

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-In-Equity Judge

Case No. 2011-CP-32-01781

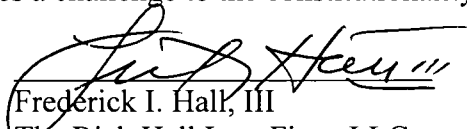
Marjorie E. Temple.....Respondent,
v.
Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon.....Appellant.

NOTICE OF APPEAL

Charles E. Strickland, et al, appeals the order (judgment) of the Honorable James O. Spence dated June 4, 2015. Appellant received written notice of entry of this order (judgment) on June 16th. Thereafter, a timely Motion to Alter or Amend the Judgment of the Court and/or For Reconsideration was filed pursuant to S.C.R. C.P. 59 (e). Written Notice of the Entry the Judgment Denying the Motion For Rule 59 (e) relief was received on September 16, 2015.

Appellant files this Notice of Appeal in the South Carolina Supreme Court pursuant to Rule 203 (d) (1) (A) (ii) S.C.A.C.R. because it involves a challenge to the constitutionality of a state law.

September 28, 2015


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(803) 957-7717 facsimile
Attorney for Appellant

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SEP 29 2015

SC SUPREME COURT

Other Counsel of Record:

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PO Box 7403
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Columbia, S.C. 29201

Attorneys for Respondent

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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA

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Marjorie E. Temple.....Respondent,
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CERTIFICATE OF SERVICE

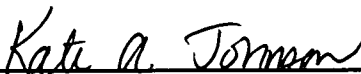
The undersigned paralegal to The Rick Hall Law Firm, LLC does hereby certify that she has served a true copy of the Notice of Appeal this 28th day of September 2015 by sending a copy via U.S. Mail to the person(s) at the address(es) listed below:

**Lexington County Clerk of Court
Beth Carrigg, Clerk of Court
205 East Main Street
Lexington, SC 29072**

And courtesy copies sent to:

**S. Andrew Syrett, Esquire
712 Richland Street, Suite E
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Columbia, SC 29202**

**Rolland E. Greenburg, III, Esquire
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Columbia, S.C. 29201
Attorneys for Respondent**



Kate A. Johnson
Paralegal to Frederick I. Hall, III

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS FOR THE
ELEVENTH JUDICIAL CIRCUIT
CASE #: 2011-CP-32-1781

Charles E. Strickland, III,)
Latisha Strickland, and)
Justin R. Dillon,)

Plaintiffs,)

vs.)

Marjorie E. Temple,)
)
Defendant.)

Marjorie E. Temple,)
)
Third Party Plaintiff,)

vs.)

Russell Koivu,)
ERA Wilder Realty, Inc.,)
Gary A. Pickren,)
Rex Casterline, and)
Harvey Casterline & Vallini, LLP,)

Third Party Defendants.)

COPY

**ORDER
(ATTORNEY FEES)**

2015 JUN -4 A 11:16
JESSICA A. CARRIS
CLERK OF COURT
LEXINGTON SC

2015 JUN -4 A 11:16

FILED

While this court earlier terminated the underlying Conditional Sales Contract/Bond for Title because the Defendant admitted that she had not made sufficient payments to create a right of equitable redemption the property, Plaintiffs' claim for a separate award of attorney fees under two theories: 1) the contract provides for attorney fees and 2) the Defendant's Rule 11 violations entitled the Plaintiffs to sanctions was held in abeyance pending submission of memos by respective parties.

FACTS: PROCEDURAL HISTORY

May 10, 2011 Plaintiff files an Action to Foreclose on Equitable interest in real property and or terminate a conditional sales agreement and bond for title. Attached to the complaint was a recorded fourteen (14) page Conditional Sales Agreement/Bond for Title containing language that Attorney represented the Seller, and that Purchase could obtain attorney, independent title search etc.

1-

Defendant responded with eleven (11) count Answer, Counterclaim and Third Party Complaint against Real Estate Agents and Law Firm involved in closing.

The Complaint, Answer and other pleadings detail how the Plaintiffs and Defendant entered into their agreement on April 6, 2009. The property was sold "as-is." The agreement noted that there was a pond and dam on the property. The first payment was to be May, 2009. One of Defendant's responses was that the (1) property had a dam on it (2) the Association which was to manage the pond was defunct (3) Defendant had told Plaintiffs that Defendant wanted to build or locate a home on the property. (4) That a significant portion of the property was subject to flood plain which meant a home could not be built or placed there,

Hearing testimony and a review of case history reveals that extensive discovery, discovery motions and dispositive motions, mediation and other process occurred. (See attached CMS Case History Screen Shot)

May 28, 2013 the Order referring the case to the Office of Master-in-Equity was filed.

June 20, 2013 the Order was submitted to the Master-in-Equity Office with a request for a hearing.

July 3, 2014 the case was heard pursuant to agreed date between attorneys and court. Plaintiffs argue that the Circuit Court grant of Summary Judgment and Defendant's failure to withdraw claims timely pursuant to Plaintiffs 'demand, warrant a court imposition of sanctions. Defendant's counsel responds that he had duty to represent client, fully investigate, conduct discovery etc and that all delays in case were not directly caused by Defendant. Defendant also claims that Plaintiff has failed to prove case law specific six (6) factors entitling them to award of attorney fees or if so entitled, the attorney fees are not a separate award, but simply added to the debt.

August 5, 2014, Order entered terminating contract and finding no equity.

ISSUES

- I. Contractual Attorney Fee Claim**
- II. Rule 11 Attorney Fee Claim**

LAW/ ANALYSIS

I. Contractual Attorney Fees Issue

Plaintiff argues that they are entitled to attorney fees because there is a contractual provision in the contract that states " Purchaser agrees to pay all costs and expenses, including a reasonable sum for attorney's fees incurred by Seller in terminating Purchaser's rights under this Agreement or claims to the property or in enforcing any or all rights of the terms of this Agreement, and in

appropriate judicial proceedings, if any or initiated to establish(ed) or maintain Seller's right or title to, and possession of said property after breach by Purchaser." Contract Page 6.

This clause is a similar clause to those routinely found in promissory notes and mortgages—that is the Plaintiff is entitled to a reasonable attorney fees for the cost of foreclosing the specific lien.

Once it is determined that there is a contractual right to attorney fees, the court must make a determination that the fees are reasonable according to a six factor test. "When determining what constitutes a "reasonable" attorney's fee, the trial court must consider the following six factors: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Dedes v. Strickland, 307 S.C. 155, 414 S.E.2d 134 (1992); Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989).

Consideration should be given by the trial court to all six factors; none of the factors is controlling. Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998); Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989).

The Court must make a finding on all six factors. When an award of attorney's fees is requested and authorized by contract or statute, the court should make specific findings of fact on the record for each factor set forth in Collins [v. Collins, 239 S.C. 170, 122 S.E.2d 1 (1961)]." Blumberg v. Nealco, Inc., 310 S.C. 492, 494, 427 S.E.2d 659, 661 (1993). (The Honorable Judge Ralph King Anderson, 2010 South Carolina Master-in-Equity Bench /Bar Seminar 6-25 (10-41 2010)).

Plaintiff has submitted three (3) attorney fees affidavits and an affidavit by Attorney John Koon to support their attorney fee claim. A review of the case file, the affidavits, the court's knowledge of these actions and fees charges, and the trial testimony dictates that attorney fees be awarded because (a) Defendant did not contest nor choose to cross examine Plaintiff counsel about the hours worked or claimed to have been worked, and (b) Plaintiff submitted affidavits satisfying the six factor attorney reasonableness test.

1. The Nature, Extent and Difficulty of the Legal Services Rendered.

As noted above the pleadings, CMS status report, and counsels hearing arguments indicate that this was a well-contested case about the sale of property that contained a pond. There were counterclaims, defenses, third party claims etc, extensive discovery, mediations, motions filed and argued before various trial courts.

2. The Time and Labor Necessarily Devoted to the Case

Plaintiff documented time. Defendant did not cross Plaintiff about time allocations contained on affidavit nor argue that he believed Plaintiff had not worked the time he claimed on affidavit.

3. The Professional Standing of Counsel.

Plaintiff counsel's affidavits and attorney John Koon's affidavit noted his work experience, his length of practice, various trial and appellate work, legal associations and his Martindale-Hubbard AV attorney rating.

4. The Contingency of Compensation.

Not applicable since this was not a contingency case.

5. The Fee Customarily Charged in the Locality for Similar Legal Services.

The various affidavits contained the fee contract and hourly rates of \$200.00 etc. The court has reviewed nine years of attorney fee hourly rates from attorneys in this geographical area for not only foreclosures, but actions to foreclose on bonds for title, equitable mortgages, contracts for deeds, installment sales contracts etc. There is no question in this judge's mind that the court's knowledge plus matters contained in affidavits confirm that the fees based on a \$200 hourly rate satisfies this criteria for such a case and an experienced attorney.

6. The Beneficial Results Obtained.

Plaintiff won. He successfully prosecuted his action; defended against defenses and counterclaims through discovery, and filed and argued motions.

While Plaintiff had demonstrated both a contractual right to attorney fees and that the fees are reasonable, the attorney fee claim is not a separate damage award.

The underlying action was to terminate any equitable interest Defendant had in the property, not to obtain a money or damage award. An Installment Land Contract has been described as the "poor man's mortgage." The two main cases governing these contracts are Lewis v. Premium Investment Corporation, 351 S.C. 167, 568 S.E.2d 361 (2002) and Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E.2d 697 (Ct.App. 2006).

These cases make it clear that the purchaser in an Installment Land Contract may have an equity of redemption in the property after there is a default in payment. After the default, the Court must pursuant to case law and Rule 71, SCRPC determine if there is the Defendant has equity in the property. The first step in this analysis is for the court to determine the debt owned just like in a standard mortgage foreclosure. The principle, interest, allowable attorney fees and cost, escrows if applicable are calculated. Here, as in a mortgage foreclosure, the attorney fees are simple part of the debt calculation, not an independent damage award.

After the debt is calculated and the other factors such as property value, any defendant improvement or property are examined, case law and various legal journals basically explain that there are three possible fact scenarios: (a) if defendant has no equity in property, then proper remedy is to terminate equitable interest. (b) if some equity, then a 30 day (or some time period)

is granted to defendant to redeem or tender a full pay -off. (c) if substantial equity, then a court could order a public sale as in the case of a legal foreclosure. (See Andrew S. Radeker, Esq." 2008 South Carolina Master-in-Equity Bench /Bar Seminar 45-49 (08-41 2008).

The foreclosure of the Installment Land Contract is most closely related to the mortgage foreclosure process in which the Plaintiff does not seek a deficiency judgment .While S.C. Code § 29-3-660 (1976 as amended) allows a Mortgagee the right to seek a deficiency judgment, there is no similar statute or case law which would allow a Plaintiff to obtain a separate judgment for attorney fees in an action to foreclosure an Installment Land Contract.

I further note that this argument, granting a separate award of attorney fees or an assignment of the attorney fees award from client to law firm has been made and universally rejected by our state trial courts over the last nine years.

II. RULE 11 Attorney Fee Claim

Plaintiff's argument that attorney fees as sanctions should be imposed against defendant because the counsel raised or continued to prosecute improper defenses, failed to dismiss them after demand, and ultimately had summary judgment granted against them, is not persuasive.

While Plaintiff's case law does allow for sanctions in certain cases, I do not believe the facts and actions in this matter warrant sanctions under any Plaintiff theory.

Plaintiffs and Defendant both made a business decision to enter into this Conditional Sales Contract/Bond for Title. This arrangement often referred to as 'Owner-financing' results in the buyer paying the seller payments of a fixed period of time pursuant to the payment agreements of the sales document. The benefit to the Seller/Owner is that the seller, if all goes according to plan, will receive a long stream of interest and principal payments of a period of time. The benefit to the purchaser is that the purchaser who is often unable to afford conventional financing, can purchase the home and pay less closing cost type fees.

However, there is always the risk of non-payment which then requires a law suit in circuit court to foreclose the lien. Each decision made thereafter by both attorneys can, and often does, delay the trial date.

The parties could have filed no discovery and simply have waited until the case came up on the court administration benchmark (six months) and asked for a trial before a circuit court judge. Each decision to (1) file discovery or (2) Motions had to be carefully weighed by each attorney, in consultation with their respective clients, to best serve their case.

Trial delays generally can result from things such as (1) 7 month discovery time allowance (2) Attorney or court conflicts while establishing a scheduling Order (3) delays in court time scheduling, hearing and ruling on discovery motions (4) delay in court time scheduling, hearing and ruling on SJM (5) mediations (6) attorney generated request for continuances (7) Court conflict rules-which trial does first if conflict between courts etc.

As noted above, the Action page from the CMS system is attached. This list does not include discovery filed but not requiring court action (ie. Interrogatories, Request to Admit, Produce, etc.)

Rule 407 and the comments reflect the tension between the attorney's responsibility to represent his clients interest and his duty to the not use the legal system improperly. The rules discuss that a lawyer has responsibilities to (a) his client (b) to the legal system and to (3) the lawyer & firm's interest. These rules are designed to provide guideposts advising such things as:

Attorney must have basis in law and fact to plead or act.

Attorney has duty to use the legal procedure for the fullest benefit of the clients cause but also a duty not to abuse the legal system.

Comment 2 notes that an action is not frivolous even if lawyer doesn't believe his client will ultimately win so long as layer can in good faith believes law can by changed or modified, but cautions that attorney can't do things just for delay.

Comments to Rule 3.3 regarding duty to expedite litigation does not seem to indicate that defense attorney has duty to push case forward, but rather that attorney cannot do overt/improper acts to delay. Normally, a lawyer does not have an obligation to dismiss a claim or to quit based upon a request by another lawyer. Trials exist so that parties can argue their case before a judge and or jury to receive a decision pursuant to rules of law, evidence and procedure.

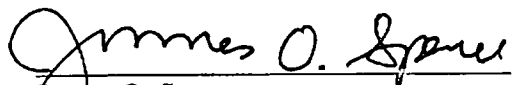
While Plaintiffs claim certain defense were not proper, defendant points out that the failure to raise possible defense could well have been malpractice. Defendant did file a Third Party Complaint against multiple Third Party Defendants which did complicate the case. Several of the Third Party Defendants paid the Defendant sums to settle the claims made against them.

The evidence does not support Plaintiff's claim that Defendant improperly or wrongful delayed court action required to impose sanctions.


IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

For the reasons set forth above, the Plaintiffs' Motion is denied.

AND IT IS SO ORDERED.


James O. Spence
Master in Equity for Lexington County

June 4, 2015

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2015 JUN - 4 A 11: 16
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JETHA. CARRIGS
CLERK OF COURT
LEXINGTON SC

6-

Master in Equity
CASE HISTORY FOR CASE 2011CP3201781

Charles E Strickland III , plaintiff, et al VS Marjorie E Temple , defendant, et al

FILED DATE: 5/28/2013

CASE TYPE: CP/Foreclosure 420

STATUS: Dismissed

JUDGE: Spence, James O

CASE PARTIES:

Plaintiff Strickland, Charles E III

Plaintiff Attorney Hall, Frederick Ivey III
PO Box 1898, Lexington, SC 29071

Defendant Temple, Marjorie E

Plaintiff Strickland, Latisha D

Plaintiff Dillon, Justin R

Defendant Koivu, Russell

Defendant ERA Wilder Realty

Defendant Pickren, Gary A

Defendant Casterline, Rex

Defendant Harvey Casterline & Vallini LLP

Defendant Attorney Greenburg, Rolland E. III
712 Calhoun St., Ste. D, Columbia, SC 29201

Defendant Attorney Syrett, Spencer Andrew
PO Box 7403, Columbia, SC 292027403

Defendant Attorney Peace, M. Alan
PO Box 11656, Columbia, SC 292111656

Defendant Attorney Mack, Francis Marion
1900 Barnwell St., Columbia, SC 29201

Defendant Attorney Peace, Taylor Anthony
1331 Elmwood Avenue, Columbia, SC 292011656

CASE HISTORY FOR CASE 2011CP3201781

Strickland, Charles E III

Age: Unknown
DL#:

DOB: Unknown
SSN: 000-00-0000

COST ORIGINAL BALANCE DUE DISBURSED PAY PRIORITY

Total:

DATE	TIME	EVENT DESCRIPTION
5/11/2011	10:07 AM	Filing recorded: Lis Pendens Filed
5/11/2011	10:03 AM	Filing recorded: Summons & Complaint
6/3/2011	12:00 AM	Filing recorded: Acceptance Of Service for M Temple
7/28/2011	12:00 AM	Filing recorded: Answer Counterclaim & 3rd Party Sums & Comp
8/18/2011	12:00 AM	Filing recorded: Service/Acceptance Of Service
8/25/2011	12:00 AM	Filing recorded: Acceptance Of Service/Reg Agt for Harvey Casterling etc
9/9/2011	12:00 AM	Filing recorded: Answer/Wilder & R Koivu to 3rd party Comp
9/22/2011	9:24 AM	Filing recorded: Reply to Answer and Counterclaim
9/15/2011	12:00 AM	Filing recorded: Amended/Amended Certificate of Service
12/30/2011	12:54 PM	Motion/Motion Filing Fee
1/19/2012	3:11 PM	Order/Form 4
1/23/2012	12:00 AM	Filing recorded: AmendReply to Answ & Counter Claim and Third Party Compliant
10/31/2012	3:29 PM	Order/Form 4
11/21/2012	3:49 PM	Motion/Motion Filing Fee
1/4/2013	4:43 PM	Order/Order
1/22/2013	12:00 AM	Filing recorded: Affidavits in Support of Motion
1/22/2013	12:00 AM	Filing recorded: Memo in Support
2/7/2013	12:00 AM	Filing recorded: Affidavit of Charles Strickland III
1/30/2013	12:00 AM	Order/Protective Order
3/13/2013	10:18 AM	Order/Form 4
3/22/2013	4:41 PM	Motion/Motion Filing Fee
3/18/2013	9:50 AM	Order/Form 4
5/17/2013	2:10 PM	Filing recorded: Stipulation Of Dismissal of 3 3rd party defendants
5/20/2013	12:00 AM	Order Grantin SJ on Def Count Claim/Refer to Master
5/28/2013	12:00 AM	Order/Referred to Master
12/16/2011	11:40 AM	Notice of Motion Roster Publication Sent
12/30/2011	12:00 AM	Motion/Compel
5/7/2012	3:53 PM	Nctice of Motion Roster Publication Sent
10/2/2012	10:49 AM	Notice of Motion Roster Publication Sent
11/13/2012	10:10 AM	Notice of Motion Roster Publication Sent

Print Date: 05/04/2015
Print Time: 11:14:18AM
Requested By: GFAIRCLOTH

CaseHistory.rpt V6.1

Page 2 of 4

CASE HISTORY FOR CASE 2011CP3201781

11/21/2012	12:00 AM	Motion/Summary Judgment
1/11/2013	11:37 AM	Notice of Motion Roster Publication Sent
2/25/2013	3:17 PM	Notice of Motion Roster Publication Sent
4/4/2013	1:15 PM	Notice of Motion Roster Publication Sent
2/8/2013	3:30 PM	Motion/Motion Filing Fee
5/21/2013	2:28 PM	Motion/Motion Filing Fee
5/21/2013	12:00 AM	Motion/Summary Judgment
8/20/2012	4:03 PM	Motion/Motion Filing Fee
1/14/2014	12:32 PM	Motion/Motion Filing Fee
3/26/2014	12:52 PM	ADR/Mediation Results Report
3/26/2014	12:52 PM	Filing recorded: ADR/Mediation Results Report/Filing
4/17/2014	3:27 PM	Motion/Motion Filing Fee
7/15/2014	10:30 AM	Filing recorded: Amended/Amended
7/15/2014	4:33 PM	Filing recorded: Memo/Memo in Support
7/15/2014	4:35 PM	Filing recorded: Affidavit/Attorney Fees
7/29/2014	10:08 AM	Filing recorded: Memo/Memo in Opposition
8/5/2014	1:44 PM	Order/Order
10/20/2014	12:04 PM	Filing recorded: Affidavit of John Koon
10/13/2014	12:05 PM	Filing recorded: Plt Reply Memo in Support of Motion to Award Fees and Sancti
10/23/2014	1:32 PM	Motion/Motion Filing Fee
10/13/2014	3:46 PM	Filing recorded: Certificate of Service
10/23/2014	4:28 PM	Plaintiffs Motion for Expedited Hearing
11/10/2014	10:33 AM	Filing recorded: Notice of Hearing
3/17/2015	3:45 PM	Filing recorded: Reply/Reply
12/11/2014	10:42 AM	Filing recorded: Transcript of Motion Hearing (original filed)
3/31/2015	8:52 AM	Filing recorded: Proof of Mailing
3/26/2015	2:36 PM	Filing recorded: Letter from Judge Spence to Parties
8/9/2013	12:00 AM	CMAY recorded the following Case Note: Case created via Master In Equity Case Transfer from agency 32002: Common Pleas
1/20/2012	12:00 AM	CMAY recorded the following Case Note: Motion to Make More Definate and Certain is granted by consent of the parties
11/2/2012	12:00 AM	CMAY recorded the following Case Note: Defendant Motion for Protective order is continued to the next term of court.
1/14/2013	12:00 AM	CMAY recorded the following Case Note: Case not to be called for trial before April 1, 2013.
1/22/2013	12:00 AM	CMAY recorded the following Case Note: Summary Judgement
1/22/2013	12:00 AM	CMAY recorded the following Case Note: Motion for Summary Judgement
3/13/2013	12:00 AM	CMAY recorded the following Case Note: Motion to Compel is granted.
3/29/2013	12:00 AM	CMAY recorded the following Case Note: Plaintiffs Motion for sj against the defendant is granted.
5/17/2013	12:00 AM	CMAY recorded the following Case Note: Dismissal of ALL CLAIMS OF 3RD PARTY DEFENDANTS Gary Pickren, Rex Casterline and Harvey Casterline & Vanilli LLP
2/1/2013	12:00 AM	CMAY recorded the following Case Note: Moved to 2/07/2013 @ 2:00 p.m.
8/9/2013	12:00 AM	CMAY recorded the following Case Note: Costs rect & disb before August 1, 2013
1/14/2014	12:00 AM	WHENSON recorded the following Case Note: Creation of this action was triggered by the add of action "MOTION" - Motion/Motion Filing Fee for associated case 2011CP3201781 in court agency 32002
3/26/2014	12:00 AM	JMCCARTHA recorded the following Case Note: Creation of this action was triggered by the add of action "ADRRPT" - ADR/Mediation Results Report for associated case 2011CP3201781 in court agency 32002
3/26/2014	12:00 AM	JMCCARTHA recorded the following Case Note: Creation of this action was triggered by the add of action "ADRMRS" - ADR/Mediation Results Report/Filing for associated case 2011CP3201781 in court agency 32002

CASE HISTORY FOR CASE 2011CP3201781

4/17/2014	12:00 AM	WHENSON recorded the following Case Note: Creation of this action was triggered by the add of action "MOTION" - Motion/Motion Filing Fee for associated case 2011CP3201781 in court agency 32002
7/17/2014	12:00 AM	JMCCARTHA recorded the following Case Note: Creation of this action was triggered by the add of action "AMENDA" - Amended/Amended for associated case 2011CP3201781 in court agency 32002
7/18/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "MEMSUP" - Memo/Memo in Support for associated case 2011CP3201781 in court agency 32002
7/18/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "AFFFEE" - Affidavit/Attorney Fees for associated case 2011CP3201781 in court agency 32002
8/7/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "MEMOPP" - Memo/Memo in Opposition for associated case 2011CP3201781 in court agency 32002
8/8/2014	12:00 AM	PBENTON recorded the following Case Note: Creation of this action was triggered by the add of action "ORDER" - Order/Order for associated case 2011CP3201781 in court agency 32002
10/20/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "AFFDVT" - Affidavit of John Koon for associated case 2011CP3201781 in court agency 32002
10/20/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "REPREP" - Plt Reply Memo in Support of Motion to Award Fees and Sancti for associated case 2011CP3201781 in court agency 32002
10/23/2014	12:00 AM	JMARSHALL recorded the following Case Note: Creation of this action was triggered by the add of action "MOTION" - Motion/Motion Filing Fee for associated case 2011CP3201781 in court agency 32002
10/23/2014	12:00 AM	CFREE recorded the following Case Note: Creation of this action was triggered by the add of action "CERTSERV" - Certificate of Service for associated case 2011CP3201781 in court agency 32002
10/28/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "MOTMOT" - Plaintiffs Motion for Expedited Hearing for associated case 2011CP3201781 in court agency 32002
11/13/2014	12:00 AM	CFREE recorded the following Case Note: Creation of this action was triggered by the add of action "NOTICE" - Notice of Hearing for associated case 2011CP3201781 in court agency 32002
3/17/2015	12:00 AM	CROSA recorded the following Case Note: Creation of this action was triggered by the add of action "REPREP" - Reply/Reply for associated case 2011CP3201781 in court agency 32002
3/27/2015	12:00 AM	CEDWARDS recorded the following Case Note: Creation of this action was triggered by the add of action "TRANSR" - Transcript of Motion Hearing (original filed) for associated case 2011CP3201781 in court agency 32002
4/1/2015	12:00 AM	CEDWARDS recorded the following Case Note: Creation of this action was triggered by the add of action "SPROOFC" - Proof of Mailing for associated case 2011CP3201781 in court agency 32002
5/12/2015	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "LETTER" - Letter from Judge Spence to Parties for associated case 2011CP3201781 in court agency 32002

SEP102015

ORIGINAL

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3201781

Charles E Strickland III
Justin R Dillon

Latisha D Strickland

Marjorie E Temple
ERA Wilder Realty
Ref Casterline

Russell Kolvu
Gary A Pickren
Harvey Casterline &
Vallini LLP

FILED
2015 SEP - 1 P
WETHA A. CALHOUN
CLERK OF COURT
LEXINGTON SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

James O. Spence
Circuit Court Judge

3068
Judge Code

9/1/2015
Date

SEP102015

For Clerk of Court Office Use Only

11th Sept 2015

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

Jennifer M Cooper 301 Gibson Road Lexington, SC 29072

Rolland E. Greenburg III 712 Calhoun St., Ste. D
Columbia, SC 29201
Spencer Andrew Syrett PO Box 7403 Columbia, SC 29202-7403
M. Alan Peace PO Box 11656 Columbia, SC 29211-1656
Francis Marion Mack 656 Fort Motte Road Saint Matthews, SC 29135
Taylor Anthony Peace PO Box 11656 Columbia, SC 29211-1656

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg /mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Charles E. Strickland, III,)
Latisha Strickland, and)
Justin R. Dillon,)
Plaintiffs,)
vs.)
Marjorie E. Temple,)
Defendant.)

ORDER DENYING RULE 59(e) MOTION

2011-CP-32-1781

Marjorie E. Temple,)
Third Party Plaintiff,)
vs.)
Russell Koivu,)
ERA Wilder Realty, Inc.,)
Gary A. Pickren,)
Rex Casterline, and)
Harvey Casterline & Vallini, LLP,)
Third Party Defendants.)

FILED
2015 SEP - 1 P 1:09
JETHA A. SANDERS
CLERK OF COURT
LEXINGTON SC

This matter came before the Court on Plaintiffs' Motion to Reconsider this Court's Order dated June 4, 2015. For the reasons set forth below, the Court denies the Motion.

TIMELINESS

The Defendant argued that the Plaintiffs' motion was not timely. The Court rejects this argument.

The Court signed the Order on June 4, 2015, and clocked the order in the Clerk's Office on June 4, 2015. Although this Court sent out a courtesy copy (without a filed Form 4) of the clocked Order to counsel on June 4, 2015, this courtesy copy was not notice of the entry of the judgment. The Clerk's Office notified the parties of the entry of

the Order on June 16, 2015. Judgments are entered pursuant to Rule 58, SCRPC:

(2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly prepare the form of the judgment, or direct counsel to promptly prepare the form of judgment, to which may be attached the decision, order or opinion of the court, and after review and approval by the court, the clerk shall promptly enter it.

Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered in the record. Entry of the judgment should not be delayed for the taxing of costs.

The Plaintiffs' Motion to reconsider was timely served and filed.

DENIAL OF RULE 11 SANCTIONS

The Plaintiffs assert that the Court's Order fails to set forth the "good grounds" which support the Defendant's Answer and Counterclaim. The Court has reviewed the Order and finds that it adequately addresses the issue.

ATTORNEY FEES ISSUES

IMPAIRMENT OF THE OBLIGATIONS OF CONTRACT

Plaintiffs claim that the Court's order impairs the obligations of contract in violation of the Constitutions of the United States and South Carolina.

The Court has reviewed the record in the case and does not find any prior trial presentation of this argument to the Court. The court did not understand this claim to be at issue at trial and did not request that the parties brief the issue in their respective post trial memos. Thereafter, the issue was not addressed in the (a) post trial memos (b) court's decision memorandum (c) Plaintiff's letter addressing perceived shortcomings in Defendant's proposed Order. The issue was first clearly raised in Plaintiff's Rule 59 Motion. A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial. Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995).

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claim nor plead any right to a deficiency judgment in this foreclosure of an installment land contract.


Once the principal, debt, interest, attorney fees etc. were considered, the Defendant conceded, and Plaintiff did not contest, that there is no equity in the property. Just as a Plaintiff in a traditional mortgage foreclosure must plead and prove it's entitlement to attorneys fee, the attorney fees in this case were not a separate damage award, but these fees are, as described above, elements of the debt that must be established to determine the debt, so as to determine the proper remedy which was terminating the equitable interest in the property.

Therefore the appropriate relief in this case, as plead, and argued, is termination of the Contract.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

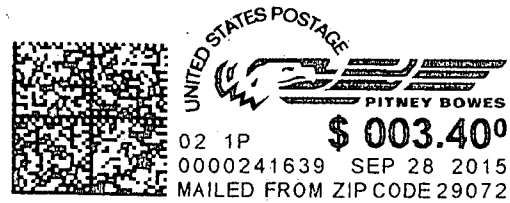
For the reasons set forth above, the Plaintiffs' Motion is denied.

AND IT IS SO ORDERED.


James O. Spence
Master in Equity for Lexington County

September 1 2015

FILED
2015 SEP - 1 P 1:09
JAMES O. SPENCE
CLERK OF COURT
LEXINGTON SC



301 Gibson Road • P.O. Box 1898
Lexington, South Carolina 29071

Daniel E. Shearouse, Clerk of Court
SC Supreme Court
1231 Gervais Street
Columbia, SC 29201

