an appearance or filing a responsive pleading were notified of the time, date, and place of the hearing of this matter.

5. According to the affidavit(s) and certifications filed herein, any Defendant who is in default has been reviewed for his/her eligibility under The Servicemembers' Civil Relief Act of 2003 ("SCRA") and any amendments thereto and this review does not indicate any Defendant is eligible for protections.

6. No Defendant raised any credible issues related to Plaintiffs' standing to prosecute this action, and Plaintiffs are real parties in interest as contemplated by Rule 17(a), SCRCP. The Court finds that any issues related to Plaintiffs' standing or ability to prosecute this action are waived.

7. For value received, Defendant, S17 Owners Association, Inc., made, executed and delivered certain Notes dated April 22, 2006, promising thereby to pay to the order of various lenders various sums, but in particular, to Bernard Loyer, Jr. in the principal sum of \$40,000.00 with interest at the rate of 9.75% per annum; to Sherry Loyer in the principal sum of \$10,000.00 with interest at the rate of 9.75% per annum; and to Charles Wilmot Miller in the principal sum of \$15,000.00 with interest at the rate of 9.75% per annum. Other terms and conditions are stated in the Notes, which are of record herein.

8. To better secure the payment of the Note described above, the said Defendant S17 Owners Association, Inc., made, executed and delivered to Bernard Loyer, Sherry Loyer, John L. Avent; Frances Avent; Sylvia S. Berger; Robert J. Berning; Jeanne M. Clavel; Greg Connell; Gerald Crawford; Dorothy Crawford; Bruce C. Douglas; Jonathan D. Dunn; Les Galazka; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Laura Linn; Roger McCoig; Charles Wilmot Miller, Michael O'Brien; Carolyn M. Rischbieter; William Satcher and Belinda Smith-Sullivan a Mortgage in writing, dated April 22, 2006, covering real property in Edgefield and Aiken Counties, which is the same as

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that described in the Complaint. The Mortgage was filed in Edgefield County on May 2, 2006, and is of record in the Office of the Register of Deeds in Book 1048, at Page 58 and was filed in Aiken County on May 4, 2006 and is of record in the office of the Register of Deeds in Book 4061 at Page 1832. The Mortgage evidences and secures the repayment of money advanced by the mortgagees to, or on behalf of, the mortgagor.

9. Pursuant to the South Carolina Lis Pendens Statute (S.C. Code Section 15-11-10, et. seq.) Counsel for Plaintiff has accomplished a Report on Title whereby Counsel for Plaintiff has, upon information and belief, named all parties who claim or may claim an interest in the subject property. This Court further finds that this Report on Title is a recoverable charge, expense, or cost as provided for in the Mortgage and/or Note contracts.

10. This Court therefore finds that this Mortgage constitutes a first lien on the mortgage premises.

11. The Court finds that Plaintiffs and their counsel have fully complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations, including, but not limited to, the furnishing of any notices, where applicable.

12. According to the records of Plaintiffs and their counsel, neither Plaintiffs their counsel is aware of any party to this action currently being on active duty or recently discharged.

13. According to the records of Plaintiffs and their counsel, neither Plaintiff nor its counsel is aware of any party to this action currently being under the protection of the United States Bankruptcy Court.

14. Payment due on the Plaintiff's Notes and the Note held by Charles Wilmot Miller has not been made as provided for in the Note and Plaintiff has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of the attorney herein for collection. The Court received no testimony from any other Defendants who were named in this action to compel them to come forward to prove their Notes and/or debt.

15. With respect to attorney fees and in view of the potential financial liabilities and likely continuing professional obligations inherent in judicially prosecuting a real property mortgage credit matter, the attendant professional duties and responsibilities, and the size of

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the mortgage debt and consistent with similar case proceedings before this Honorable Court, I find that a reasonable attorney's fee for the Plaintiffs in this matter would be \$5,000.00. Further with respect to the attorneys fees incurred by Charles Wilmot Miller, I find that a reasonable attorney's fee for his in the matter would be \$2,000.00. These awards are consistent with the laws of this state in the awarding of attorney fees. I have considered the six (6) factors (none of these factors is controlling in the singular) as follows: (1) the nature, extent and difficulty of the legal service rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998); Baron Data Systems v. Loter, 297 S.C. 382, 377 S.E.2d 296 (S.C. 1989), Jackson v. Speed, 326 S.C. 289, 486 S.E. 2d 750 (1997). As to Michael S. Medlock and his professional standing, it is noted that counsel for the Plaintiff is regionally and nationally recognized for its professional experience in mortgage default credit matters. Pursuant to the language in the Note and Mortgage, this Court has specifically reviewed and satisfied itself with all six (6) factors, as well as the disclosed client billing by Plaintiff's counsel considered in awarding reasonable attorneys' fees in this matter as set forth herein in this paragraph as well as Paragraph 22.

16. Although I have heretofore given consideration to all six (6) factors in the awarding of attorney fees and costs herein, jurisdiction over the fee award shall be reserved as granted in the Order of Reference with the right to re-visit the question of attorney fees should the action proceed in an unexpected way and/or to facilitate the assessment and payment of any such current or additional professional compensation.

17. The amount due and owing on the Note, with interest at the rate provided in the Note, including attorney's fee, permitted costs and reimbursable charges permitted, by law, equity, or contract, under and secured by the Note and Mortgage, is as follows:

As to Bernard Loyer

Principal	\$37,342.63
Interest from May 1, 2008 through May 19, 2014	\$22,044.94
Late Charges	\$ 127.13
Attorneys Fee from Bankruptcy	\$ 200.00

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As to Sherry Loyer

Principal	\$ 9,335.65
Interest from May 1, 2008 through May 19, 2014	\$ 5,511.23
Late Charges	\$ 31.78
Attorneys Fee from Bankruptcy	\$ 200.00

As to Both Loyers

Costs of Collection	\$ 540.00
Attorney's Fees	\$ 5,000.00

As to Charles Wilmot Miller

Principal	\$14,015.76
Interest from May 1, 2008 through May 19, 2014	\$ 8,330.25
Attorneys Fee	\$ 2,000.00

TOTAL DEBT SECURED BY NOTES

AND MORTGAGES PROVEN:

\$104,679.37

Interest shall continue to accrue on the unpaid principal balances shown in (a) above, at the 9.75% from the date of hearing until entry of judgment, and such interest shall be added to the above stated "Total Debt": to comprise the amount of the judgment debt entered herein. Interest after the date of entry of judgment at the rate of 9.75% per annum (pursuant to the terms of the Note and Mortgage) shall accrue on the judgment debt and shall be added to such judgment debt to comprise the amount of debt secured by the Mortgage through the date of compliance with the terms of the judicial sale.

18. As to any debts allegedly owed to any other Mortgagee (specifically John L. Avent; Frances Avent; Sylvia S. Berger; Jeanne M. Clavel; Greg Connell; Gerald Crawford; Dorothy Crawford; Bruce C. Douglas; Jonathan D. Dunn; Les Galazka; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Laura Linn; Roger McCoig; Michael O'Brien; Carolyn M. Rischbieter; William Satcher and Belinda Smith-Sullivan) their counsel advised the Court that none of these lenders had provided to her

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their promissory notes nor any information showing what debts were owed to them. Therefore I FIND that these Defendants are not entitled to any relief.

19. However, the mortgage being foreclosed provides:

9. Default; Acceleration; Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this entire mortgage, including the covenants to pay when due any sums under the Notes secured by this mortgage, **any Lender**, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable... (emphasis added)

20. Therefore, having answered the Complaint without a crossclaim for foreclosure¹, and not having proven the existence of any debt at trial, John L. Avent; Frances Avent; Sylvia S. Berger; Jeanne M. Clavel; Greg Connell; Gerald Crawford; Dorothy Crawford; Bruce C. Douglas; Jonathan D. Dunn; Les Galazka; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Laura Linn; Roger McCoig; Michael O'Brien; Carolyn M. Rischbieter; William Satcher and Belinda Smith-Sullivan are barred from recovery under the mortgage. This Court, however, makes no ruling on the validity of, or the amounts owed, under the promissory notes these Defendants may hold.

21. Based upon a search of the public records of the aforesaid counties pursuant to the South Carolina Lis Pendens statutes, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of Plaintiffs and Mr. Miller as of the date and time of the filing of the Lis Pendens herein have been made defendants.

22. Plaintiffs and Mr. Miller are seeking the usual foreclosure of mortgage and has in the Complaint expressly demanded the right to a personal or deficiency judgment against S17 Owners Association, Inc.

23. Defendants S17 Owners Association, Inc., John L. Avent; Frances Avent; Sylvia S. Berger; Jeanne M. Clavel; Greg Connell; Gerald Crawford; Dorothy Crawford; Bruce C.

¹ From statements of Ms. Banks at the hearing, the decision of her clients not to crossclaim for foreclosure was against her advice. It appears that these Defendants were involved in several other lawsuits when this foreclosure action was originally filed and the Defendants represented by Ms. Banks refused to sue their neighbors yet again despite Ms. Banks' numerous attempts to convey the legal consequences of their collective decision.

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Douglas; Jonathan D. Dunn; Les Galazka; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Laura Linn; Roger McCoig; Michael O'Brien; Carolyn M. Rischbieter; William Satcher and Belinda Smith-Sullivan have not established any claims or defenses for relief against Plaintiffs or Mr. Miller, and therefore, no relief shall be granted to these Defendants.

CONCLUSIONS OF LAW

I therefore, conclude as follows:

1. William Wesley Johnston, Jr., Esq., is relieved as counsel for Robert J. Berning.
2. Plaintiffs have met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal, dated May 2, 2011, and also that Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009.
3. Plaintiffs and Mr. Miller should have judgment of foreclosure of the Mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.
4. Defendants S17 Owners Association, Inc., John L. Avent; Frances Avent; Sylvia S. Berger; Jeanne M. Clavel; Greg Connell; Gerald Crawford; Dorothy Crawford; Bruce C. Douglas; Jonathan D. Dunn; Les Galazka; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Laura Linn; Roger McCoig; Michael O'Brien; Carolyn M. Rischbieter; William Satcher and Belinda Smith-Sullivan have not established any claims or defenses for relief against Plaintiffs or Mr. Miller, and therefore, no relief shall be granted to the Defendant(s).
5. Plaintiffs and Mr. Miller should have a personal or deficiency judgment against S17 Owners Association, Inc.

Now, on motion or notice of Plaintiff's attorney,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Plaintiffs have met the requirements of the Administrative Order of the South

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Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal, dated May 2, 2011, and also that Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009.

2. That there is due to Plaintiffs and Mr. Miller on the obligations and mortgage as set forth in the Complaint the sum of **\$104,679.37**, representing the total debt due Plaintiffs and Mr. Miller as set forth *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

3. The amount due in the preceding paragraph (the "total debt" as set forth in Paragraph hereinabove, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff (may be supplemented as permitted by the Court) and shall bear interest hereafter at the rate of 9.75% per annum.

4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint or Amended Complaint, as hereinafter set forth, be sold by this Court at public auction, after giving Notice of the time and place of such sale by advertisement according to law. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this Court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. The sale shall be according to the following terms, that is to say:

a. **FOR CASH:** The Clerk of Court will require a deposit of 5% on the amount of the bid (in cash or equivalent), said 5% deposit being due and payable immediately upon the closing of the bidding, same to be applied to the purchase price only upon compliance with the bid, but in case of non-compliance within 30 days same to be forfeited and applied to the costs and Plaintiffs' and Mr. Miller's debt.

b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 9.0%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions of record and prior liens of record.

d. This Mortgage constitutes a first lien covering the real estate and improvements therein described.

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e. Purchaser to pay for deed stamps/transfer taxes and cost of recording the deed with Plaintiff to pay the Statutory allowed fee to the preparer of said deed (be it this Court or Counsel for Plaintiff).

5. If Plaintiffs or Mr. Miller be the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of them in full, either may pay to the Court only the amount of the outstanding costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

6. Personal or deficiency judgment being demanded, the bidding will remain open for a period of thirty (30) days after the sale date. Plaintiff may waive its right to a deficiency judgment prior to sale, in which case the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

7. This Court will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. This Court will execute to the purchaser, or purchasers, a deed to the premises sold. Plaintiff, or any other party to this action may become a purchaser at such sale, and that if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within 30 days after the date of sale, then this Court may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured. In the event Plaintiff is the successful bidder, at its option, or the option of its assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien against the property sold under this order and hereinafter more fully described. All bidders are hereby and herein noticed that in the event the successful bidder is a third party, neither Plaintiff nor Plaintiff's counsel make any warranties or representations of any kind as to the subject property, including but not limited to its title or habitability on behalf of the third party bidder or any subsequent purchasers.

8. The sale will not be held unless either Plaintiff's attorney or Plaintiff's bidding agent is present at the sale and either Plaintiff's attorney or Plaintiff's bidding agent enters the authorized bid of Plaintiff for this individually captioned matter. In the alternative, Plaintiff's

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counsel, if permitted by the Court, may advise this Court directly of its authorized bidding instructions. In the event a sale is inadvertently held without Plaintiff's Counsel or Counsel's bidding agent entering the authorized bid of Plaintiff for this specifically captioned matter, the sale shall be null and void and the property shall be re-advertised for sale on the next available sale date.

9. In the event of a third party bidder wherein the successful third party bidder fails to deliver the required deposit in certified (immediately collectible) funds to this Court by close of bidding on the day of the sale, this Court will re-sell the subject property at the most convenient time thereafter (including the day of sale) upon notification to counsel for Plaintiff.

10. That this Court shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the permitted costs, charges, and expenses of this action;

NEXT: To the payment to Plaintiff's attorney, of the amount of debt and interest or so much thereof as the purchase money will pay on the same; and Plaintiff's attorney shall receive and disburse such funds only in total and absolute compliance with the debt, interest, escrow, and related calculations of this Court including the Court's award for attorney fees, court permitted charges and taxable costs pursuant to Rules 54 and 71, South Carolina Rules of Civil Procedure;

NEXT: Any surplus will be held pending further order of the Court as provided for in the South Carolina Rules of Civil Procedure and particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

11. It is further ORDERED, that if the successful bidder is other than the Defendant in possession herein, the Sheriff of this County is ordered and directed to evict and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

12. And it is further ORDERED, ADJUDGED AND DECREED that Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises

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so sold, or any part thereof.

13. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant, and the Defendant who was the titleholder of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee, and the applicable recorder of deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

14. This Court will retain exclusive jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, all matters post-sale which may affect the transfer of the title to the subject real property and all improvements thereon, as well, the issuance of a Writ of Assistance.

15. Upon issuance of this Court's Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

Mortgages from S17 Owners Association to Bernard Loyer, Sherry Loyer, Charles Wilmot Miller, John L. Avent; Frances Avent; Sylvia S. Berger; Robert J. Berning; Jeanne M. Clavel; Greg Connell; Gerald Crawford; Dorothy Crawford; Bruce C. Douglas; Jonathan D. Dunn; Les Galazka; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Laura Linn; Roger McCoig; Charles Wilmot Miller, Michael O'Brien; Carolyn M. Rischbieter; William Satcher and Belinda Smith-Sullivan dated April 22, 2006, covering real property in Edgefield County, filed on May 2, 2006, and is of record in the Office of the Clerk of Court/Register of Deeds for Edgefield County in Book 1048, at Page 58 and covering real property in Aiken County, filed on May 4, 2006, and is of record in the Office of the Clerk of Court/Register of Deeds for Aiken County in Book 4061, at Page 1832.

16. This sale is specifically subject to all title matters of record, including but not limited to any other senior lien or encumbrance, and any interested party should consider performing an independent title examination of the subject property as no warranty is given at all by the Court, Plaintiff or its Counsel.

17. The following is a description of the premises herein ordered to be sold:
All that certain piece, parcel or tract of land, together with any improvements thereon, containing

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35 acres, more or less, situate, lying and being partly in the County of Aiken and partly in the County of Edgefield, State of South Carolina, and being 300 feet in width and slightly more than 5,000 feet in length, and being generally known and referred to as the airport portion of Twin Lakes Executive Air Park Development, such property including runway improvements, and any and all other improvements located thereupon, and such property being shown and designated on a plat of Section 1, Lots 3 through 21, Twin Lakes Executive Air Park, Inc., by Marion L. Jones dated September 22, 1985. Also included in the subject agreement is a 20 foot wide easement area running along the northern boundary of said property and extending from SC Highway 144 parallel to the entire tract as heretofore released by Simons and Lott from a mortgage instrument executed in their favor by Twin Lakes Executive Air Park, Inc.

Said property is also shown on a plat prepared for Donald E. Tudor by Charles M. Jones, said plat being originally dated November 20, 1981, and more recently revised in December, 1987, and it is further provided that the 50 foot strip along the Western end of said property, as depicted on the Charles M. Jones plat, is hereby abandoned as being of no further need or use and it is not intended to be reserved even though shown on said plat. See Aiken County Plat Book 20, Page 139-1 and Edgefield County Plat Book 29, Page 203.

Derivation: Aiken County Records – 2244/154; Edgefield County Records – 808/264.

TMS: 00-48.0-01-001 (Aiken) and 163-00-01-053 (Edgefield)

18. IT IS FURTHER ORDERED that if Plaintiff or Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day as ordered by this court.

19. IT IS FURTHER ORDERED that no Defendant raised any credible issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

20. Defendants have not established any claims or defenses for relief against the Plaintiff, and therefore, no relief is granted to the Defendant(s).

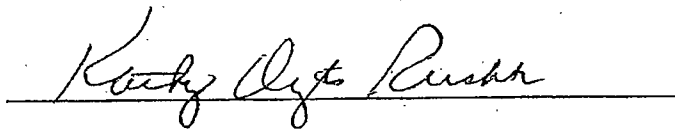
21. IT IS ORDERED that the Plaintiff is entitled to a personal or deficiency judgment against S17 Owners Association, Inc.

22. The Defendants, John L. Avent; Frances Avent; Sylvia S. Berger; Robert J. Berning; Jeanne M. Clavel; Greg Connell; Gerald Crawford; Dorothy Crawford; Bruce C. Douglas; Jonathan D. Dunn; Les Galazka; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Laura Linn; Roger McCoig; Charles

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Wilmot Miller, Michael O'Brien; Carolyn M. Rischbieter; William Satcher and Belinda Smith-Sullivan are forever barred of all right, title or interest in said property or Mortgage.

AND IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Kathy Ouzts Rushton", is written over a horizontal line.

Kathy Ouzts Rushton
Special Referee for Edgefield County

Saluda, South Carolina

June 5, 2014

#14162

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF EDGEFIELD

2009-CP-19-353

Bernard Loyer, Jr. and Sherry Loyer,

) Answer of Defendant Robert J. Berning

) Plaintiffs,

v.

S17 Owners Association, Inc.,

John L. Avent, Frances D. Avent,

Sylvia-S. Berger, Robert J. Berning,

Jeanne M. Clavel, Greg Connell,

Gerald Crawford, Dorothy Crawford,

Bruce C. Douglas, Jonathon D. Dunn,

Les Galazka, Michael V. Goransky,

Frank L. Gougher, David E. Harris,

Cathryn A. Knight, John H. Lacher,

Kyle R. Larson, Laura Linn,

Roger McCoig, Charles Wilmot Miller,

Michael O'Brien, Carolyn M. Rischbieter,

William Satcher,

and Belinda Smith-Sullivan,

) Defendants.

Defendant Robert J. Berning would hereby answer the Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted upon information and belief.
3. Paragraph 3 is denied to the extent it alleges the Plaintiffs are the sole Note holders secured by the mortgage of the subject property. It is admitted the Plaintiffs hold one of many Notes on the property along with the Defendant Berning and others.
4. Paragraph 4 is admitted and it is further alleged the Defendant Berning along with the other individual Defendants in this action hold similar or equal lien rights.
5. Defendant lacks information sufficient to form a belief as to the truth of allegations contained in Paragraph 5 which is therefore denied.

6. Paragraph 6 is admitted to the extent it alleges a Note was delivered to the defendant Robert J. Berning. Defendant Berning lacks information sufficient to form a belief as to the truth of remainder of the allegations contained in Paragraph 6 which are therefore denied.
7. Plaintiff denies paragraph 7 as it alleges the mortgage secures the payments of the Loyer Notes only.
8. Paragraph 8 is admitted.
9. Paragraph 9 is admitted as written but it is denied that such language gives the Plaintiffs a right to foreclose on the property unilaterally and without the consent of all holders of Notes secured by the mortgage on the property.
10. Defendant lacks information sufficient to form a belief as to the truth of allegations contained in Paragraph 10 which is therefore denied.
11. Defendant lacks information sufficient to form a belief as to the truth of allegations contained in Paragraph 11 which is therefore denied.
12. Defendant lacks information sufficient to form a belief as to the truth of allegations contained in Paragraph 12 which is therefore denied.
13. Defendant lacks information sufficient to form a belief as to the truth of allegations contained in Paragraph 13 which is therefore denied.
14. Defendant lacks information sufficient to form a belief as to the truth of allegations contained in Paragraph 14 which is therefore denied.
15. Defendant lacks information sufficient to form a belief as to the truth of allegations contained in Paragraph 15 which is therefore denied.
16. Defendant lacks information sufficient to form a belief as to the truth of allegations contained in Paragraph 16 which is therefore denied.
17. Paragraph 17 is admitted to the extent it alleges Defendant Berning holds a mortgage interest in the property.

FOR A SECOND DEFENSE

18. The allegations contained in paragraphs 1-17 of this Answer are re-alleged as if restated verbatim.
19. Plaintiff has filed a Complaint that fails to state fact sufficient to constitute a cause of action upon which relief may be granted and their Complaint should therefore be dismissed.

FOR A THIRD DEFENSE AND BY WAY OF CROSS-CLAIM

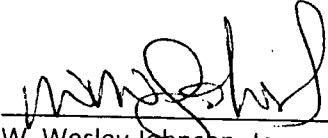
In the event this Court should find the Plaintiff's do have a right to foreclose on the mortgage, then the defendant Berning would seek to foreclose on his Note as well. In support of this, the defendant Berning would allege the following:

20. The allegations contained in paragraphs 1-19 of this Answer are re-alleged as if restated verbatim.
21. On or about April 22, 2006, for value received, S17 Owners Association, Inc. executed and delivered to defendant Berning a Promissory Note, wherein S17 Owners Association, Inc. agreed to pay to the order of Defendant Berning the sum of \$30,000 along with interest at the rate of 9.75% per annum until paid in full.
22. In order to secure payment of the Berning Note, according to the terms and conditions thereof, S17 Owners Association, Inc did execute and deliver to Lender, their successors and assigns, the Mortgage.
23. Pursuant to the terms of the Berning Note and Mortgage, the Property also secures any sums paid by Lender for inspecting and securing the property, for fire and hazard insurance, taxes and assessments for the Property, and all costs of collection, including attorney's fees.
24. The payments due to Defendant Berning are in default though demand for payment has been made. Defendant Berning elects to declare the entire balance of the Note due and payable. The balance now due consists of a principal balance of \$28,006.96 plus interest, advances, costs and disbursements of this action, including reasonable attorney's fees.

THEREFORE, having answered the Complaint herein, Defendant Berning requests the following;

- A. Dismiss the Plaintiff's Complaint to foreclose on the subject property and award Defendant Burning any other relief it deem proper;
- B. In the alternative, if the Court finds the Plaintiff's foreclosure action to be proper, then for the Defendant Berning's cross-claim against the Defendant S17 Owners Association, Inc. to be decided by the Court and that the amount due to Defendant Berning be determined together with attorney's fees and costs along with the following;
 - i) That the mortgage be declared a first lien on the property and the lenders have judgment of foreclosure for the amount to be found due and owing together with advances and disbursements along with attorney's fees and the costs of this action.

- ii) That the property be sold under order of this Court, the equity of redemption be barred, and the proceeds applied as follows:
- First, to the costs and expenses of this action, including sale.
- Second, to the payment and discharge of the amount due on the notes and Mortgage, together with attorney's fees and costs.
- Third, any surplus to be distributed according to law.
- iii) For an order directing and empowering the Sheriffs of Aiken and Edgefield county to place the successful purchaser at said foreclosure sale in possession of the property.
- iv) For an Order of Ejectment of the defendants in possession and all persons claiming thereunder and the removal of all items not subject to the lien of the Mortgage.
- v) For an Order granting the appointment of a receiver to secure and supervise the rental of the property with authority to take possession thereof and collect rents during the pendency of this action.
- vi) For any other relief which may be just and proper.



W. Wesley Johnson, Jr.
Barfield & Johnson, LLC
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Lexington SC 29072
(803) 957-4000
(803) 359-5555 Facsimile
main@barfieldjohnson.com

Lexington , South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

BERNARD LOYER, JR., and
SHERRY LOYER,

Plaintiffs,

v.

S17 OWNERS ASSOCIATION, INC.,
JOHN L. AVENT, FRANCES AVENT,
SYLVIA S. BERGER, ROBERT J.
BERNING, JEANNE M. CLAVEL,
GREG CONNELL, GERALD
CRAWFORD, DOROTHY
CRAWFORD, BRUCE C. DOUGLAS,
JONATHON D. DUNN, LES
GALAZKA, MICHAEL V.
GORANSKY, FRANK L. GOUGHER,
DAVID E. HARRIS, CATHRYN A.
KNIGHT, JOHN H. LACHER, KYLE
R. LARSON, LAURA LINN, ROGER
MCCOIG, CHARLES WILMOT
MILLER, MICHAEL O'BRIEN,
CAROLYN M. RISCHBIETER,
WILLIAM SATCHER AND
BELINDA SMITH-SULLIVAN,

Defendants.

IN THE COURT OF COMMON PLEAS

**ANSWER OF DEFENDANT CHARLES
WILMOT MILLER**

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO.: 2009-CP-19-353

Defendant Charles Wilmot Miller ("Defendant Miller"), answering the Complaint herein, respectfully would show unto the Court as follows:

FOR A FIRST DEFENSE

Defendant Miller responds specifically to the allegations contained in Plaintiff's Complaint as follows:

1. Defendant Miller admits the allegations in Paragraph 1 of the Complaint.

2. Defendant Miller lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint and, therefore, must deny the allegations contained in said paragraph.

3. Defendant Miller admits the allegations contained in Paragraph 3 of the Complaint, except that the Plaintiffs are the owners and holders of the Loyer Notes (as defined in the Complaint), not the owners and holders of all notes (the "Loyer Notes" and all other notes secured by and referenced in the Mortgage collectively referred to as, the "Notes") secured by the Mortgage (as defined in the Complaint).

4. Defendant Miller admits the allegations contained in Paragraph 4 of the Complaint. Furthermore, Defendant Miller claims a mortgage interest in the real estate that is the subject of this action ("Property") and alleges that all his rights under the Mortgage are *pari passu* to Plaintiffs' rights in and to the Property.

5. Defendant Miller lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint and, therefore, must deny the allegations contained in said paragraph.

6. Defendant Miller admits the allegations contained in Paragraph 6 of the Complaint insofar as it alleges that Defendant S17 Owners Association, Inc., issued Notes to various lenders, but lacks knowledge sufficient to form a belief as to the truth of the remaining allegations and, therefore, must deny those allegations.

7. Defendant Miller denies the allegations contained in Paragraph 7 of the Complaint insofar as it alleges the Mortgage secures only the Loyer Notes. In further response, the Mortgage secures indebtedness due and owing under the Notes to the following Lenders: John L. Avent, Frances Avent, Sylvia Berger, Robert Berning, Jeanne M. Clavel, Greg Connell,

Gerald Crawford, Dorothy Crawford, Bruce C. Douglas, Jonathon D. Dunn, Les Galazka, Michael V. Goransky, Frank L. Gougher, David E. Harris, Cathryn A. Knight, John H. Lacher, Kyle R. Larson, Laura Linn, Roger McCoig, Defendant Miller, Michael O'Brien, Carolyn M. Rischbieter, William Satcher, Belinda Smith-Sullivan and the Plaintiffs (collectively referred to as, the "Lenders"). Additionally, no individual Lender enjoys any priority, in liquidation preference of the Property, lien priority or otherwise, with respect to the other Lenders.

8. Defendant Miller admits the allegations contained in Paragraph 8 of the Complaint.

9. Defendant Miller admits the allegations contained in Paragraph 9 of the Complaint only insofar as it alleges that the Mortgage secures the obligations under the Notes. Furthermore, Defendant Miller admits the allegations in said paragraph only insofar as it alleges each individual Lender has the right to accelerate the indebtedness due under the Notes, but denies that Plaintiffs enjoy the right to unilaterally foreclose the Mortgage without the express consent of all other Lenders.

10. Defendant Miller lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint and, therefore, must deny the allegations contained in said paragraph.

11. Defendant Miller lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint and, therefore, must deny the allegations contained in said paragraph.

12. Defendant Miller lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint and, therefore, must deny the allegations contained in said paragraph.

13. Defendant Miller lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint and, therefore, must deny the allegations contained in said paragraph.

14. Defendant Miller lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint and, therefore, must deny the allegations contained in said paragraph.

15. Defendant Miller admits the allegations contained in Paragraph 15 of the Complaint.

16. Defendant Miller lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint and, therefore, must deny the allegations contained in said paragraph.

17. Defendant Miller admits the allegations contained in Paragraph 17 of the Complaint insofar as it alleges Defendant Miller holds a mortgage interest in the Property. Defendant Miller denies the remaining allegations contained in Paragraph 17. In further response, each individual Lender's lien priority rights and liquidation rights are pari passu to the other Lenders.

SECOND DEFENSE

18. The allegations of the First Defense are re-alleged and adopted as a part of this defense as if stated verbatim herein.

19. The Complaint fails to state facts sufficient to constitute a cause or causes of action upon which relief may be granted.

THIRD DEFENSE

20. The allegations of the First Defense and Second Defense are re-alleged and adopted as a part of this defense as if stated verbatim herein.

21. Plaintiffs lack standing to foreclose on the Mortgage described in the Complaint without the express consent of all Lenders.

CROSS-CLAIM AS TO DEFENDANT S17 OWNERS ASSOCIATION, INC.

In the alternative, should the Court find and conclude that Plaintiffs are entitled to foreclose upon the Mortgage, Defendant Miller desires to join Plaintiffs in the foreclosure of the Mortgage and alleges as follows:

22. The allegations of all defenses herein are re-alleged and adopted as a part of this Cross-Claim as if stated verbatim herein.

23. On or about April 22, 2006, for value received, S17 Owners Association, Inc. ("Borrower") executed and delivered to Defendant Miller a certain promissory note ("Miller Note") in writing according to the terms and conditions set out therein, wherein and whereby Borrower promised to pay to the order of Defendant Miller the sum of \$15,000.00, or so much thereof as shall have been advanced and outstanding, together with interest thereon accruing at a rate of nine and three quarters percent (9.75%) per annum until paid in full.

24. In order to secure the payment and performance of the Miller Note and the debt evidenced thereby, in accordance with the terms and conditions thereof, Borrower did execute and deliver to Lenders, their successors and assigns, the Mortgage.

25. Pursuant to the terms of the Miller Note and Mortgage, the Property also secures any sums paid by Lenders for inspecting and securing the Property, for fire and hazard insurance, taxes and assessments for the Property, and all costs of collection, including attorney's fees.

26. The monthly payments due on the Miller Note and Mortgage are in default, and

the conditions of the Miller Note and Mortgage have been broken although demand for payment thereof has been made. Defendant Miller, as the owner and holder of the Miller Note and co-owner and co-mortgagee under the Mortgage, after providing all required notices, elected to and does declare the entire balance of said indebtedness due and payable and elects to foreclose the Property securing, in part, the Miller Note.

27. There is due on the Miller Note as of April 22, 200, the sum of \$14,262.36, together with interest and other charges from and after said date per terms as set out in the Miller Note and Mortgage and also for the costs and disbursements of this action, including reasonable attorney's fees.

28. Any and all notices which may have been required have been provided.

SUMMARY

WHEREFORE, having answered the Complaint herein, Defendant Miller prays for the following:

A. With regard to all defenses asserted by Defendant Miller herein, that the Court inquire into the matters alleged in the pleadings herein, protect the interests and liens of Defendant Miller in and to the Property described in the Complaint according to the law, find that Plaintiffs' rights under the Mortgage preclude Plaintiffs from foreclosing the Mortgage, and award Defendant Miller such other and further relief as may be proper;

B. In the alternative, with regard to Defendant Millers cross-claim against Defendant S17 Owners Association, Inc., that the amount due upon the Miller Note and Mortgage be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

i) That the Mortgage be declared a first lien on the Property and that Lenders have judgment of foreclosure for the amount so found to be due and owing thereon,

together with any taxes or insurance premiums which may be due, together with reasonable attorney's fees and the costs of this action.

ii) That the Property be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

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

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

Third, the surplus, if any, be distributed according to law.

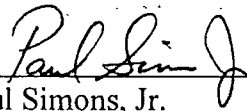
iii) For an order directing and empowering the Sheriff of Aiken County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the Properties should the same become necessary.

iv) For an order for the ejectment of the Defendant in possession herein and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures, and items not subject to the lien of the Mortgage, which personal property if not removed shall be deemed abandoned and shall be removed by Defendant Miller or his agent from the Property by placing said personal property on the public street or highway or by any other means.

v) For an order granting the appointment of a receiver to secure and supervise the rental of the Property with authority to take possession thereof and collect rents, issues and profits thereon during the pendency of this action and to hold the same as further security for Defendant Miller's debt.

vi) For reimbursement of all costs for inspecting and securing the Property incurred by Defendant Miller as a result of the delinquency.

vii) For such other and further relief as may be just and proper.



Paul Simons, Jr.
Hull, Towill, Norman, Barrett & Salley
P.O. Box 517
Aiken, SC 29802-0517
(803) 648-4213

December 4, 2009

STATE OF SOUTH CAROLINA)

COUNTY OF EDGEFIELD)

IN THE COURT OF COMMON PLEAS

2001 NOV 10 PM 1:22

Bernard Loyer, Jr., and Sherry Loyer,)

Plaintiff,)

-vs-)

S17 Owners Association, Inc.,)
John L. Avent, Frances Avent, Sylvia S.)
Berger, Robert J. Berning, Jeanne M.)
Clavel, Greg Connell, Gerald Crawford,)
Dorothy Crawford, Bruce C. Douglas,)
Jonathan D. Dunn, Les Galazka,)
Michael V. Goransky, Frank L. Gougher,)
David E. Harris, Cathryn A. Knight,)
John H. Lacher, Kyle R. Larson,)
Laura Linn, Roger McCoig, Charles)
Wilmot Miller, Michael O'Brien, Carolyn)
M. Rischbieter, William Satcher and)
Belinda Smith-Sullivan,)

Defendants.)

COMPLAINT

(Mortgage Foreclosure)
(Non-Jury)

The Plaintiffs, Complaining of the Defendants allege:

JURISDICTION AND PARTIES

1. This is an action for the foreclosure of a mortgage upon certain real estate in Edgefield County and Aiken County, South Carolina.
2. The Plaintiffs, Bernard Loyer, Jr., and Sherry Loyer, are citizens and residents of the State of South Carolina.
3. The Plaintiffs are the owners and holders of the Notes, and co-holders of the Mortgage, described hereafter and the subject of this action.
4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendants herein.
5. The Defendants herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of Section 15-35-840 of the Code of Laws of South Carolina (1976).

FOR A FIRST CAUSE OF ACTION
(Mortgage Foreclosure)

6. Heretofore, on or about April 22, 2006, S17 Owners Association, Inc. made, executed and delivered unto various lenders (John L. Avent, Frances Avent, Sylvia S. Berger, Robert J. Berning, Jeanne M. Clavel, Greg Connell, Gerald Crawford, Dorothy Crawford, Bruce C. Douglas, Jonathan D. Dunn, Les Galazka, Michael V. Goransky, Frank L. Gougher, David E. Harris, Cathryn A. Knight, John H. Lacher, Kyle R. Larson, Laura Linn, Bernard Loyer, Jr., Sherry Loyer, Roger McCoig, Charles Wilmot Miller, Michael O'Brien, Carolyn M. Rischbieter, William Satcher and Belinda Smith-Sullivan) certain Notes, but more particularly Notes (the "Loyer Notes") in favor of Bernard Loyer, Jr. ("Mr. Loyer") in the principal sum of \$40,000.00 and in favor of Sherry Loyer ("Mrs. Loyer") in the principal sum \$10,000.00, payable in semi-annual installments of principal and interest of \$2,542.56 on Mr. Loyer's note, and \$635.64 on Mrs. Loyer's note, commencing October 15, 2006.

7. In order to secure the payment of the Loyer Notes according to the terms and conditions thereof, S17 Owners Association, Inc. made, executed and delivered unto John L. Avent, Frances Avent, Sylvia S. Berger, Robert J. Berning, Jeanne M. Clavel, Greg Connell, Gerald Crawford, Dorothy Crawford, Bruce C. Douglas, Jonathan D. Dunn, Les Galazka, Michael V. Goransky, Frank L. Gougher, David E. Harris, Cathryn A. Knight, John H. Lacher, Kyle R. Larson, Laura Linn, Bernard Loyer, Jr., Sherry Loyer, Roger McCoig, Charles Wilmot Miller, Michael O'Brien, Carolyn M. Rischbieter, William Satcher and Belinda Smith-Sullivan a certain real estate mortgage ("Mortgage") covering the following described property:

All that certain piece, parcel or tract of land, together with any improvements thereon, containing 35 acres, more or less, situate, lying and being partly in the County of Aiken and partly in the County of Edgefield, State of South Carolina, and being 300 feet in width and slightly more than 5000 feet in length, and being generally known and referred to as the airport portion of Twin Lakes Executive Air Park Development, such property including runway improvements, and any and all other improvements located thereupon, and such property being shown and designated on a plat of Section 1, Lots 3 through 21, Twin Lakes Executive Air Park, Inc., by Marion L. Jones dated September 22, 1985. Also included in the subject agreement is a 20 foot wide easement area running along the northern boundary of said property and extending from SC Highway 144 parallel to the entire tract as heretofore released by Simons and Lott from a mortgage instrument executed in their favor by Twin Lakes Executive Air Park, Inc.

Said property is also shown on a plat prepared for Donald E. Tudor by Charles M. Jones, said plat being originally dated November 20, 1981, and more recently revised in December, 1987, and it is further provided that the 50 foot strip along the Western end of said property, as depicted on the Charles E. Jones plat, is hereby abandoned by the Grantor as being of no further need or use and it is not intended to be reserved even though shown on said plat. See Aiken County Plat Book 20, Page 139-1 and Edgefield County Plat Book 29, Page 203.

Derivation: Aiken County Records – 2244/154; Edgefield County Records – 808/264

TMS: 00-48.0-01-001 (Aiken) / 163-00-01-053 (Edgefield)

8. The Mortgage was signed, witnessed and probated; thereafter the Mortgage was recorded in the office of the Register of Deeds for Edgefield County on May 2, 2006, in Mortgage Book 1048 at Page 1048 and in Aiken County, South Carolina on May 4, 2006 in Real Estate Mortgage Book 4061 at page 1832

9. The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor and constitutes a first lien on the mortgaged premises. The mortgage specifically provides as follows:

9, Default; Acceleration, Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this entire Mortgage, including the covenants to pay when due any sums under the Notes secured by this Mortgage, any Lender, and Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without demand or notice, notice of the exercise of such option being hereby expressly waived.

10. The Plaintiffs have complied with their obligations as required under the specific terms of the Loyer Notes and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; and that moreover and prior to the filing of this judicial proceeding, S17 Owners Association, Inc. (the "S17 Defendant") had not raised any compliance defenses or objections as to any applicable banking laws by the Plaintiffs.

11. The payments due on the Loyer Notes and Mortgage are in default since October 15, 2008, and the conditions of the Loyer Notes and Mortgage have been broken and the Plaintiffs elect to and do declare the entire balance of said indebtedness due and payable, and that there is due on the Loyer Notes and Mortgage as of October 15, 2008, the sum of \$37,342.63 on Mr. Loyer's note and \$9,335.65 on Mrs. Loyer's note, with interest at the rate of 9.750% per thereon, together with any taxes or insurance premiums which may be due, with reasonable attorney's fees, and for the costs of this action.

12. Based upon a search of the public records of the aforesaid county, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made defendants.

13. The Plaintiffs' rights to a personal or deficiency judgment pursuant to Section 29-3-650 and Section 29-3-660, *Code of Laws of South Carolina*, 1976, as amended, may be waived at any time prior to the sale requested herein against the S17 Defendant.

14. Pursuant to the terms of the Mortgage, Plaintiffs have employed counsel to prosecute this action and a reasonable value of services of counsel in this action is a sum which the Court may find reasonable.

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

16. This mortgage loan is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac and the servicer is not participating in the Home Affordable Modification Program (HMP) (Administrative Order 2009-05-22-01).

17. The hereinafter named Defendants may have some interest in or lien upon the premises covered by the Mortgage as set forth above, or some part thereof, said liens or interests are of record in the Office of the Clerk of Court for Edgefield County and Aiken County and are described as follows:

(a) John L. Avent, Frances Avent, Sylvia S. Berger, Robert J. Berning, Jeanne M. Clavel, Greg Connell, Gerald Crawford, Dorothy Crawford, Bruce C. Douglas, Jonathan D. Dunn, Les Galazka, Michael V. Goransky, Frank L. Gougher, David E. Harris, Cathryn A. Knight, John H. Lacher, Kyle R. Larson, Laura Linn, Roger McCoig, Charles Wilmot Miller, Michael O'Brien, Carolyn M. Rischbieter, William Satcher and Belinda Smith-Sullivan are all "Lenders" under the Mortgage complained of, and are named as parties to this action to compel them to come forward and assert their claims in the Court of forever be barred from the collection thereof.

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

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

(2) Declare Plaintiffs' Mortgage a first lien and render judgment and foreclosure for the amount so found to be due, with reasonable attorney's fees, and for the costs and disbursements of this action.

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

(4) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or

exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

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

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

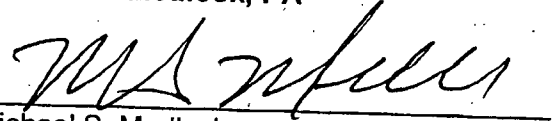
Second, to the payment and discharge of the amount due on Plaintiffs' Notes and Mortgage, together with attorney's fees as aforesaid; and

Third, to the distribution of any surplus pursuant to Rule 71, SCRPC.

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

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

Michael S. Medlock, PA



Michael S. Medlock
Attorney for Plaintiff
Post Office Box 300
Edgefield, South Carolina 29824-0300
(803) 637-3800
(803) 637-2480 fax

Edgefield, SC
November 10, 2009.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD) ELEVENTH JUDICIAL CIRCUIT
2009 DEC 11 PM 1:37

Bernard Loyer, Jr. and Sherry Loyer,
Plaintiffs)

vs.)

S-17 Owners Association, Inc., et al
Defendants..)

ANSWER
FILE NO. 09-CP-19-00353

NOW COMES Defendants J.L. Avent, F. Avent, S.S. Berger, R.J. Bernign, J.M. Clavel, G. Connell, G. Crawford, D. Crawford, B.C. Douglas, J.D. Dunn, L. Galazka, M.V. Goransky, F.L. Gougher, D.E. Harris, C.A. Knight, J.H. Lacher, K.R. Larson, L. Linn, R. McCoig, C.W. Miller, M. O'Brien, C. M. Rischbiter, W. Satcher and B. Smith-Sullivan (hereinafter referred to as Defendants/Co-lenders), by and through their attorney, Marsha M. Banks, and respectfully submit their Answer as follows:

1. Defendants/Co-Lenders deny paragraph 1 that the Court has jurisdiction over the parties as stated in the caption.
2. Defendants/Co-Lenders can neither affirm or deny paragraph 2 with regard to whether the citizenship of the Plaintiffs.
3. Defendants/Co-Lenders deny paragraph 3 as to Plaintiffs' sole ownership of "the Notes" and that said "Notes" hold any precedence over the promissory notes issued to the other co-lenders listed on the Mortgage securing said promissory notes.
4. Defendants/Co-Lenders deny the minimal interest implied in paragraph 4 in that the Defendants/Co-Lenders 83.3% interest is greater than Plaintiff's 16.7% interest in the subject entity.
5. Defendants/Co-Lenders deny paragraph 5.

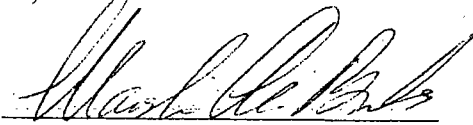
6. Defendants/Co-Lenders deny paragraph 6 in so far as it is stated that "the Loyer Notes" hold precedence over the promissory notes issued to the other Co-lenders listed on the Mortgage securing said promissory notes.
7. Defendants/Co-Lenders deny paragraph 7 in so far as it implies the "the Loyer Notes" are the sole promissory notes collateralized by the Mortgage issued by Defendant S-17 Owners Association, Inc.
8. Defendants/Co-Lenders deny paragraph 8 in so far as the recordation of the Mortgage in Edgefield County is incorrect and should be May 2, 2006, Mortgage Book 1048, Page 58-62; affirm as to Aiken County recordation information
9. Defendants/Co-Lenders deny paragraph 9 in so far as once again Plaintiffs insist on implying that they are the only mortgagees; furthermore the quoted paragraph from the mortgage directly contradict paragraph 4 of the mortgage as follows:

"Protection of Lenders' Security. If Borrower fails to perform the covenants and agreements contained in this mortgage, or if any action or proceeding is commenced which materially affects Lenders' interest in the property, then each Lender, at Lender's option, **upon notice to Borrower...**" (emphasis added)

Additionally, the quoted paragraph 9 from the Mortgage directly conflicts with SCJur Vol 27 §107 which states in part, "...one of two or more co-mortgagees cannot maintain a foreclosure action without joining the others."
10. Defendants/Co-Lenders can neither affirm nor deny paragraph 10.
11. Once again Plaintiffs represent to the Court that "the Loyer Notes" are in a superior position to the other twenty-four note holders listed on the face of the Mortgage; therefore, paragraph 11 is denied by the Defendants/Co-Lenders in that they all are in the exact same position as the Plaintiffs and are not listed as in default.
12. Paragraph 12 is an egregious misrepresentation to the Court and is denied by the Defendants/Co-Lenders; consequently, and not wishing to file a counter-claim, Defendant/Co-Lenders, by and through counsel, respectfully request that Plaintiff's Counsel be subject to Rule 11 sanctions.
13. Defendants/Co-Lenders can neither affirm or deny paragraph 13.
14. Defendants/Co-Lenders deny paragraph 14 in so far as it attempts to request Plaintiffs' attorneys fees and costs be paid by Defendants/Co-Lenders.

15. Defendants/Co-Lenders deny paragraph 15.
16. Defendants/Co-Lenders affirm paragraph 16.
17. Once again Defendants/Co-Lenders deny the minimal interest implied in paragraph 17 in that the Defendants/Co-Lenders hold 83.3% interest while Plaintiff's only holds 16.7% interest in the subject entity; therefore Defendant/Co-Lenders deny that they "may have some interest in or lien upon the premises covered by the Mortgage" and again point out that this is simply a blatant misrepresentation to the Court.

Respectfully Submitted this 11th day of December, 2009



Marsha M. Banks
Attorney for Defendants/Co-Lenders

BANKS & ASSOCIATES PC
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803.648.5228 Facsimile
mmblaw@gmail.com

1 David E. Harris, Cathryn A. Knight, John H. Lacher,
2 Kyle R. Larson, Laura Linn, Roger McCoig, Charles
3 Wilmot Miller, Michael O'Brien, Carolyn M.
4 Rischbieter, William Satcher, and Belinda Smith-
5 Sullivan. I apologize for any mispronunciations of
6 names.

7 As you know from your attorneys, I was
8 appointed as a Special Referee in this matter by
9 the Circuit Court judge. And what that means is
10 any time -- most of the time when there's an action
11 involving real estate foreclosure the Circuit Court
12 judges, to lighten the load of Circuit Court
13 trials, they will appoint attorneys to serve as a
14 Special Referee. I will make a ruling and that
15 ruling is appealable to the South Carolina Court of
16 Appeals. And this is just one of the things that
17 we do in South Carolina to try to speed things
18 along, especially with foreclosure actions.

19 And so at this time I'm going to turn the case
20 over to Michael Medlock, who is the Plaintiff's
21 attorney.

22 **MR. MEDLOCK:** Please the Court, your Honor.
23 For the record, your Honor, to begin with --

24 **THE COURT:** Excuse me. Present, also, are the
25 attorneys Marsha Banks, who represents a majority

1 of these Defendants, I believe. S17 Owners
2 Association, Inc is not represented is not
3 represented, is my understanding, is that correct?

4 **MR. MEDLOCK:** Yes, their Counsel withdrew
5 previously.

6 **THE COURT:** Okay. And Paul Simons is here
7 representing?

8 **MR. SIMONS:** Mr. Charles Wilmont Miller, your
9 Honor, and Ellen Miller, his wife, who are on the
10 note -- one of the notes.

11 **THE COURT:** And everyone else, I believe, is
12 represented by Marsha Banks, except for
13 Mr. Berning, is that correct?

14 **MR. MEDLOCK:** That is correct. And his
15 Counsel has asked to withdraw. He sent us all an
16 email on Monday -- I mean on Friday. I was out of
17 the office and did not see it. I certainly consent
18 to his Motion.

19 **MR. SIMONS:** I consent to his Motion, as well.

20 **MS. BANKS:** I consent to that Motion, as well,
21 your Honor.

22 **THE COURT:** Okay. So is everyone else
23 represented by Ms. Banks, is there anyone else
24 that's not represented by her?

25 **COURTROOM:** (No response.)

THE COURT: Okay. I'm sorry, Mr. Medlock.
Proceed.

MR. MEDLOCK: That's okay, your Honor. As a matter of housekeeping, your Honor, Plaintiff's Exhibit 1, for the record today, is Notice of today's hearing.

And, your Honor, I have you a packet of my Exhibits that I've given to both lawyers, as well.

THE COURT: Okay. Thank you.

MR. MEDLOCK: Your Honor, I call Bernie Loyer to the stand.

* * * *

Whereupon,

BERNARD LOYER, JR.,

having been first duly sworn,
was examined and testified as follows:

* * * *

THE COURT: Please state your name for the record.

WITNESS: Bernard J. Loyer, Junior.

DIRECT EXAMINATION

BY MR. MEDLOCK:

Q. Thank you, Mr. Loyer. Would you tell me your street address, please, where do you live?

A. 61 Rachel Avenue, Trenton, South Carolina.

1 Q. And what county is that in?

2 A. Edgefield County.

3 Q. And you're currently married?

4 A. Yes, I am.

5 Q. To your co-claimant, Ms. Sherry Loyer, is that
6 correct?

7 A. That's correct.

8 Q. I'm going to show you what's been pre-marked as
9 Plaintiff's Exhibit 2 and ask you if you recognize
10 that.

11 A. Yes, sir, it's the Promissory Note.

12 Q. All right. Is that an original seal at the bottom
13 of it? Do you see an impression?

14 A. Yes, it is, sir.

15 Q. So that would be an original document, is that
16 correct?

17 A. Yes, sir.

18 Q. Okay. You're the holder of that note, you've not
19 sold it or conveyed it to anyone else?

20 A. No, I have not, and I am the original.

21 Q. Can you tell me, this Promissory Note is to you,
22 who made this Promissory Note to you?

23 A. S17 Owners Association.

24 Q. All right. And for how much money?

25 A. It was for 40,000.

1 Q. What is the date of the Promissory Note?

2 A. The date on the Promissory Note is April 22, 2006.

3 Q. Okay. And what is the interest rate on this
4 Promissory Note in the first paragraph?

5 A. Interest rate is 9.75 percent.

6 Q. And how was the payment to be made, in the second
7 paragraph there?

8 A. Well, it was going to be starting in October 31st
9 and continuing until April 30th of 2011. Which, at
10 that time the principal and interest should have
11 been paid in full.

12 Q. Okay. How often were the payments?

13 A. Twice a year.

14 Q. And was that Promissory Note secured by a Mortgage
15 recorded in both Edgefield and Saluda Counties,
16 where the property is located?

17 A. Yes, it was.

18 Q. I'll show you Plaintiff's Exhibit 4 and ask you if
19 you recognize that.

20 A. It's the original -- or could be a copy of the
21 Mortgage.

22 Q. All right. But it shows the Edgefield County
23 recording and the Aiken County recording, is that
24 correct?

25 A. Yes, it is, it's a filing from both places.

1 Q. Now, part of that, your note and Mortgage requires
2 that you give notice -- well, let me say real quick
3 -- according to your complaint the Owners
4 Association is currently due for the October 15th,
5 2008 payment, is that correct?

6 A. At that point, yes.

7 Q. And the note requires that you wait six months
8 before holding them in default, is that correct?

9 A. That's correct, I had to wait.

10 Q. At that time did I, as your attorney, send a what
11 we know -- is commonly noticed as a Notice of Right
12 to Cure to the association? Let me let you look at
13 Plaintiff's Exhibit 5.

14 A. Yes, this is the...

15 Q. So notice was sent to the Borrower, as required in
16 the Promissory Note and the Mortgage?

17 A. Yes, it shows it was filed.

18 Q. Okay. I'm going to show you what's labeled as
19 Plaintiff's Exhibit 6 and I ask if you recognize
20 this?

21 A. This is the Affidavit of Indebtedness that was
22 total amount due at this period.

23 Q. All right. Let's go through this briefly. What is
24 the principal due on your Promissory Note?

25 A. Thirty-seven thousand three hundred and forty-two

1 dollars and sixty-three cents.

2 Q. And before we go any further, you have signed the
3 second page of that and had it notarized, is
4 that correct?

5 A. Yes, sir.

6 Q. Can you show that to the Judge so that she will
7 know --

8 MR. MEDLOCK: Her copy -- y'all's copies are
9 not signed.

10 A. (Complies.) The second copy shows the signature.

11 Q. All right. Now, even though the payment is due
12 from August that means interest is due from May 1,
13 2008 through today at 9.75 percent, and what does
14 that total up to?

15 A. That will total up to \$22,044.94.

16 Q. And you had one late charge as the note allows, how
17 much is that?

18 A. One hundred and twenty-seven dollars and thirteen
19 cents.

20 Q. And you hired me previously when the corporation
21 filed bankruptcy and paid how much for that
22 service?

23 A. That service was \$200.

24 Q. Now, we'll get into my Attorneys Fees Affidavit
25 later on through me. But the total of this debt,

1 what is the total of this debt?

2 A. The total debt at this time is \$59,714.70.

3 Q. You're asking the Court to foreclose on this
4 Mortgage?

5 A. Yes, I am.

6 Q. For any party that has counterclaimed and proves
7 their debt, is that correct?

8 A. That is correct.

9 Q. Including yourself and your wife?

10 A. That's right.

11 **MR. MEDLOCK:** Thank you. I have no further
12 questions of this witness, your Honor.

13 **THE COURT:** Thank you. Any questions,
14 Ms. Banks?

15 **MS. BANKS:** No, your Honor.

16 **THE COURT:** Mr. Simons?

17 **MR. SIMONS:** No questions, your Honor.

18 **MR. MEDLOCK:** Your Honor, that's all.

19 I call Sherry Loyer to the stand.

20 *****

21 Whereupon,

22 **SHERRY LOYER,**

23 having been first duly sworn,

24 was examined and testified as follows:

25 *****

DIRECT EXAMINATION

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BY MR. MEDLOCK:

Q. Would you please state your name.

A. Sherry Loyer.

Q. And, Ms. Loyer, you are Mr. Loyer's husband, is that correct -- I mean wife, is that correct?

A. Yes, sir.

Q. And you also had a Promissory Note made to you in this matter, is that correct?

A. Yes, sir.

Q. I'm going to show you what's been marked as Plaintiff's Exhibit 3 and ask you to review that. Is that your Promissory Note?

A. Yes, sir.

Q. And is it an original, is there a seal at the bottom of that document, a crimp seal, we call them?

A. Yes, sir.

Q. Okay. So that is your original note, correct?

A. Yes, sir.

Q. You've not sold, hypothecated, or otherwise gotten rid of that note?

A. No, sir.

Q. And your note is also secured by a Mortgage, is that correct?

1 A. Yes, sir.

2 Q. I'm going to show you what's been marked as
3 Plaintiff's Exhibit 7, your Affidavit of
4 Indebtedness. Can you tell us the principal amount
5 due on your note?

6 A. Nine thousand three hundred thirty-five, sixty-
7 five.

8 Q. And how much interest on May 1, 2008 through today
9 at 9.75 percent?

10 A. Five thousand five hundred eleven, twenty-three.

11 Q. And you also have a one time late charge of how
12 much?

13 A. Thirty-one, seventy-eight.

14 Q. And you also paid \$200 to me during the bankruptcy
15 phase of this, is that correct?

16 A. Yes, sir.

17 Q. And what is your total debt?

18 A. Fifteen thousand seventy-eight, sixty-six.

19 Q. Okay. And you're asking the Court to foreclose, as
20 well, just as your husband has asked for, is that
21 correct?

22 A. Yes.

23 MR. MEDLOCK: Thank you. I have no further
24 questions of this witness, your Honor.

25 THE COURT: Any questions, Ms. Banks?

1 MS. BANKS: No, your Honor.

2 THE COURT: Mr. Simons?

3 MR. SIMONS: No questions, your Honor.

4 THE COURT: And I need, again, for --

5 Mr. Berning is not here, is that correct, the one
6 that was represented by Mr. Johnson?

7 MR. MEDLOCK: No, ma'am, he is not here.

8 THE COURT: He is not -- okay.

9 No further questions from either of you?

10 MS. BANKS: No, your Honor.

11 MR. MEDLOCK: Your Honor, the last thing that
12 I have is Plaintiff's Exhibit 8, which is my
13 Affidavit of Attorneys Fees and costs in this
14 matter. And I'll be glad to answer any questions
15 they may have regarding my affidavit.

16 THE COURT: Any questions?

17 MS. BANKS: No, your Honor, I have no
18 questions regarding his affidavit.

19 THE COURT: Mr. Simons?

20 MR. SIMONS: No questions, your Honor.

21 THE COURT: Mr. Medlock, is that Plaintiff's
22 case?

23 MR. MEDLOCK: That is Plaintiff's case, your
24 Honor..

25 THE COURT: Mr. Simons or Ms. Banks, who

1 wants...

2 MR. SIMONS: We'll go ahead, your Honor. I
3 will call Charlie Miller to the stand.

4 *****

5 Whereupon,

6 CHARLES MILLER,

7 having been first duly sworn,
8 was examined and testified as follows:

9 *****

10 THE COURT: Proceed.

11 DIRECT EXAMINATION

12 BY MR. SIMONS:

13 Q. Could you please state your name for the record.

14 A. Charles Miller.

15 Q. And, Mr. Miller, what is your address?

16 A. 194 Cessna Drive, Trenton, South Carolina.

17 (Whereupon, the below described Promissory
18 Note was marked Defendant's Exhibit
19 No. 1.)

20 Q. And I'm going to hand you what's been marked as
21 Defendant's Exhibit 1. Could you just tell me what
22 that is, please?

23 A. That's the Promissory Note between myself and S17
24 Owners Association. And it does have a seal on it,
25 it's the original.

1 Q. I'm sorry. You said it had a --

2 A. Has the seal on it and is the original.

3 Q. So that is an original document --

4 A. Yes, sir.

5 Q. -- you have. Could you tell me the face value of
6 the note, what does it recite as the debt owing?

7 A. The original -- it was \$15,000.

8 Q. Okay. And have you assigned that note or
9 hypothecated that note, in other words, have you
10 used it as collateral?

11 A. No, sir, I have not.

12 Q. You are the owner and the holder of that note?

13 A. Yes, sir, I am.

14 Q. Okay. And what's the date of that note?

15 A. April 22, 2006.

16 Q. Okay. And the interest rate is what?

17 A. Nine point seven five percent.

18 Q. Okay. So the debt is accruing interest at the rate
19 of 9.75 percent?

20 A. Correct.

21 Q. I'm going to ask you a little bit about the
22 payments so we can figure out what the debt is.
23 And I believe you have some notes there in your
24 folder. As of today what is the total principal
25 balance owing under the note?

1 A. Fourteen thousand fifteen dollars, seventy-six
2 cents.

3 THE COURT: Could you repeat that?

4 WITNESS: Fourteen thousand fifteen, sevety-
5 six cents.

6 Q. Okay. And the total accrued interest as of today
7 is how much?

8 A. Eight thousand three hundred thirty and twenty-five
9 cents.

10 Q. And for a total principal and interest debt owing
11 under the note of how much?

12 A. Twenty-two thousand three forty-six and one cent.

13 Q. And have you had attorneys fees incurred during the
14 prosecution of this case?

15 A. Yes, sir, I have.

16 Q. And what have those been?

17 A. The attorneys fees were \$2,000.

18 Q. Okay. And so for a total debt with the principal,
19 interest, and attorneys fees of how much?

20 A. Twenty-four thousand three hundred forty-six
21 dollars, one cent.

22 Q. And is that Promissory Note secured by a Mortgage?

23 A. (No response.)

24 Q. I'm going to hand you what's been marked as
25 Plaintiff's Exhibit 4. Do you recognize that?

1 A. Yes, sir.

2 Q. Is that the Mortgage that's securing the note that
3 we just went over?

4 A. Yes, sir, it is.

5 Q. And, to the best of your knowledge, has that
6 Mortgage been amended in any way, any manor?

7 A. Not to my knowledge.

8 MR. SIMONS: That's all I have, your Honor.

9 THE COURT: Mr. Medlock?

10 MR. SIMONS: Excuse me, your Honor. My I
11 introduce that into evidence as Defendant's Exhibit
12 1, please?

13 THE COURT: Yes, without objection.

14 MR. MEDLOCK: No, objection.

15 THE COURT: Okay.

16 MR. SIMONS: That's it, your Honor.

17 THE COURT: Mr. Medlock, any questions?

18 MR. MEDLOCK: No questions.

19 THE COURT: Ms. Banks, any questions?

20 MS. BANKS: Your Honor, we have no questions.

21 MR. MEDLOCK: Your Honor, as a matter of
22 housekeeping. Although we've marked our Exhibits
23 can we admit those as evidence once the Plaintiff
24 -- I forgot to even your Honor that.

25 THE COURT: I thought maybe y'all had maybe

1 stipulated --

2 MR. MEDLOCK: No, we hadn't --

3 THE COURT: -- it didn't go on the record?

4 Are we stipulating that --

5 MR. SIMONS: Yes, your Honor, I have no
6 objections.

7 MS. BANKS: We have no objections to that.

8 MR. MEDLOCK: I didn't think to -- I
9 apologize.

10 THE COURT: Ms. Banks.

11 MS. BANKS: Your Honor, as you know, I
12 represent quite a few Defendants in this case. And
13 although I have contacted and notified every
14 Defendant that I represent I have not been
15 presented with original Promissory Notes by those
16 Defendants. So we do not have a litany of
17 testimony to present with a list of debt.

18 The Mortgage lists, in specificity, the
19 amounts that each Note holder contributed to the
20 situation that we have, as you know, and that was
21 pretty -- as was discussed, this is a community
22 airstrip where most of these people that
23 contributed money to the situation live in this
24 community and they have an airstrip where they fly
25 in and fly out. They contributed this money in the

1 situation where they would re-pave and redo this
2 airstrip to maintain it for the community.

3 Unfortunately, the organization that they
4 contributed that money to is not appearing here
5 today and is not represented here today, that would
6 be the S17 Owners Association. It's my
7 understanding that that Owners Association is the
8 primary Defendant and then all the other Defendants
9 are all just Note holders within that organization,
10 as well as stockholders within that organization.

11 We are asking the Court to consider the fact
12 that all of these people are neighbors, that they
13 own property on the airstrip, that all of them have
14 hangers, and airplanes, and that's why they moved
15 into the community, is because of the airstrip and
16 the area. This has been a very long and arduous
17 case for all of these people. The S17 organization
18 has been through a bankruptcy proceeding, which was
19 dismissed, eventually, by the Trustee. This has
20 been ongoing since 2009. I know it's been
21 difficult for the Bernings', as well as it's been
22 difficult for Mr. Simon's clients and for my
23 clients. It's been a very hard situation.

24 We do not, at this time, have any -- we do
25 understand at this time that the Court is going to

1 have no choice but to go forward with foreclosure.
2 And we would just ask that the Court take into
3 consideration the circumstances behind the
4 situation that we're dealing with today. Thank
5 you.

6 **THE COURT:** That was somewhat of a closing
7 argument.

8 **MS. BANKS:** That's all we have, your Honor.

9 **THE COURT:** Ms. Banks, I think one of your
10 clients wants to speak with you.

11 **MS. BANK'S CLIENT:** May I say something?

12 **THE COURT:** Are you one of Ms. Bank's clients?

13 **MS. BANK'S CLIENT:** Yes, I am.

14 **THE COURT:** Then you need to speak through
15 her.

16 **MS. BANKS:** It's fine, your Honor, we can
17 proceed.

18 **THE COURT:** Now, I will hear closing arguments
19 from the other two. But I would like for Counsel
20 to look at the third paragraph of one of the
21 Promissory Notes beginning with the middle of that
22 second line (As read): However, no Payee will be
23 paid in advance of another without approval by a
24 majority vote of the outstanding shares of S170A,
25 Inc.

1 and they were good enough friends to make this
2 investment together, and to form this organization,
3 and to say, We live together, we're neighbors, and
4 we want to have a better airstrip. And that's what
5 they did.

6 As so in this case this is not a boilerplate
7 bank foreclosure. It's just not. It is, I dare
8 say, a case of first impression.

9 **THE COURT:** Thank you. Mr. Simons.

10 **MR. SIMONS:** Your Honor, we -- still passing
11 on the third sentence there -- I don't know that
12 it's -- I tend to agree with Mr. Medlock, it deals
13 with prepayment. And it seems, in the case here,
14 that if there was a prepayment it would be to --
15 not to the benefit of any one party, it would be
16 paid *pro rata*. If you were going to pay one person
17 in advance the other would take the vote that the
18 full board -- or excuse me -- the majority vote of
19 the outstanding Sharers of the owners association.

20 And I don't know if we're delving, maybe, into
21 closing arguments, but it seems like there will be
22 three ways to handle the situation. The first
23 would be to deny a foreclosure completely. The
24 second would be to allow the parties that have
25 proven their debt to foreclose on the entire 100

1 percent interest of the runway. The third option
2 would be to allow the people who have proven their
3 debt to foreclose the Mortgage to the extent of
4 their Mortgage. So if there was one person
5 foreclosing that would be a one/twenty-fourth
6 interest they are foreclosing on, therefore, they
7 are putting up a one/twenty-fourth interest of the
8 property up for sale.

9 **MR. MEDLOCK:** Your Honor, regarding his last
10 point. We will agree to disagree on that.

11 If you will look at paragraph nine of the
12 Mortgage it talks about default of any Lender --
13 any one Lender may declare the Mortgage to be
14 immediately due, it doesn't talk about a percentage
15 of the Mortgage to be due immediately. The written
16 agreement says the Mortgage to be due.

17 **THE COURT:** Interestingly enough, I was going
18 to call your attention to that paragraph.
19 Paragraph nine (As read): Any Lender may declare
20 all of the sums secured by this Mortgage --

21 **MR. MEDLOCK:** Right.

22 **THE COURT:** All of the sums, that means all of
23 the Notes, is that correct?

24 **MS. BANKS:** That would be how I would
25 interpret this.

1 **MR. MEDLOCK:** Well, they still have to prove
2 their debt here in court today. We don't know, you
3 know, how much they've been paid, what's their
4 principal balances, what's their interest balances,
5 nothing.

6 I agree with Ms. Banks, this is the first time
7 -- I mean, I've been doing foreclosures for 20
8 years and I've never seen anything like this.
9 Anything. You know, it's just odd.

10 **THE COURT:** Would you like to make a closing
11 argument --.

12 **MR. MEDLOCK:** Very well, your Honor.

13 **THE COURT:** -- for anything that hasn't
14 already been said.

15 **MR. MEDLOCK:** I agree with Ms. Banks, this is
16 very unique so you're going to make a decision
17 that's going to be unique in this matter.

18 The one thing I'm going to harp on -- and,
19 yes, I've already said it, but I'm going to say it
20 one more time -- is that we would ask that only the
21 interest of those that have provided you evidence
22 of their debt today would be included into the
23 amount owed to them in this case and that the
24 entire Mortgage be foreclosed.

25 The remainder of the owners, they still have

1 their Promissory Notes, which in Chase v. Richard
2 the Supreme Court wiped out half a million dollar
3 debt to a bank, saying, Ah, too bad, you've still
4 got your Promissory Note, even though the man's
5 dead and has nothing. But that's what the Supreme
6 Court said in Chase v. Richard so we'll go with
7 that and ask your Honor to foreclose.

8 **THE COURT:** Ms. Banks.

9 **MS. BANKS:** Your Honor, as I'm sure you can
10 understand, I have repeatedly tried to explain the
11 procedures behind this to my clients. I have a lot
12 of clients. They all agreed to come together,
13 because this is one of multiple lawsuits they have
14 defended since they took on this situation and
15 they're trying to defer costs. And they don't
16 understand this. They don't understand how one
17 person can come and foreclose the whole thing when
18 they all contributed. And that's one of the
19 questions one of my clients was coming up asking, I
20 don't understand why I'm a defendant when I'm a
21 Lender, I still don't understand it. And it's been
22 explained multiple times that's it's a legal
23 technicality that can be done because of the way
24 the documents are written, that's why it can be
25 done this way.

1 We would ask that in light of the testimony
2 here today and the uniqueness of this case that the
3 Court not make a decision today.

4 We would also ask that in light of what my
5 clients have now seen in open court and what is
6 required for them to prove their debt that --
7 because I have been contacting them and telling
8 them, you know, you have to be involved in this
9 process, you have to come forth, you have to
10 participate, and they're all -- since 2008 they've
11 been in litigation over this thing, not for
12 Mr. Loyer, but for various entities that have
13 inundated, served multiple times. It's just boxes
14 and boxes of litigation over this runway. And a
15 lot of them are just to the point where they're
16 like, I just don't want to hear about this runway
17 ever again. And I don't think they realize what's
18 at stake. And I would ask to be given five days to
19 submit proofs of their Notes. Because although I
20 have spoken to them and I have contacted them they
21 have not provided me with the evidence I needed to
22 be able present their testimony today.

23 **THE COURT:** Now, I think you've gone from a
24 closing argument to making some kind of Motion.

25 **MS. BANKS:** Well, I don't know if it's

1 to speak with my clients?

2 **THE COURT:** Yes.

3 **MR. MEDLOCK:** Your Honor, I have spoken with
4 my clients, they are not amenable to allowing any
5 sort of amendment of the pleadings at this time
6 with this case, it's five years old.

7 In addition, since they didn't counterclaim
8 for any foreclosure and didn't present any evidence
9 today -- you know, you don't get a second bite at
10 the apple -- after they've heard all my testimony
11 they get to go home with five days and come up with
12 something great to go against us, and we can't
13 consent. We would ask the Court to rule that way.

14 **MS. BANKS:** Your Honor, I'm not asking to
15 amend the testimony.

16 **MR. MEDLOCK:** Well, she is, your Honor,
17 because I don't have any way -- if she's going to
18 submit affidavits --

19 **MS. BANKS:** I'm not asking to amend the
20 pleading.

21 **MR. MEDLOCK:** But even if she submitted
22 affidavits, I've got no way to cross-examining
23 affidavits.

24 **THE COURT:** Mr. Simons?

25 **MR. SIMONS:** Your Honor, my client, from the

1 beginning, has sort of been on the fence. That if,
2 in fact, the property went up for foreclosure he
3 would join. He has no -- takes no position on the
4 Motion, your Honor.

5 **THE COURT:** I am going to have to deny the
6 Motion. I mean, you have indicated that you have
7 repeatedly asked. They would not even provide you
8 with original Notes. You've done what you could by
9 telling them the importance of this case, that they
10 had to prove their debt to get anything out of it.
11 I have to agree with Mr. Medlock, there is no way
12 that he could cross-examine -- we would have to
13 have a subsequent hearing and this has been going
14 on long enough. And I think you've reached out to
15 your clients, you've corresponded with them, and if
16 they don't cooperate then you can't do anything
17 about it. Motion denied.

18 **MS. BANKS:** Thank you, your Honor.

19 **THE COURT:** Mr. Simons?

20 **MR. SIMONS:** Your Honor, I would just, for the
21 record, reiterate that we had asked if the
22 foreclosure was granted that we would join in the
23 foreclosure. To do that we have to prove two
24 things, that there was a debt to be owed to
25 Mr. Miller, we have proved a debt of \$24,346.01,

1 and we've also proved that it is secured by the
2 Mortgage, the second prong of foreclosure. The
3 Mortgage and the real property describe therein is
4 the collateral for the Note and stands as security
5 for the Note. And we feel that we have proved
6 that. That's all, your Honor.

7 **THE COURT:** Thank you. Anything further from
8 anyone?

9 **MR. MEDLOCK:** No, your Honor.

10 **THE COURT:** Okay. I will get back with the
11 attorneys with my decision and an Order will be
12 prepared and circulated around before I sign it.

13 **MR. MEDLOCK:** Thank you.

14 **MS. BANKS:** Thank you, your Honor.

15 **MR. SIMONS:** Thank you, your Honor.

16 *

17 (Whereupon, the hearing concluded at 11:00 a.m.)

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

Bernard Loyer, Jr. and Sherry Loyer,

Plaintiffs

vs.

S-17 Owners Association, Inc., et al

Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2009 DEC 11 PM 4:39

MOTION TO DISMISS
FILE NO. 09-CP-19-00353

NOW COMES Defendants J.L. Avent, F. Avent, S.S. Berger, R.J. Bernign, J.M. Clavel, G. Connell, G. Crawford, D. Crawford, B.C. Douglas, J.D. Dunn, L. Galazka, M.V. Goransky, F.L. Gougher, D.E. Harris, C.A. Knight, J.H. Lacher, K.R. Larson, L. Linn, R. McCoig, C.W. Miller, M. O'Brien, C. M. Rischbiter, W. Satcher and B. Smith-Sullivan (hereinafter referred to as Co-lenders), by and through their attorney, Marsha M. Banks, do respectfully request an Order of Dismissal with regard to the foreclosure action referenced herein above.

On or about September 12, 2002 J.M. Clavel formed an eleemosynary corporation of which Plaintiffs and the above-listed Co-lenders made up the entire membership. Said corporation is Defendant S-17 Owners Association, Inc.

Shortly thereafter, on or about September 16, 2002, Plaintiffs and Co-lenders pooled their funds and loaned those joint funds to Defendant S-17 Owners Association, Inc. Plaintiffs and Co-lenders each received individualized notes from Defendant S-17 Owners Association, Inc., which in turn utilized the borrowed funds to purchase the subject property of the above referenced foreclosure action. In turn, Defendant S-17 Owners Association, Inc. executed a mortgage to all lenders making them co-mortgagees and first lien holders to the subject property.

The Co-lenders request a Dismissal of this action for the following reasons:

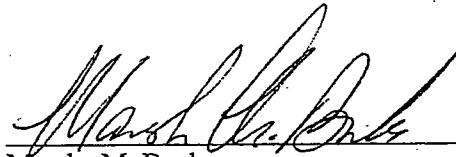
1. That paragraph 8 of the Mortgage clearly states as follows:

"8. Governing Law; Severability. The State and local laws applicable to this mortgage shall be the laws of the State of South Carolina, County of Aiken. ..."

therefore, Edgefield County is the improper venue for this action.

2. Plaintiffs, acting unilaterally and in complete disregard of the by-laws of S-17 Owners Association, Inc., of which they are members, have filed this action without joining the additional lenders (the Co-lenders) as party Plaintiffs, without notice, and without the opportunity to decline to join as party Plaintiffs and thereby be named as Defendants. See Pioneer Savings & Loan Association of Whiteville, North Carolina, Appellant-Respondent v. Horry Coastal Enterprises, Inc., Internationale Inn Properties, International Inn, Inc., H. F. Bell, Carolyn M. Bell, Robert L. Kilgo, Evalyn J. Kilgo, R. David Bell, Helene K. Bell, T.B. King, Nancy M. King, Mary G. Wolfe, and First Union National Bank of North Carolina, Defendants-Respondents, of whom H.F. Bell, R. David Bell, Robert L. Kingo and T.B. Kingare, Respondents-Appellants (275 SC 469-474, 1980, 272 S.E. 2d 460; SCJur. 27 §107; 108).

Defendants (herein referred to as Co-lenders) respectfully submit this Motion for Dismissal requesting the Court dismiss this action with prejudice and request that an Order be issued restraining the Defendant from bringing actions of a similar nature against any of the Co-lenders named in the Summons and Complaint filed May 10, 2009.


Marsha M. Banks
Attorney for Co-lenders/Defendants

BANKS & ASSOCIATES PC
319 Park Avenue SE
Aiken, SC 29801
803.648.5777 Telephone
803.648.5228 Facsimile
mmblaw@gmail.com

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY

STATE OF SOUTH CAROLINA 2014 JUL -8 AM 11:16 THE COURT OF COMMON PLEAS

COUNTY OF EDGEFIELD

Bernard Loyer, Jr. and Sherry Loyer

Plaintiffs,

Vs.

S17 Owners Association, Inc., et al,

Defendants.

**MOTION TO POSTPONE SALE
FUND DISTRIBUTION**

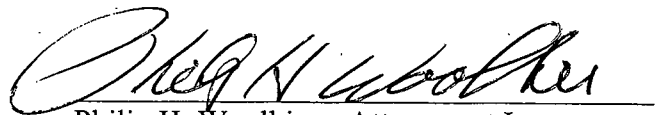
Case No.: 2009-CP-19-00353

The 6/5/2014 Judgment for a Foreclosure Sale, has been appealed to the Court of Appeals with a Notice of Appeal filed with the Edgefield Clerk of Court on July 7 2014.

The Appeal will include the validity of excluding a group of Defendants from the distribution of Sale proceeds.

The applicable mortgage requires distribution to all lenders.

WHEREFORE, the following Defendants request distribution of Sale proceeds to the Plaintiffs Bernard Loyer, Jr., Sherry Loyer and Charles W. Miller be held in escrow until a final decision on the rights of all Defendants.



Philip H. Woolhiser, Attorney at Law
112 Trafalgar Street, SW
Aiken, South Carolina 29801
Phone: 803-648-9994
Attorney for Appellants **

July 8, 2014

**Individually named Defendants, appealing the order of Honorable Kathy Ouzts Rushton, dated June 5, 2014 are: John L. Avent, Frances Avent, Sylvia S. Berger, Greg Connell, Jonathan D. Dunn, Michael V. Goransky, Frank L. Gougher, David E. Harris, Cathryn A. Knight, John H. Lacker, Kyle R. Larson, Michael O'Brien, Carolyn M. Rishchbieter and Belinda Smith Sullivan.

MICHAEL S. MEDLOCK, P.A.

ATTORNEY AND COUNSELOR LAW
POST OFFICE BOX 2065
COLUMBIA, SOUTH CAROLINA 29824-0300
e-mail: mmedlock@medlocklaw.com

MICHAEL S. MEDLOCK

(803) 252-3340
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May 6, 2014

Marsha M. Banks, Esq.
319 Park Ave SE
Aiken, SC 29801

S-17 Owners Association, Inc.
85 Rachel Ave
Trenton, SC 29847

William Wesley Johnston, Jr., Esq.
900 Elmwood Ave., Ste 200
Columbia, SC 29201

Paul Knapp Simons, Esq,
111 Park Ave SW
Aiken SC 29801

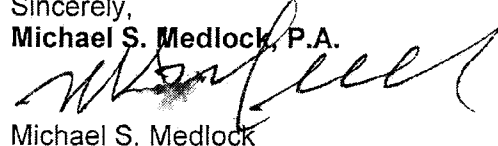
**Re: Bernard Loyer et al.
vs. S-17 Owners Association, Inc., et al.
C/A No.: 2009-CP-19-00353**

Dear Sir or Madam:

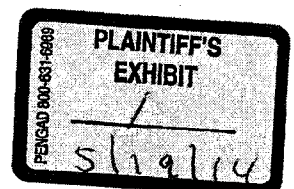
A foreclosure hearing has been set in the above referenced matter for Monday, May 19, 2014 at 10:00 am before the Honorable Kathy Ouzts Rushton, Special Referee for Edgefield County, at Edgefield County Courthouse, Main Courtroom, 127 Courthouse Sq., Edgefield SC 29824. Pursuant to S.C. Code Ann. §14-11-110 (as amended), the Plaintiff's attorney will submit written testimony on behalf of the Plaintiff at the hearing. As a result of the hearing, a foreclosure sale could be ordered as soon as sixteen (16) days after this foreclosure hearing.

If you plan to attend the hearing, we would appreciate your calling us at 803-637-3800 and advising the receptionist of your intent.

Sincerely,
Michael S. Medlock, P.A.



Michael S. Medlock



PROMISSORY NOTE

For value received, the undersigned S17 Owners Association, Inc., (the "Promisor") promises to pay to the order of Bernard Loyer (the "Payee"), at 61 Rachel Ave, Trenton, SC 29847, (or at such other address as the Payee may designate in writing) the sum of \$40000 with interest from April 22, 2006, on the unpaid principal at the rate of 9.75 percent annually, according to the amortization schedule given in Appendix A.

The unpaid principal and accrued interest shall be payable in semi-annual installments of \$2542.56, beginning on October 31, 2006 and continuing until April 30, 2011 (the "Due Date"), at which time the principal and interest shall be paid in full. All payments on this Note shall be applied first in payment of accrued interest and any remainder in payment of principal.

The Promisor reserves the right to prepay this Note (in whole or in part) prior to the Due Date with no prepayment penalty, however no Payee will be paid in advance of another without approval by a majority vote of the outstanding shares of S17OA, Inc.

If the Promisor has not paid the full amount of any semi-annual installment at the scheduled time, then interest will continue to accrue on the unpaid portion. After 30 days from the date due, any unpaid amount will also be subject to a one-time 5% late charge penalty. If Promisor has not paid the full amount of any semi-annual installment, with the late charge, within 12 calendar months of the date it is due, Promisor will be in default. If Promisor is in default, the Payee may send Promisor a written notice requiring Promisor to pay immediately the full amount of principal which has not been paid and all the interest owed on that amount. Payee shall have the relief of foreclosure as set forth in the applicable mortgage.

This note shall not be transferred to a substitute or alternate party, without prior permission of the Promisor.

Promisor pledges to deposit all amounts initially paid by Payee, under this Note, into the trust account of Attorney Phil Woolhiser, Security Federal Bank Account #0408012617. Such amounts paid into trust shall be transferred to the Promisor only after a mortgage from Promisor to Payee has been recorded in the applicable public records. Said mortgage shall secure this and all additional associated notes, and shall list the S17 runway as collateral for this Note.

This Note shall be construed in accordance with the laws of the State of SC.

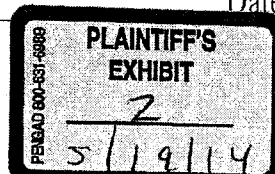
If any one or more of the provisions of this Note are determined to be unenforceable, in whole or in part, for any reason, the remaining provisions shall remain fully operative.

All payments of principal and interest on this Note shall be paid in the legal currency of the United States.

Signed this 22nd day of April, 2006

By: John L. Arent, Treas. Date: 4/22/06
S17 Owners Association, Inc.

Witness: John A. Lacher Date: 5/17/06



\$40,000 AMORTIZATION SCHEDULE - Normal amortization

Pmt	Date	Payment	Interest	Principal	Balance
Loan 04-22-2006					40,000.00
1	10-15-2006	2,542.56	1,871.77	670.79	39,329.21
2	04-15-2007	2,542.56	1,904.62	637.94	38,691.27
3	10-15-2007	2,542.56	1,884.27	658.29	38,032.98
4	04-15-2008	2,542.56	1,852.21	690.35	37,342.63
5	10-15-2008	2,542.56	1,818.59	723.97	36,618.66
6	04-15-2009	2,542.56	1,773.35	769.21	35,849.45
7	10-15-2009	2,542.56	1,745.87	796.69	35,052.76
8	04-15-2010	2,542.56	1,697.52	845.04	34,207.72
9	10-15-2010	2,542.56	1,665.92	876.64	33,331.08
10	04-15-2011	2,542.56	1,614.14	928.42	32,402.66
11	04-15-2011	32,402.64	0.02	32,402.66	0.00
Grand totals		57,828.24	17,828.24	40,000.00	

PROMISSORY NOTE

For value received, the undersigned S17 Owners Association, Inc., (the "Promisor") promises to pay to the order of Sherry Loyer (the "Payee"), at 61 Rachel Ave, Trenton, SC 29847, (or at such other address as the Payee may designate in writing) the sum of \$10000 with interest from April 22, 2006, on the unpaid principal at the rate of 9.75 percent annually, according to the amortization schedule given in Appendix A.

The unpaid principal and accrued interest shall be payable in semi-annual installments of \$635.64, beginning on October 31, 2006 and continuing until April 30, 2011 (the "Due Date"), at which time the principal and interest shall be paid in full. All payments on this Note shall be applied first in payment of accrued interest and any remainder in payment of principal.

The Promisor reserves the right to prepay this Note (in whole or in part) prior to the Due Date with no prepayment penalty, however no Payee will be paid in advance of another without approval by a majority vote of the outstanding shares of S17OA, Inc.

If the Promisor has not paid the full amount of any semi-annual installment at the scheduled time, then interest will continue to accrue on the unpaid portion. After 30 days from the date due, any unpaid amount will also be subject to a one-time 5% late charge penalty. If Promisor has not paid the full amount of any semi-annual installment, with the late charge, within 12 calendar months of the date it is due, Promisor will be in default. If Promisor is in default, the Payee may send Promisor a written notice requiring Promisor to pay immediately the full amount of principal which has not been paid and all the interest owed on that amount. Payee shall have the relief of foreclosure as set forth in the applicable mortgage.

This note shall not be transferred to a substitute or alternate party, without prior permission of the Promisor.

Promisor pledges to deposit all amounts initially paid by Payee, under this Note, into the trust account of Attorney Phil Woolhiser, Security Federal Bank Account #0408012617. Such amounts paid into trust shall be transferred to the Promisor only after a mortgage from Promisor to Payee has been recorded in the applicable public records. Said mortgage shall secure this and all additional associated notes, and shall list the S17 runway as collateral for this Note.

This Note shall be construed in accordance with the laws of the State of SC.

If any one or more of the provisions of this Note are determined to be unenforceable, in whole or in part, for any reason, the remaining provisions shall remain fully operative.

All payments of principal and interest on this Note shall be paid in the legal currency of the United States.

Signed this 22nd day of April, 2006

By: John L. Aved, Treas.
S17 Owners Association, Inc.

Date: 4/22/06

Witness John H. Loebe

Date: 5/17/06



Appendix A: \$10,000 AMORTIZATION SCHEDULE - Normal amortization

Pmt	Date	Payment	Interest	Principal	Balance
Loan	04-22-2006				10,000.00
1	10-15-2006	635.64	467.94	167.70	9,832.30
2	04-15-2007	635.64	476.15	159.49	9,672.81
3	10-15-2007	635.64	471.07	164.57	9,508.24
4	04-15-2008	635.64	463.05	172.59	9,335.65
5	10-15-2008	635.64	454.65	180.99	9,154.66
6	04-15-2009	635.64	443.34	192.30	8,962.36
7	10-15-2009	635.64	436.47	199.17	8,763.19
8	04-15-2010	635.64	424.38	211.26	8,551.93
9	10-15-2010	635.64	416.48	219.16	8,332.77
10	04-15-2011	635.64	403.54	232.10	8,100.67
11	04-15-2011	8,100.66	0.01-	8,100.67	0.00
Grand totals		14,457.06	4,457.06	10,000.00	
Last interest amount decreased \$			0.01	due to rounding.	

9.15

Instrument Book Page
200600001732 OR 1048 58

200600001732
Filed for Record in
EDGEFIELD COUNTY, SC
SHIRLEY F NEWBY, CLERK
05-02-2006 At 12:55 pm.
MORTGAGE 11.00
OR Book 1048 Page 58 - 62

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

MORTGAGE

COUNTY OF EDGEFIELD)

WHEREAS, S17 Owners Association, Inc., ("Borrower") in and by those certain notes, ("Notes") bearing date the 22nd day of April, 2006, stand firmly held and bound unto the following individuals (Lenders) in the sum of Three Hundred Thousand and no 100th's Dollars, (\$300,000.00), conditioned for the payment of the full and just sum of said notes. Borrower has promised to pay this debt in regular periodic payments and to pay the debt in full not later than April 30, 2011.

The lenders and the amount of the individual notes:

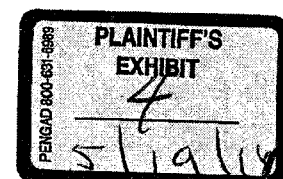
Avent, John L. & Frances	\$10,000
Berger, Sylvia S.	30,000
Berning, Robert J.	30,000
Clavel, Jeanne M.	10,000
Connell, Greg	10,000
Crawford, Gerald & Dorothy	10,000
Douglas, Bruce C.	10,000
Dunn, Jonathan D.	5,000
Galazka, Les	25,000
Goransky, Michael V.	10,000
Gougher, Frank L.	5,000
Harris, David E., Trust	10,000
Knight, Cathryn A.	5,000
Lacher, John H.	5,000
Larson, Kyle R.	15,000
Linn, Laura	5,000
Loyer, Bernard, Jr.	40,000
Loyer, Sherry	10,000
McCoig, Roger	5,000
Miller, Charles Wilmot	15,000
O'Brien, Michael	20,000
Rischbieter, Carolyn M.	5,000
Satcher, William	5,000
Smith-Sullivan, Belinda	5,000

2006014215

MORTGAGE
RECORDING FEES \$11.00
PREPARED & RECORDED:
05-04-2006 09:20 AM
JUDITH WARNER
REGISTER OF DEEDS CONVEYANCE
AIKEN COUNTY, SC
By: JOYCE H EGGLE DEPUTY RMC
BK:RB 4061
PG:1832-1836

LENDERS' ADDRESS: 112 TRAFALGAR STREET SW
AIKEN, SC 29801

Book 4061 Page 1832



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Instrument Book Page
200800001732 OR 1048 59

NOW, KNOW ALL MEN, THAT THIS MORTGAGE secures to the Lenders the repayment of the indebtedness evidenced by the Notes, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, to Lenders the following described Property located in part in the County of Aiken, State of South Carolina, and in part in the County of Edgefield, State of South Carolina.

ALL that certain piece, parcel or tract of land, together with improvements thereon, containing 35 acres, more or less, situate, lying and being partly in the County of Aiken and partly in the County of Edgefield, State of South Carolina, and being 300 feet in width and slightly more than 5000 feet length, and being generally known and referred to as the airport portion of Twin Lakes Executive Air Park Development, such property including runway improvements, and any and all other improvements located thereupon, and such property being shown and designated on a plat of Section 1, Lots 3 through 21, Twin Lakes Executive Air Park, Inc. by Marion L. Jones, dated September 22, 1985. Also included in the subject agreement is a 20 foot wide easement area running along the northern boundary of said property and extending from SC Highway 144 parallel to the entire tract as heretofore released by Simons and Lott from a mortgage instrument executed in their favor by Twin Lakes Executive Air Park, Inc.

Said property is also shown on a plat prepared for Donald E. Tudor by Charles M. Jones, said plat being originally dated November 20, 1981 and more recently revised in December, 1987, and it is further provided that the 50 foot strip along the Western end of said property, as depicted on the Charles E. Jones plat, is hereby abandoned by the Grantor as being of no further need or use and it is not intended to be reserved even though shown on said plat. See Aiken County Plat Book 20, Page 139-1 and Edgefield County Plat Book 29, Page 203.

The within conveyance is made subject to easements and agreements of record.

Derivation No.: Aiken Records: 2244/154 Edgefield Records: 308/264
Tax Map No.: 00-48.0-01-001 Aiken
163-00-01-053 Edgefield

Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS. Borrower covenants and agrees as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness evidence by the Notes. This Mortgage secures

Instrument Book Page
200600001732 GR 1048 60

- payment of said Notes according to Note terms, which are incorporated herein by reference.
2. **Charges; Liens.** Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage.
 3. **Preservation and maintenance of Property.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property.
 4. **Protection of Lenders' Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lenders' interest in the Property, then each Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such actions as is necessary to protect Lender's interest. Any amounts disbursed by Lender pursuant to this section 4, with interest thereon from the date of disbursement, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this section 4 shall require Lender to incur any expense or take any action hereunder.
 5. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lenders subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.
 6. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Borrower shall remain liable for full payment of the principal and interest on the Note (or any advancement or obligation) secured hereby, notwithstanding any of the following; (a) the sale of all or a part of the premises; (b) the assumption by another party of Borrower's obligations hereunder; (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Borrower or a subsequent owner of the Property; and (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Lender's right to a deficiency judgment (in the event of foreclosure) against Borrower or any party assuming the obligations hereunder, to the extent permitted by applicable law. Any forbearance by Lenders in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.
 7. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by first class mail addressed to the current President of Borrower at the Twin Lakes Executive Air Park, and (b) any notice to Lenders shall be given by first class mail to each Lender's address at

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Instrument Book Page
200600001732 OR 1048 61

the Twin Lakes Executive Air Park. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lenders when given in the manner designated herein.

8. **Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the State of South Carolina, County of Aiken. The foregoing sentence shall not limit the applicability of federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflicts shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

NON-UNIFORM COVENANTS. Borrower further covenants and agrees:

9. **Default; Acceleration; Remedies.** Upon Borrower's breach of any covenant or agreement of Borrower in this entire Mortgage, including the covenants to pay when due any sums under the Notes secured by this Mortgage, any Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without demand or notice, notice of the exercise of such option being hereby expressly waived. Lenders may invoke the power of sale hereby granted. Lenders shall have the right to enter upon and take possession of the Property hereby conveyed and after or without taking such possession shall have the right to sell the same at public action for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale in some newspaper published in said county, and upon payment of the purchase money, Lender, or owner of the debt and this Mortgage, or auctioneer, shall execute to the purchaser for and in the name of Borrowers, a good and sufficient deed to the Property sold. Lender shall apply the proceeds of said sale: first, to the expense of advertising, selling and conveying said Property, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment in full of the principal indebtedness and interest thereon, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the date of said sale; and fourth, the balance, if any, shall be paid over to said Borrower or to whomever then appears of record to be the owner of said Property. Lender may bid and become the purchaser of the Mortgaged Property at any foreclosure sale hereunder.
10. **Borrower's Right to Reinstate.** Notwithstanding Lenders' acceleration of the sums secured by this Mortgage, Borrower shall have the right to have any proceedings begun by a Lender to enforce this Mortgage discontinued if: (a) Borrower pays Lenders all sums which would be then due under this Mortgage, and the Notes, had no acceleration occurred; (b) Borrower cures all breaches of

13/15

Instrument Book Page
200600001732 OR 1048 62

any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in section 10 hereof, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action, as Lenders may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

11. Satisfaction. When the balance of all outstanding sums including finance charges and other charges, if any, secured by this Mortgage is zero, Lenders shall upon request of Borrower, release this Mortgage. Borrower will pay all recordation costs, if any. Absent a request from Borrower, this Mortgage shall remain in full force and effect for the term set forth above.

IN WITNESS WHEREOF, Borrower has executed this Mortgage and adopted as his seal the word ("SEAL") appearing beside his name.

Signed, sealed and delivered in the presence of:

For S17 Owners Association, Inc.

Mary B. Woolhiser
Mary B. Woolhiser

John L. Avent (SEAL)
John L. Avent, Treasurer

Philip Woolhiser
Philip Woolhiser

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

ACKNOWLEDGEMENT

Acknowledged before me by John L. Avent, Treasurer of the S17 Owners Association, Inc., duly authorized by Board resolution, Borrower, this 2nd day of May, 2006.

Philip Woolhiser (L.S.)
Philip Woolhiser

Notary Public for SC

My commission expires: 6/05/08

MICHAEL S. MEDLOCK, P.A.

ATTORNEY AND COUNSELOR AT LAW

300 BUNCOMBE STREET

POST OFFICE BOX 300

EDGEFIELD, SOUTH CAROLINA 29824-0300

MICHAEL S. MEDLOCK

(803) 637-3800

fax (803) 637-2480

May 7, 2009

S17 Owners Association, Inc.
a/k/a Countyline Airpark, Inc.
60 Piper Dr
Trenton SC 29847

**Re: Mortgagor: S17 Owners Association, Inc.
Mortgagee: Sherry Loyer and Bernard Loyer
Note and Mortgage dated April 22, 2006
Property: 00-48.0-01-001 / 163-00-01-053**

This firm represents **Sherry Loyer and Bernard Loyer ("the Loyers")**. I am writing to advise you that the above-referenced account with my client is now in default because of your failure to make payments in a timely manner as required under the terms of the Mortgage ("Security Instrument"). The Amount Now Due under the terms of the Security Instrument is **\$6,356.40** plus legal fees in the amount of **\$250.00** for a Total Amount Now Due in the amount of **\$6,606.40**. If you pay the Total Amount Now Due by certified bank check or money order on or before **June 7, 2009**, you may continue with the contract as though you were not late in making your payments, and you will not incur additional legal expenses. Also, any payments that become due between the date of this letter and the date payment is tendered will need to be included in order to bring this account current.

If you fail to cure this default on or before **June 7, 2009** by paying the Total Amount Now Due in the amount of **\$6,606.40**, then as of **June 8, 2009** the maturity of this contract will be automatically accelerated and full payment of the entire remaining balance of your loan, plus legal expenses, shall be due and payable (including the remaining unpaid principal balance, plus earned interest to such date) without any further notice. You have the right to reinstate after acceleration and the right to bring court action to assert the non-existence of a default, or any other defense to acceleration and sale.

If you fail to cure this default by **June 7, 2009**, the **Loyers** shall also pursue legal remedies and take such steps as are necessary or desirable to protect their rights under the Security Instrument and any other instrument(s) evidencing or securing the loan as allowed by applicable law. These rights include the right without further demand to repossess any property held as collateral for this transaction. If you are in default again, the **Loyers** may exercise its rights without sending you another notice like this one.

Breakdown of Amounts Due:

Sherry Loyer	10/15/08	\$ 635.64
Sherry Loyer	4/15/09	\$ 635.64
Bernard Loyer	10/15/08	\$2,542.56



May 7, 2009
Page Two

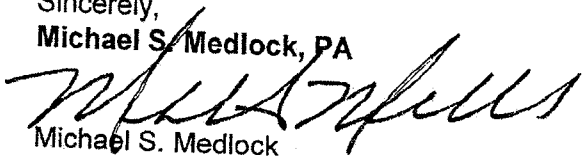
Bernard Loyer

4/15/09

\$2,542.56

Thank you for your considerate attention to this matter.

Sincerely,
Michael S. Medlock, PA


Michael S. Medlock

C: Sherry Loyer
Bernard Loyer
61 Rachel Ave
Trenton SC 29847

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

IN THE COURT OF COMMON PLEAS

Bernard Loyer, Jr., and Sherry Loyer)
Plaintiff,)
vs.)
S17 Owners Association, Inc., et al.,)
Defendants.)

Case No.: 2009-CP-19-00353

AFFIDAVIT OF INDEBTEDNESS

PERSONALLY appeared before me the undersigned witness, who being duly sworn, deposes and says:

That he is Plaintiff and holder of the note for the loan which is the subject of the above referenced foreclosure action authorized to make this affidavit. That the amount of indebtedness is as follows:

(a) Principal due \$37,342.63

(b) Interest from May 1, 2008

through May 19, 2014 at 9.75% per annum \$22,044.94

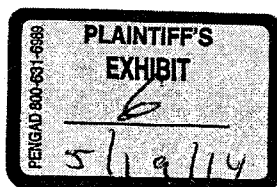
(c) Late Charges (prior to acceleration) \$127.13

Dates and Amounts incurred: _____

(i) Attorney's fees from previous bankruptcy \$200.00

TOTAL \$59,714.70

[signature on following page ...]



2210 days

9.975 per day

Bernard J. Loyer
Bernard Loyer

SWORN TO BEFORE ME
this 19 day of May, 2014.
[Signature]
Notary Public for DC
My Commission Expires: 2/7/15

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

IN THE COURT OF COMMON PLEAS

Bernard Loyer, Jr., and Sherry Loyer)

Case No.: 2009-CP-19-00353

Plaintiff,)

AFFIDAVIT OF INDEBTEDNESS

vs.)

S17 Owners Association, Inc., et al.,)

Defendants.)

PERSONALLY appeared before me the undersigned witness, who being duly sworn, deposes and says:

That he is Plaintiff and holder of the note for the loan which is the subject of the above referenced foreclosure action authorized to make this affidavit. That the amount of indebtedness is as follows:

(a) Principal due \$9,335.65

(b) Interest from May 1, 2008

through May 19, 2014 at 9.75% per annum \$5,511.23

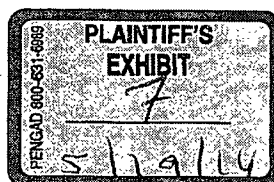
(c) Late Charges (prior to acceleration) \$31.78

Dates and Amounts incurred: _____

(i) Attorney's fees from previous bankruptcy \$200.00

TOTAL \$15,078.66

[signature on following page ...]



2210 days
2.499 per day

Sherry D. Loyer
Sherry Loyer

SWORN TO BEFORE ME
this 19 day of May, 2014
[Signature]
Notary Public for
My Commission Expires: 2/7/22

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

IN THE COURT OF COMMON PLEAS

Bernard J. Loyer, et al.,)
Plaintiff,)
vs.)
S17 Owners Association, Inc., et al)
Defendant(s).)

C/A No.: 2009-CP-19-00353

AFFIDAVIT OF ATTORNEYS FEES

The undersigned, first being duly sworn, deposes and states as follows:

1. That my name is Michael S. Medlock, and I am an attorney licensed in the State of South Carolina to practice law.

2. That I am the attorney for the Plaintiff in this matter.

3. My firm's billing in this matter, as well as the costs incurred with all available invoices and raw billing, reflects less than 15% of the debt owed, the final amount owed (which includes interest to date as complained of). These fees are provided for at the said rate in the contract complained of and total \$5,000.00 in connection with this action.

4. My law firm was engaged by the Plaintiff to foreclose the mortgage as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the running of interest. Plaintiff must also comply with investor requirements, government or private insuring agreements. Upon receipt of the case file, the title was examined to identify all parties having or claiming any interest in the subject real estate. The following non-inclusive list of pleadings and other documents have been prepared or reviewed in this action:

1. Lis Pendens and any amendment thereto
2. Summons and Complaint and any amendment thereto
3. Affidavits and proposed Orders for publication
4. Order of Reference
5. Notice(s) of Hearing
6. Record (Transcript) of Testimony
7. Proposed Master's Report and Judgment of Foreclosure and Sale
8. Notice of Sale

5. Additionally, the pleadings were drafted and served upon each defendant personally or by statutory/substitute service; reinstatement and payoff figures and payment histories were provided as requested or required. We scheduled and attended the hearing in this matter. Future duties include forwarding copies of the Judgment to appearing defendants, obtaining bidding instructions from Plaintiff or its designee, representing Plaintiff at the sale or arranging for such representation, preparing an Order of Sale or Report on Sale and Disbursements and Order Confirming Sale, and preparing the Master's/Special Master's Deed



and any other documents necessary in this particular action. I have expended approximately twelve hours on this matter prior to this hearing.

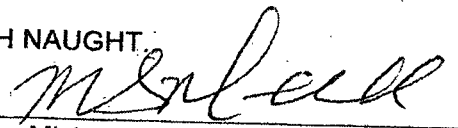
6. In addition to the time expended to date in prosecution of this action, we anticipate a minimum additional four hours after the hearing. Moreover, depending upon the interest shown by defendants, third parties, or counsel for either and the inherent negotiations required thereby, other time may also be committed to the completion of the case. In that regard, I would reserve the right to re-visit the question of attorney fees should the action proceed in an unexpected way.

7. In regard to the professional standing of counsel, representation of the Plaintiff has been undertaken by the firm of Michael S. Medlock, PA. The attorneys primarily involved in this representation has been Michael S. Medlock. Mr. Medlock concentrates his practice in the areas of foreclosure, bankruptcy and real estate. Furthermore, this fee is in line with the fee customarily charged by counsel with similar experience in this particular locality. Also the Plaintiff's attorneys have achieved the beneficial result of a prompt foreclosure of the mortgage.

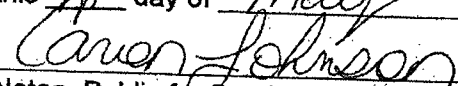
8. Costs Paid in this matter are as follows:

Title Abstracts	\$270.00
Service of Process	\$250.00
Filing Fee	\$150.00
Motion to Refer	\$ 25.00
Special Referee Fee	\$125.00

FURTHER THE AFFIANT SAYETH NAUGHT


Michael S. Medlock

SWORN TO BEFORE ME
this 19 day of May, 2014.


Notary Public for South Carolina

My Commission Expires: 1-11-2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY
2014 JUL -7 AM 10:24
COPY

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Kathy Ouzts Rushton, Special Referee

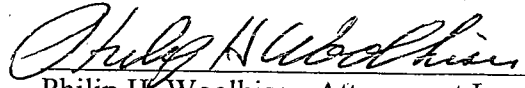
Case No. 2009-CP-19-00353

S17 Owners Association, Inc., et al., ... Appellants,
v.
Bernard Loyer, Jr. and Sherry Loyer, ... Respondents.

NOTICE OF APPEAL

The S17 Owners Association, Inc., and 14 of the individually named Defendants, appeal the order of Honorable Kathy Ouzts Rushton, dated June 5, 2014. The individual Defendants appealing the order are: John L. Avent, Frances Avent, Sylvia S. Berger, Greg Connell, Jonathan D. Dunn, Michael V. Goransky, Frank L. Gougher, David E. Harris, Cathryn A. Knight, John H. Lacker, Kyle R. Larson, Michael O'Brien, Carolyn M. Rishchbieter and Belinda Smith Sullivan.

Appellants received written notice of the entry of this Order on June 15, 2014.


Philip H. Woolhiser, Attorney at Law
112 Trafalgar Street, SW
Aiken, South Carolina 29801
Phone: 803-648-9994
Attorney for Appellants

July 2, 2014

Other Counsel of Record:

Michael S. Medlock, Esquire
Scott Law Firm, PA
PO Box 2065
Columbia, SC 29202
Attorney for Respondents

Paul Knapp Simons, Jr., Esquire
Hull Barrett, PC
111 Park Avenue SW
Aiken, SC 29801
Attorney for Defendant Charles Wilmot Miller

CERTIFICATE of COUNSEL

I hereby certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Philip H. Woolhiser
SC Bar No.: 12466
112 Trafalgar Street, SW
Aiken, South Carolina 29801
Phone: 803-648-9994
Attorney for Appellants

Aiken, SC
December 22, 2014

RECEIVED

DEC 23 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Kathy Ouzts Rushton, Special Referee

Appellate Case No. 2014-001742

Bernard Loyer, Jr. and Sherry Loyer, Respondents.

v.

S17 Owners Association, Inc.; John L. Avent; Frances Avent; Sylvia S. Berger; Robert J. Berning; Jeanne M. Clavel; Greg Connell; Gerald Crawford; Bruce C. Douglas; Jonathan D. Dunn; Les Galazka; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Laura Linn; Roger McCoig; Charles Wilmont Miller; Michael O'Brien; Carolyn M. Rischbieter; William Satcher and Belinda Smith-Sullivan, Defendants,

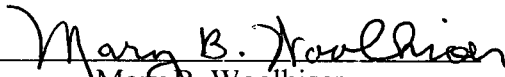
OF WHOM S17 Owners Association, Inc.; John L. Avent; Frances Avent; Sylvia S. Berger; Greg Connell; Jonathan D. Dunn; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Michael O'Brien; Carolyn M. Rischbieter; and Belinda Smith-Sullivan, are Appellants.

And Charles Wilmont Miller is a Respondent.

PROOF OF SERVICE

I, Mary B. Woolhiser, Secretary for Attorney Philip H. Woolhiser, certify that I have caused the Record on Appeal and this Certificate of Service, in the above-referenced matter to be served, via U.S. Mail on December 3, 2014, to applicable Counsel and *pro se* parties as addressed below:

Aiken, South Carolina
December 3, 2014


Mary B. Woolhiser

Philip H. Woolhiser, Esquire
112 Trafalgar St. SW
Aiken, SC 29801
Attorney for Appellants

Paul Knapp Simons, Esquire
111 Park Ave SW
Aiken, SC 29801
Attorney for Respondent, C. W. Miller

Marsha M. Banks, Esquire
319 Park Ave SE
Aiken, SC 29801
Attorney for Defendants

Bernard Loyer, Jr., *pro se*
Sherry Loyer, *pro se*
61 Rachel Avenue
Trenton, SC 29847

RECEIVED

DEC 08 2014

SC Court of Appeals