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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-in-Equity

Case No. 2010-CP-32-2038

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SC Court of Appeals

Oliver Grady Query, and the Estate of Grady W. Query,
by its Personal Representative, Oliver Grady Query,
Respondents-Appellants,

v.

Ladislao Castrejon, Alberto Lozano and Jesus Brito,
Defendants,

Of Whom Ladislao Castrejon is the Appellant-
Respondent and Jesus Brito is the Respondent.

RECORD ON APPEAL
VOLUME I OF II

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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FILED

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IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-32-2038

Oliver Grady Query, and the Estate of
Grady W. Query, by its Personal
Representative, Oliver Grady Query,

Plaintiffs,

v.

Ladislao Castrejon, Alberto Lozano,
and Jesus Brito,

Defendants.

ORDER

PROCEDURAL HISTORY

This matter comes before the Court by way of a complaint filed by Plaintiffs Oliver Grady Query and the Estate of Grady W. Query on May 18, 2010. In their complaint Plaintiffs brought causes of action for breach of contract and novation against Defendants Ladislao Castrejon, Alberto Lozano and Jesus Brito. Mr. Castrejon timely answered, but Mr. Lozano did not initially do so. Therefore, at Plaintiffs' request an order of default was entered against Mr. Lozano on June 23, 2011. While still under the order of default Mr. Lozano filed an answer. After a hearing on a motion for relief from the order of default, Mr. Lozano was subsequently relieved from the order of default by this Court by order dated September 20, 2011, and his previously filed answer was entered as a response to Plaintiffs' complaint. Plaintiffs subsequently filed an amended complaint dated September 20, 2013, in which they brought an additional cause of action for specific performance against Defendants. Mr. Castrejon and Mr. Lozano both filed answers to the amended complaint. Mr. Brito did not.

Trial was held before this Court on November 21, 2013 at the Lexington County Judicial Center. Plaintiffs were present and represented by Mark V. Evans, Esquire.¹ Defendants Castrejon and Lozano were present and represented by Allen Bullard, Esquire. Mr. Brito was not present. At the outset of trial Plaintiffs withdrew their novation and specific performance causes of action against Defendants with prejudice. [Tr., p. 6, l. 17 – p. 7, l. 12]. At trial, Plaintiffs presented the testimony of Oliver Grady Query; Tommy Dawson, formerly of Re/Max Metro Associates; and Elizabeth Keys, a real estate appraiser with Intergra Realty Resources. Defendants presented the testimony of Ladislao Castrejon, Alberto Lozano and Joseph Rosen, a real estate appraiser with Rosen Appraisal Associates. This Court also accepted eleven exhibits offered into evidence by Plaintiffs, and two exhibits offered into evidence by Defendants.

At the conclusion of trial this Court instructed counsel for the parties to submit written post-trial memoranda addressing several issues raised at trial and summarizing their clients' respective positions on each with citations to the testimony and evidence presented as well as relevant legal authority. On November 22, 2011, Plaintiffs' counsel informed this Court that based upon the testimony and evidence presented at trial it was Plaintiffs' intention to dismiss all claims against Mr. Lozano with prejudice. This Court entered an order to that effect dated December 27, 2013, which was filed with the Lexington County Clerk of Court on January 3, 2014. Counsel submitted their post-trial memoranda on February 11, 2014.

FACTUAL BACKGROUND

This case involves a dispute over a contract for the purchase and sale of real property. Plaintiffs sought to hold Defendants liable for breach of an agreement to purchase an 11.29 acre parcel of land located in Gaston, South Carolina ("the property"). As mentioned above, subsequent to trial, Plaintiffs dismissed their claims against Mr. Lozano with prejudice. The

¹ Plaintiff Oliver Grady Query is the personal representative of the Estate of Grady W. Query.

claims against Mr. Lozano being disposed of thusly, the remainder of this order will focus only on the facts and law as they apply to the remaining claims against Mr. Castrejon.

At trial Plaintiffs first presented the testimony of Elizabeth Keys, the aforementioned real estate appraiser with Intergra Realty Resources. The parties stipulated that she was an expert in appraising. Ms. Keys testified that she performed an appraisal of the property and determined that its value as of September 24, 2008, the time of the parties' contemplated closing of the transaction, was \$270,000. As part of her testimony Ms. Keys explained the methodology she employed in compiling her appraisal.

Next, Plaintiffs presented the testimony of Oliver Grady Query. Mr. Query provided testimony regarding, among other things, the initial formation of the parties' contract in March 2008. He testified that Plaintiffs agreed to sell the property to Mr. Castrejon for \$302,500, and Mr. Castrejon agreed to make a two thousand dollar (\$2000) earnest money deposit, a forty-eight thousand dollar (\$48,000) down payment, and obtain a loan of two hundred fifty-two thousand five hundred dollars (\$252,500). Mr. Query testified that after he was notified that Mr. Castrejon was unable to secure conventional financing from his bank (BB&T), Plaintiffs agreed to offer owner financing. Mr. Query testified that based upon his interactions with the attorney tasked to close the transaction, Sam Jefcoat, it was his understanding that a closing would be held on September 24, 2008 to consummate the transaction under the new owner financing terms. Mr. Query testified that to that end Plaintiffs executed a HUD financing statement and deed transferring the property to Mr. Castrejon and Mr. Brito, which were delivered to Mr. Dawson for ultimate delivery to the closing. Although he was uncertain of the reason why, Mr. Query testified that Mr. Castrejon did not purchase the property at the contemplated September 24, 2008 closing and still has not done so. Mr. Query testified that Plaintiffs were seeking damages

against Mr. Castrejon in the amount of the interest they would have earned on the owner financing offered to Mr. Castrejon as well as the difference between the contract price and the appraised value of the property at the time of the contemplated sale in September 2008.

Plaintiffs next presented the testimony of Tommy Dawson, an agent with Re/Max Metro Associates, who was Plaintiffs' real estate agent for purposes of this transaction. Mr. Dawson testified that it was he who conducted the negotiations with Mr. Castrejon on Plaintiffs' behalf which led to the formation of the March 2008 contract as well as the modification of the financing terms from conventional to owner financing. He testified that he forwarded the original contract to Mr. Castrejon's banker at BB&T, and understood that BB&T was unwilling to loan Mr. Castrejon the funds to purchase the property. He also testified that he was the one who reduced the terms of the owner financing deal to writing [Plaintiffs' Trial Exhibit #10] and forwarded them to Mr. Jefcoat.

Defendants then presented the testimony of Ladislao Castrejon. Mr. Castrejon testified once he became interested in purchasing the property, all discussion about the property and negotiations regarding a prospective sale were had with Mr. Dawson. He testified that the terms of the contract he agreed to in March 2008 required him to make a \$50,000 down payment and obtain financing for the remaining \$252,500 of the purchase price. Mr. Castrejon testified that he attempted to obtain financing from BB&T, a bank he had an ongoing business relationship with, but BB&T was unwilling to extend him any additional credit. He testified that it was not until several months after he informed Mr. Dawson that he was unable to obtain financing from BB&T that owner financing began to be discussed. He testified that he intended to obtain the \$75,000 down payment called for under the terms of the owner financing deal from Jesus Brito,

but Mr. Brito ultimately decided on the day of closing (September 24, 2008) not to provide the funds for the down payment.

Defendants also presented the testimony of Joseph Rosen, a real estate appraiser with Rosen Appraisal Associates. As with Ms. Keys, the parties stipulated that Mr. Rosen was an expert in appraising. Mr. Rosen testified that he performed an appraisal of the property and determined that its value as of September 24, 2008, the time of the parties' contemplated closing of the transaction, was \$315,000. As part of his testimony Mr. Rosen explained the methodology he employed in compiling his appraisal.

Plaintiffs claim Mr. Castrejon's failure to purchase the property constituted a breach of the parties' contract. Since Plaintiffs to date have not been able to secure a buyer for the property, they claim they are entitled to general damages measured as the difference between the contract price and the fair market value of the property on September 24, 2008, the time of the breach, as determined by Ms. Keys. In addition, Plaintiffs claim they are entitled to special damages in the form of the interest they would have earned on the owner financing they offered to Mr. Castrejon (\$103,404.29) [Plaintiff's Trial Exhibit 7]. Mr. Castrejon has raised several defenses to the enforceability of the contract and to Plaintiffs' ability to prove and collect contract damages.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety, the documents received into evidence, the arguments of counsel and the parties' post-trial memoranda. This Court has further had the opportunity to observe the witnesses presented at trial, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law required by Rule 52, SCRCP.

A. Contract Issues

The elements required for formation of a contract are an offer, acceptance, and valuable consideration. Sauner v. Public Service Authority of South Carolina, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). In order for a contract to arise, there must be a meeting of the minds of the parties involved with regard to all essential and material terms of the agreement. Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989) ("[I]n order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement."); Rushing v. McKinney, 370 S.C. 280, 290, 633 S.E.2d 917, 922 (Ct. App. 2006) (holding that for a contract to arise, there must be a meeting of the minds of the parties involved).

This Court finds that the contract containing signatures dated March 27, 2008 [Plaintiffs' Trial Exhibit 4] contained the necessary elements of offer acceptance and valuable consideration, and, thus, constituted a binding contract as to Plaintiffs and Defendant Castrejon. Mr. Castrejon wanted to purchase the property and contacted Plaintiffs' real estate agent, Mr. Dawson, to gauge their interest. He subsequently made an offer to purchase, and although that initial offer was not accepted, he continued to engage in negotiations with Plaintiffs through Mr. Dawson until they ultimately arrived at a purchase price of \$302,500. Both the Plaintiffs and Mr. Castrejon signed the contract indicating their assent to its terms, and Mr. Castrejon began the process of attempting to secure financing from his bank to complete the contemplated transaction.

The contract contained both a "time is of the essence" clause and one which set a specific deadline by which the transaction was to be consummated. [Plaintiff's Trial Exhibit #4, ¶ 11, ¶ 13]. That deadline was April 25, 2008. [Id., ¶ 11.] It is uncontroverted that the transaction did not close by the date specified in the Contract. [Tr., p. 60, ll. 2-14; p. 63, l. 22 – p. 64, l. 8; p. 69,

ll. 6-16; p. 75, ll. 8-10; p. 76, ll. 19-22; p. 79, ll. 1-7]. Defendant Castrejon argues a contract which by its terms has expired becomes legally defunct and unenforceable. Plaintiffs argue to the contrary.

As mentioned above, although it is undisputed that the contemplated transaction did not close by April 25, 2008, it is also uncontroverted that the parties continued negotiations past that date. Although it is clear Plaintiffs and Mr. Castrejon never spoke directly to one another, it is equally clear that they all continued working on alternative financing terms after the contractual deadline for closing the transaction had passed and eventually agreed upon a new financing arrangement involving owner financing and a closing date in September 2008. None of the parties attempted to terminate the contract when it did not close on April 25, 2008; nor did they propose a new contract-they simply continued to act as though the contract was still valid. Since none of the parties attempted to enforce the "time is of the essence" clause, the contract did not terminate on April 25, 2008.

Mr. Castrejon also argued that the owner financing terms and the agreement to extend the closing date constituted modifications to the contract which were unenforceable because they failed to comply with the Statute of Frauds. Mr. Castrejon argued further that Plaintiffs were prohibited from recovering contract damages on a contract brought outside the application of the Statute of Frauds by part performance. However, as noted above, this Court finds that the original contract was never terminated and, thus, the owner financing terms and the extension of the closing date were simply modifications to the terms of the original written contract and, therefore, the Statute of Frauds was not implicated.

B. Attorney Issues

Generally, in the attorney-client relationship, clients are bound by their attorneys' acts or omissions during the course of the legal representation that fall within the apparent scope of their attorneys' authority. Koutsogiannis v. BB&T, 365 S.C. 145, 149 616 S.E.2d 425, 428-429 (2005). What is at issue here is the extent of Mr. Jefcoat's authority: The parties do not dispute that Mr. Jefcoat was the attorney designated by Mr. Castrejon to close the contemplated transaction. Where the parties differ is in their interpretation of the scope of Mr. Jefcoat's representation. Mr. Castrejon contends that Mr. Jefcoat's scope of representation was limited to the closing of the transaction. [Tr., p. 163, l. 11 – p. 164, l. 12; p. 175, ll. 14-18]. Plaintiffs claim that Mr. Jefcoat had authority to negotiate terms of the purchase on behalf of Mr. Castrejon.

Again, while the general rule in South Carolina is that clients are bound by the acts of their attorneys, South Carolina courts recognize that the scope of an attorney's representation is dependent in large part upon whether or not the attorney's actions occur as part of his representation of the client in an active suit. Attorneys, under their general authority, have limited powers. There is a wide and clear distinction between the acts of attorneys under their general authority in matters not in court, and the acts of attorneys in the conduct and progress of a suit in court. Ex parte Jones, 47 S.C. 393, 25 S.E. 285 (1896). For instance, it is perfectly permissible for counsel of record in a matter pending before a court to agree to refer a case to arbitration. However, that same act would not be within an attorney's purview in a matter not before a court without his client's express permission. Id. The same limitation to an attorney's authority applies to negotiating contracts. As the Supreme Court noted in Annely v. De Saussure, 12 S.C. 488 (1879):

The relation of attorney and client implies authority to enforce the demands of his client, of obtaining either voluntary or coercive satisfaction of such demands, and

to bind the client as a party litigant in certain matters appertaining to the conduct of causes; but it does not confer a general power of attorney to contract independently in relation to such demands, nor to transfer such demands to a third party. The proper duty of a counselor is to advise his clients; if he becomes a negotiator, a business manager, it is through some other form of authorization than that implied in being selected as a legal adviser merely. (emphasis added).

Even in cases where actions are pending, and attorneys are of record, there is a line beyond which they cannot go and bind their clients. Attorneys, without express authority, have no right to compromise or settle their clients' rights, to release a lien, or substitute one security for another, in matters not in court. Graves v. Serbin Farms, Inc., 295 S.C. 391, 392-393, 368 S.E.2d 682, 683 (Ct. App. 1988).

In this matter, Mr. Jefcoat's involvement was merely as a facilitator or scrivener for the contemplated closing of the sale of the property. He was not hired to negotiate or alter the terms of the Contract, and his retention to close the real estate transaction did not provide him with the authority to renegotiate the terms of the transaction or to otherwise bind Mr. Castrejon. To negotiate contractual terms for Mr. Castrejon, Mr. Jefcoat would have needed express authority from Mr. Castrejon to do so. This Court finds that he did not.

Nevertheless, Mr. Jefcoat could still bind Mr. Castrejon if he had the requisite apparent authority. A party asserting agency as a basis of liability must prove the existence of the agency, and the agency must be clearly established by the facts. Orphan Aid Society v. Jenkins, 294 S.C. 106, 109, 362 S.E.2d 885, 887 (Ct. App. 1987) (quoting McCall v. Finley, 294 S.C. 1, 362 S.E.2d 26 (Ct. App. 1987)). "It is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority." Id.

The doctrine of apparent authority provides that the principal is bound by acts of his agent when he has placed the agent in such a position that a person of ordinary prudence, reasonably familiar with business usages and custom, is led to believe the agent has certain

authority and in turn deals with the agent based on that assumption. Muller v. Myrtle Beach Golf and Yacht Club, 303 S.C. 137, 399 S.E.2d 430 (Ct. App. 1990), *rev'd on other grounds*, 313 S.C. 412, 438 S.E.2d 248 (1993). Apparent authority to do an act is created as to a third person by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe the principal consents to have the act done on his behalf by the person purporting to act for him. Restatement (Second) of Agency § 27 (1958); Muller v. Myrtle Beach Golf and Yacht Club, 303 S.C. at 142, 399 S.E.2d at 433. Either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief. *Id.* Moreover, an agency may not be established solely by the declarations and conduct of an alleged agent. *Id.*, at 142-43.

To establish apparent agency, it is not enough simply to prove that the purported principal by either affirmative conduct or conscious and voluntary inaction has represented another to be his agent or servant. Watkins v. Mobil Oil Corp., 291 S.C. 62, 352 S.E.2d 284 (Ct. App. 1986). In order for a third party to recover against the principal based upon this theory, it must be shown that he reasonably relied on the indicia of authority *originated by the principal* and such reliance must have effected a change of position by the third party. Beasley v. Kerr-McGee Chem. Corp., Inc., 273 S.C. 523, 257 S.E.2d 726 (1979); Watkins v. Mobil Oil Corp. Apparent authority must be established based upon the manifestations of the principal, not the agent. Orphan Aid Society v. Jenkins, 294 S.C. 106, 362 S.E.2d 885, 887 (Ct. App. 1987).

Plaintiffs were unable to show Mr. Jefcoat had apparent authority, because they produced no proof of indicia of Mr. Jefcoat's apparent authority originating from Mr. Castrejon. Both Mr. Query and Mr. Castrejon testified that they never spoke to one another. [Tr., p. 81, l. 21 – p. 82, l. 7; p. 162, ll. 11-19]. Therefore, there could be no manifestation of any kind by Mr. Castrejon

to Mr. Query, much less one that Mr. Jefcoat had authority to negotiate terms of the transaction on his behalf. Although Mr. Dawson did communicate with Mr. Castrejon regarding Mr. Jefcoat, no evidence was presented showing that Mr. Castrejon indicated to Mr. Dawson that Mr. Jefcoat's involvement in the transaction would be in any capacity other than a closing attorney. [Tr. p. 113, l. 8 – p. 114, l. 11; p. 141, l. 13 – p. 142., l. 18]. Thus, Mr. Jefcoat lacked apparent authority as well.

Even though Mr. Jefcoat lacked authority to bind Mr. Castrejon, this Court, nevertheless, finds that Mr. Castrejon was made aware of and agreed to the owner financing terms and the proposed closing date in September 2008. He had made arrangements to borrow the down payment necessary to meet the terms of the owner financing deal from Mr. Brito and planned to close the transaction on September 24, 2008. Just as his decision not to close was not based upon the passage of the April 25, 2008 deadline in the original contract, neither was it due to any unauthorized agreement by Mr. Jefcoat. Mr. Castrejon did not close because Jeffcoat had agreed to the owner financing option without his approval. Rather Castrejon did not close after Brito viewed the property and decided that he would not advance the down payment since he did not like the property after he physically inspected it.

C. Financing Issue

At trial Plaintiffs presented the Court with two offers to purchase the property. Both were on a standard form of the Greater Columbia Association of Realtors captioned "Land, Lots and Acreage Offer to Purchase," and both were dated March 20, 2008 in paragraph 1. However, the first appeared to be the initial offer to purchase as it contained a purchase price that was lower than the purchase price ultimately agreed to by the parties. It also failed to contain signatures of the Plaintiffs (Sellers). [Plaintiffs' Trial Exhibit #3]. The second represented the

actual agreement between the parties as it contained Mr. Query's signatures, indicating his acceptance of the offer to purchase. The signatures contained on the second document were all dated March 27, 2008. It is this second document which Plaintiffs seek to enforce ("the Contract"). [Trial Transcript, p. 56, l. 24 – p. 59, l. 15; p. 69, ll. 6-13; p. 70, ll. 6-12]. Paragraphs 3 of the Contract required Mr. Castrejon, the purchaser, to make a two thousand dollar (\$2000) earnest money deposit, which was to be held by Re/Max, Mr. Query's realtor, a forty-eight thousand dollar (\$48,000) down payment, and obtain a loan of two hundred fifty-two thousand five hundred dollars (\$252,500). [Plaintiff's Trial Exhibit #4, ¶ 3]. Paragraph 6 of the Contract explicitly made the Contract contingent upon Mr. Castrejon obtaining the financing referenced in paragraph 3. [Id., ¶ 6]. The financing was never obtained and, thus, the contingency was not met.

At trial, each of the parties acknowledged that Mr. Castrejon made attempts to secure \$252,500 in financing from BB&T, the bank with whom he had a previous lending relationship, but those attempts were unsuccessful. [Tr., p. 59, l. 16 – p. 60, l. 1; p. 60, ll. 15-20; p. 103, l. 6 – p. 104, l. 9; p. 160, l. 1 – p. 161, l. 2]. Mr. Castrejon also made attempts to secure the down payment from Mr. Brito, but that too was unsuccessful. [Tr. p. 162, l. 20 – p. 163, l. 4; pp. 163, ll. 8-10; p. 164, l. 20 – p. 165, l. 7].

A condition precedent is an act which must occur before performance is due. Alexander's Land Co., L.L.C. v. M&M&K Corp., 390 S.C. 582, 596, 703 S.E.2d 207, 214 (2010). If a contract contains a condition precedent, that condition must occur before a party's duty to perform arises. McGill v. Moore, 381 S.C. 179, 187, 672 S.E.2d 571, 575 (2009). Generally, the failure of one to perform under a contract because of his inability to obtain financing from a third party on whom he relied to furnish money will not excuse performance, in the absence of a

contract provision in that regard. However, paragraph 6 of the Contract had just such a term. It read, "Contract is contingent upon above financing." In 2008 the South Carolina Court of Appeals, construing identical language, determined that the phrase "is contingent upon" is a clear and unambiguous condition precedent. The Court reasoned as follows:

The use of the language "is contingent upon" is unequivocal and patently indicates the parties' respective obligations to buy and sell ... are contingent on [the purchaser's] ability to secure financing. No other meaning could be deduced from such clear and commonly used language.

M&M Group, Inc. v. Holmes, 379 S.C. 468; 666 S.E.2d 262 (Ct. App. 2008).

Financing is "the act or process or an instance of raising or providing funds" or "the funds thus raised or provided." (Merriam-Webster Dictionary, 2014 Online Edition, <http://www.merriam-webster.com/dictionary/financing>); BLACK'S LAW DICTIONARY 663 (8th Ed. 2004) ("the act or process of raising or providing funds"). The phrase "above financing" found in paragraph 6 of the Contract had three components – (1) an earnest money deposit of \$2000; (2) a \$48,000 down payment; and, (3) a \$252,500 loan. Since each of the three components of the contract purchase price noted above had to be paid to Plaintiffs before their obligation to deliver the property to Mr. Castrejon, they collectively make up the "financing" for this transaction. Although Mr. Castrejon made an effort to secure both, he was never able to deliver the down payment, nor the additional \$252,500. Mr. Castrejon tried but failed to obtain the down payment from Jesus Brito. While there was some indication that he might be able to do so, Mr. Brito eventually decided he was not willing to provide the funds, and Mr. Castrejon had no other means to obtain them. Likewise, his attempts to obtain a loan from BB&T for \$252,500 proved unsuccessful. Mr. Castrejon's inability to obtain the down payment (\$48,000) and remaining funds (\$252,500) for the purchase of the property, therefore, constitute a failure of the contract's financing contingency, and excuses him from performance. Storen v. Meadors,

295 S.C. 438, 440, 369 S.E.2d 651, 652 (Ct. App. 1988)(prospective buyer excused from performance under a real estate purchase contract with a financing contingency clause when buyer made good faith effort to obtain financing); Nodolf v. Nelson, 103 Wis.2d 656, 658, 309 N.W.2d 397, 398 (Ct. App. 1981)(“Subject to financing” clause in real estate purchase contract creates condition precedent to buyer's performance which delays the enforceability of the contract until condition has been met).

Plaintiffs contend that their offer to provide owner financing for a portion of the purchase price satisfied the condition precedent and, thereby, made the contract enforceable. However, Plaintiffs' position is not persuasive. The owner financing arrangement had two components: (1) a down payment and (2) the balance to be financed. Plaintiffs argue by implication that since they were the “bank,” they could have reached an agreement wherein Defendant could have paid some amount as a down payment with the balance being negotiated. That argument is not flawed since it would convert the financing equation from one of a good faith negotiation into one where Plaintiffs could invoke any offer of owner financing terms to justify a claim that Mr. Castrejon breached the Contract by not agreeing to their conditions as to terms, interest rates, down payment amount, etc.

D. Clear Title Issue

The Contract required Plaintiffs to convey marketable title, free of encumbrances. Specifically, paragraph 11 of the Contract read as follows:

Conveyance shall be made subject to all easements as well as covenants of record (*provided they do not make the title unmarketable*) and to all governmental statutes, ordinances, rules and regulations. *Seller agrees to convey by marketable title* and to have prepared a proper statutory warranty deed *free of encumbrances*, except as herein stated. (emphasis added).

There were no exceptions to Plaintiffs' duty to convey the property free of encumbrances noted elsewhere in the Contract.

An encumbrance is a right or interest in the land granted which may subsist in third persons to the diminution in value of the estate although consistent with the passing of the fee. A mortgage is a classic example. Truck South, Inc. v. Patel, 339 S.C. 40, 48, 528 S.E.2d 424, 428-429 (2000); Martin v. Floyd, 282 S.C. 47, 51, 317 S.E.2d 133, 136 (Ct. App. 1984) (quoting 21 C.J.S. Covenants § 142); see also BLACK'S LAW DICTIONARY 547 (7th ed. 1999) ("A claim or liability that is attached to property or some other right that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest.") (emphasis added).

A marketable title is one free from encumbrances and any reasonable doubt to its validity. Gibbs v. G.K.H., Inc., 311 S.C. 103, 105, 427 S.E.2d 701, 702 (Ct. App. 1993). It is a title which a reasonable purchaser, well-informed as to the facts and their legal significance, is ready and willing to accept. Scalise Development, Inc. v. Tidelands Investments, LLC, 392 S.C. 27, 33, 707 S.E.2d 440, 443 (Ct. App. 2011). A purchaser of realty cannot be required to take a doubtful title. Sanders v. Coastal Capital Ventures, Inc., 296 S.C. 132, 134, 370 S.E.2d 903, 905 (Ct. App. 1988).

Mr. Query testified at trial that Plaintiffs intended to use the \$75,000 down payment to reduce the existing mortgage. However, he acknowledged that the existing mortgage would not be paid off in full, but would remain against the property, with Plaintiffs' owner financing constituting a second mortgage against the property. [Tr., p. 98, l. 15 – p. 99, l. 21]. A purchaser of real property is not required to accept an encumbered title, trusting to the good faith of the sellers to satisfy the liens at some future time. Robeson-Marion Development Company, Inc. v. Powers Company, Inc., 256 S.C. 583, 183 S.E.2d 454 (1971); Treadaway v. Williams, 163 So.

2d 911, 914 (La. App. 4th Cir. 1964) (purchaser not required to purchase property when uncanceled encumbrances exceed amount seller receives at closing); Shear v. Helm, 195 Kan. 281, 287, 403 P.2d 941 (1965) (buyer not expected to proceed with contract where seller unable to remove encumbrances). There was no testimony that seller would have cured this problem by obtaining a (1) subordination agreement (2) substitution of collateral or (3) release of the subject property from the mortgage. Since the funds Plaintiffs would have received upon closing the owner financing deal would not have been sufficient to remove the existing mortgage, Mr. Castrejon was excused from proceeding with the transaction, and cannot, therefore, be found in breach.

E. Appraisal Issues

In an action for breach of a contract to purchase real estate, general damages may be measured by the difference between the contract price and the fair market value of the property at the time of the breach. Bannon v. Knauss, 282 S.C. 589, 593, 320 S.E.2d 470, 472 (Ct. App. 1984). The Contract purchase price was \$302,500. Both Plaintiffs and Mr. Castrejon presented testimony from appraisers who opined as to the value of the property in September 2008, the time Plaintiffs claim Mr. Castrejon breached the contract. Plaintiffs' expert, Elizabeth Keys, opined that the value of the property at that time was \$270,000 [Plaintiff's Trial Exhibit #1]. Mr. Castrejon's expert, Joseph Rosen, opined that the value of the property in September 2008 was \$315,000. [Defendants' Trial Exhibit #2]. Therefore, based upon Ms. Keys' appraisal, Plaintiffs' general damages would be the difference between the purchase price (\$302,500) and the property's appraised value (\$270,000), or \$32,500. However, based upon Mr. Rosen's appraisal, Plaintiffs would have no damage, as the property's value exceeded the Contract purchase price.

The property is considered commercial vacant property. It is slightly over 11 acres in size. It is shaped like a backward "L", with the top of the L fronting on Highway 321 in Gaston. [Id., p. 15]. Ms. Keys' confined her pool of comparable properties to those which were between 3 and 20 acres in size. [Tr., p. 40, ll. 15-23]. For this reason she could find no comparable sales in the Gaston area. The three properties she ended up using as comparables were not located in proximity to Gaston, but were, instead, located in West Columbia, Springdale and Edmund. [Plaintiffs' Trial Exhibit #1, p. 33; Tr. p. 53, l. 11 - p. 54, l. 5]. Although Mr. Rosen was able to locate sales of commercial vacant land in Gaston during the relevant time period, Ms. Keys testified that she discounted them, because they were too small and because their highest and best use was not commercial retail. [Tr. p. 45, l. 20 - p. 46, l. 14; p. 48, ll. 2-16]. How she arrived at the 3 acre demarcation line was not entirely clear.

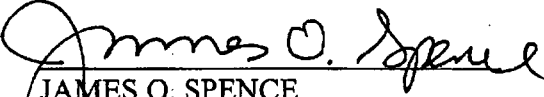
Mr. Rosen determined that the 4 acres of the property which fronted 321 carried the value of the property due to the fact it was bisected by a power line. [Tr., p. 194, l. 20 - p. 195, l. 6]. He felt that the remainder of the property had very little utility. Mr. Rosen found three comparable commercial vacant properties located in the city of Gaston which sold within the relevant time period. [Defendants' Trial Exhibit #2, p. 34; Tr., p. 195, ll. 6-8]. Although they did fall below the three acre threshold imposed by Ms. Keys, Mr. Rosen explained that the subject property's real utility was in the 4 acres which fronted 321, so these properties were comparable in size to the portion of the property with any real utility, an approach which Ms. Keys admitted was proper. [Tr., p. 49, ll. 8-14]. More importantly, however, was the fact that they were all located in Gaston. [Tr., p. 195, l. 20 - p. 196, l. 3]. He felt that it could be misleading to use properties outside Gaston when trying to appraise a property in Gaston. [Tr., p. 193, l. 15 - p. 194, l. 5; p. 195, ll. 15-19].

This Court finds Mr. Rosen's appraisal was more appropriate for a property located in Gaston. His comparables were all in the same vicinity. Although they were significantly smaller than the overall tract of land to be sold, they were very close in size to the portion of the property that was usable for retail development. Ms. Keys placed more importance on the size of the lots rather than the location, and intentionally ignored viable comparables in the vicinity. Based upon evaluating both appraisers' testimony, Rosen's appraisal represents a more accurate appraisal of the true value of the property, and Plaintiffs' therefore would not have been able to recover general damages, even had they prevailed on their breach of contract claim.

CONCLUSION

For the foregoing reasons, Plaintiffs claims against Mr. Castrejon are denied and dismissed with prejudice.

AND IT IS SO ORDERED this 4th day of April, 2014.


JAMES O. SPENCE
Master-In-Equity
Lexington County

Lexington, South Carolina.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

ELEVENTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-32-2038

Oliver Grady Query, and the Estate of
Grady W. Query, by its Personal
Representative, Oliver Grady Query,

Plaintiffs,

v.

ORDER

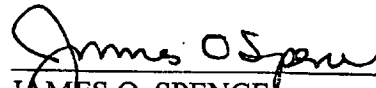
Ladislao Castrejon, Alberto Lozano,
and Jesus Brito,

Defendants.

This first full paragraph on page 11 of this Court's order dated April 4, 2014 in the above captioned matter is hereby amended to correct a scrivener's error. It should read as follows:

Even though Mr. Jeffcoat lacked authority to bind Mr. Castrejon, this Court, nevertheless, finds that Mr. Castrejon was made aware of and agreed to the owner financing terms and the proposed closing date in September 2008. He had made arrangements to borrow the down payment necessary to meet the terms of the owner financing deal from Mr. Brito and planned to close the transaction on September 24, 2008. Just as his decision not to close was not based upon the passage of the April 25, 2008 deadline in the original contract, neither was it due to any unauthorized agreement by Mr. Jeffcoat. Mr. Castrejon did not fail to close because Mr. Jeffcoat had agreed to the owner financing option without his approval. Rather Mr. Castrejon did not close after Mr. Brito viewed the property and decided that he would not advance the down payment, since he did not like the property after he physically inspected it.

AND IT IS SO ORDERED this 25th day of April, 2014.


JAMES O. SPENCE
Master-In-Equity
Lexington County

Lexington, South Carolina.

ORIGINAL²

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-32-2038

Oliver Grady Query, and the Estate of)
Grady W. Query, by its Personal)
Representative, Oliver Grady Query,)

Plaintiffs,)

v.)

Ladislao Castrejon, Alberto Lozano,)
and Jesus Brito,)

Defendants.)

ORDER

BETH A. CARRIGS
CLERK OF COURT
LEXINGTON, SC

2014 AUG 22 PM 1:01

FILED

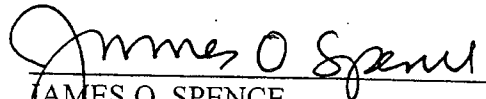
This matter comes before the Court by way of Defendant Ladislao Castrejon's ("Defendant") motion pursuant to Rule 60(a), SCRCF, filed July 18, 2014. In Defendant's motion he requested the Court issue an order correcting a scrivener's error contained in the final paragraph of Section C of the Court's order dated April 4, 2014. By email correspondence dated July 25, 2014, Plaintiffs indicated, through counsel, their consent to Defendant's motion. Plaintiffs subsequently confirmed their consent, through counsel, by email correspondence dated August 13, 2014. Therefore, the Court grants the relief requested by Defendant.

The final paragraph of this Court's order dated April 4, 2014 in the above captioned matter is amended to read as follows:

Plaintiffs contend that their offer to provide owner financing for a portion of the purchase price satisfied the condition precedent and, thereby, made the contract enforceable. However, Plaintiffs' position is not persuasive. The owner financing arrangement had two components: (1) a down payment and (2) the balance to be financed. Plaintiffs argue by implication that since they were the "bank," they could have reached an agreement wherein Defendant could have paid some amount as a down payment with the balance being negotiated. That argument is flawed since it would convert the financing equation from one of a good faith negotiation into one where Plaintiffs could invoke any offer of owner

financing terms to justify a claim that Mr. Castrejon breached the Contract by not agreeing to their conditions as to terms, interest rates, down payment amount, etc.

AND IT IS SO ORDERED this 15 day of August, 2014.


JAMES O. SPENCE
Master-In-Equity
Lexington County

Lexington, South Carolina.

BETH A. CARRICO
CLERK OF COURT
LEXINGTON COUNTY

2014 AUG 28 PM 1:01

FILED

SPENCE, JAMES

From: SPENCE, JAMES
Sent: Friday, August 15, 2014 10:26 AM
To: 'Mark Evans'; 'Allen Bullard'; FAIRCLOTH, GAIL
Cc: 'Carey L. Warren'
Subject: RE: Oliver Grady Query, et al v. Ladislao Castrejon, et al (2010-CP-32-2038)

Thanks to all.

JOS

From: Mark Evans [<mailto:mevans14@bellsouth.net>]
Sent: Friday, August 15, 2014 10:22 AM
To: 'Allen Bullard'; FAIRCLOTH, GAIL
Cc: 'Carey L. Warren'; SPENCE, JAMES
Subject: RE: Oliver Grady Query, et al v. Ladislao Castrejon, et al (2010-CP-32-2038)

I consent to the proposed order. ✓

From: Allen Bullard [<mailto:abullard@montgomerywillard.com>]
Sent: Friday, August 15, 2014 10:12 AM
To: FAIRCLOTH, GAIL
Cc: Carey L. Warren; Mark Evans; SPENCE, JAMES
Subject: Oliver Grady Query, et al v. Ladislao Castrejon, et al (2010-CP-32-2038)

I have attached a proposed order granting the relief requested in the rule 60 motion for Mr. Evans' review and comments and the judge's consideration.



ALLEN BULLARD
MONTGOMERY WILLARD, LLC
1002 CALHOUN STREET (29201)
Post Office Box 11886
COLUMBIA, SOUTH CAROLINA 29211

(803) 779-3500
(803) 799-2755 (FAX)

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IRS CIRCULAR 230 Disclosure: Under U.S. Treasury regulations, we are required to inform you that any tax advice contained in this e-mail or any attachment hereto is not intended to be used, and cannot be used, to avoid penalties imposed under the Internal Revenue Code.

From: FAIRCLOTH, GAIL [<mailto:GFAIRCLOTH@lex-co.com>]
Sent: Wednesday, August 13, 2014 4:42 PM
To: Allen Bullard
Cc: Carey L. Warren; Mark Evans; SPENCE, JAMES
Subject: RE: Oliver Grady Query, et al v. Ladislao Castrejon, et al (2010-CP-32-2038)

Hi Mr. Bullard,

Judge Spence did not have the Rule 60(a) Motion, however he did have the July 25th e-mail from Mark Evans Consenting to the motion – He will need a consent order to this motion as we did not see one attached to the e-mail that you sent to me below. ✓

Thanks,
Gail

Gail R. Faircloth, Docket Manager
Lexington County Master-In-Equity
205 E. Main Street, Suite 204
Lexington, SC 29072
ph: 803-785-8291 fax: 803-785-0609

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From: Allen Bullard [<mailto:abullard@montgomerywillard.com>]
Sent: Wednesday, August 13, 2014 9:33 AM
To: FAIRCLOTH, GAIL
Cc: Carey L. Warren; Mark Evans; Shealy, Leslie; SPENCE, JAMES
Subject: RE: Oliver Grady Query, et al v. Ladislao Castrejon, et al (2010-CP-32-2038)

Mrs. Faircloth:

I have attached a copy of the motion in question. I do believe opposing counsel, Mr. Evans, indicated his consent to the motion by email, but I do not know if an order has been signed. If a hearing is necessary, I would appreciate it if you could assist us in setting it up.



ALLEN BULLARD

MONTGOMERY WILLARD, LLC

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COLUMBIA, SOUTH CAROLINA 29211

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FORM 4

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

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP32-2038**

Oliver Grady Query et al	Ladislao Castrejohn et al
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ 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 ☐ Statement of Judgment by the Court:

ORDER INFORMATION

Order

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.**

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

Allen Bullard

Michael Montgomery

ATTORNEY(S) FOR THE DEFENDANT(S)

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.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or printed text on the paper.

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-32-2038Oliver Grady Query, and the Estate of
Grady W. Query, by its Personal
Representative, Oliver Grady Query,

Plaintiffs,

v.

Ladislao Castrejon, Alberto Lozano,
and Jesus Brito,

Defendants.

BRITO ORDER

Plaintiff sued all three defendants for breach of the same real estate contract. The complaint pled and alleged all matters as Plaintiff/Seller and Defendants/Buyers. The parties tried the case before this Court on November 21, 2013. This court ruled Plaintiff failed to prove either liability or damages.

Thereafter, Plaintiff held a damages hearing on July 8, 2014 against the third defendant, Brito. Plaintiff argues that notwithstanding the court's earlier ruling, Brito is liable in damages to Plaintiff since Brito defaulted and did not appear at the damages hearing to contest damages. Plaintiff cites Rule 55 SCRPC and relevant case law (citations omitted) that hold if a party fails to plead, then the party is deemed to have admitted the truth of the allegations and concedes liability.

For ease of discussion, the following fact pattern is assumed:

1. Plaintiff Query sued Defendants Castrejon and Brito.

2. Castrejon answered and denied liability.
3. Brito defaults.
4. At trial Plaintiff failed to prove his case for breach of contract or damages.
5. The court requested Plaintiff to provide authority that would allow Plaintiff to recover damages against Brito since Brito defaulted, even though default relates to same facts Plaintiff failed to prove at trial.

Plaintiff argues: (1) The plain letter of the law and underlying policy of Rule 55 dictate that a party loses if a party fails to answer. Further, since the damages were not liquidated, Brito had the opportunity to appear at the damages hearing and contest damages. Despite notice, Brito did not attend. (2) Case law allows inconsistent results against multiple defendants. Fred Chenoweth Equipment Co. v Oculus Corp., 328 S.E. 2d 539 (1985). This court held that even while the default judgment did not reach the merits of the contract claim, the failure to answer dictates default and judgment against the defaulting party.

This view is not universal. See *Imposition of Default Judgment against Co-Defendants—Modern Treatment*. 102 A.L. R. 5th 647. (2002) Harlow v Voyager Communications V, 348 N.C. 568, 501 S.E.2d 72, 102 A.L.R. 5th 783 (1998). This North Carolina case held that “The court recognized that when a plaintiff alleges joint liability against multiple defendants of which only one defaults, a default judgment may not be entered against the defaulting defendant until after the court adjudicates the liability of the non-defaulting defendants.”

Brito's underlying liability and damages are based on the same allegations, contract, arguments, set of facts and damages argued at trial. Plaintiff did not present persuasive evidence at either the November trial or the damages hearing to indicate that there was a separate basis for either liability or damages against Brito.

Two policy functions are at seemingly at odd – the rigid application of Rule 55 that prevents a defaulting party from failing to answer and then appearing at trial and contesting liability and the underlying concept that the purpose of trial is to arrive at the truth. Brito did not fail to answer and then get another chance to plead his case. Brito is in default for facts that were alleged, but not proven. Admitting a false statement does not make the false statement true; therefore Brito cannot be liable since this court has already ruled that there is no liability under the contract.

CONCLUSION

For the foregoing reasons, Plaintiffs claims against Brito are denied and dismissed with prejudice.

AND IT IS SO ORDERED this 27 th day of August, 2014.


JAMES O. SPENCE
Master-In-Equity
Lexington County

Lexington, South Carolina.

Southern Reporting, Inc.
Diane M. Hendricks
(803) 749-8100

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
CASE NUMBER: 2010-CP-32-

Oliver Grady Query, and)
The Estate of Grady W. Query,)
By its Personal Representative,)
Oliver Grady Query,)

Plaintiffs,

vs.

Ladislao Castrejon, Alberto Lozano,)
and Jesus Brito,)

Defendants.

AMENDED COMPLAINT
(BREACH OF CONTRACT/
SPECIFIC PERFORMANCE)

(Non-Jury Trial)

The Plaintiffs, herein, complaining of the Defendants, would respectfully show unto this
Honorable Court:

FOR A FIRST CAUSE OF ACTION
(Specific Performance)

1. At all times pertinent herein, Plaintiff, Oliver Grady Query, individually and as Personal Representative of the Estate of Grady W. Query (hereinafter collectively referred to as "Sellers"), is a citizen and resident of the City of Charleston, County of Charleston, State of South Carolina.
2. At all times pertinent herein, Defendants Ladislao Castrejon, Alberto Lozano and Jesus Brito, (hereinafter referred to as "Buyers"), upon information and belief, were citizens and residents of the City of Chapin, County of Lexington, State of South Carolina.
3. This action concerns real property located within the County of Lexington, State of South Carolina, described more particularly herein-below.
4. On or about March 27, 2008, and at all times pertinent herein, Sellers were and still are the owners in fee simple and possessed the real property, together with buildings and improvements

thereon, situated in the City of Gaston, County of Lexington, State of South Carolina, on Highway 321 (Lexington County TMS # 010100-02-017), herein referred to as the "Property" (property description attached as Exhibit A).

5. On or about March 27, 2008, Sellers and Buyers entered into a written agreement to buy and sell real estate under the terms of which Sellers agreed to sell and Buyers agreed to buy the Property for a purchase price of \$302,500.00, closing to occur on or before April 25, 2008. A true and correct copy of the contract is attached hereto as "Exhibit B" and incorporated herein by reference.

6. Pursuant to the terms of the contract between Sellers and Buyers, Buyers made a \$2,000.00 earnest money deposit with ReMax Metro Associates, in its capacity as listing agent and escrow agent under the contract. Said funds remain on deposit with ReMax Metro Associates and have not been released to the Sellers.

7. Sellers have always been and still are ready, willing, and able to perform the agreement, and on September 24, 2008, at the subsequently rescheduled closing of the sale, Sellers offered to convey the Property to Buyers by a sufficient deed to the Property to perform fully the contract on Sellers' part, and made due demand upon Buyers for payment of the amount due under the contract in the manner provided therein. However, Buyers failed and/or refused to accept the conveyance and/or to pay the agreed upon purchase price.

8. On or about October 1, 2008, shortly after the scheduled closing date, Sellers wrote a letter to the Buyers' attorney notifying them that the Sellers were ready, willing, and able to perform the agreement and demanding that the Buyers make payment of the amount due under the contract in the manner provided therein and that they close the sale. However, Buyers have failed and/or refused, and continue to fail and/or refuse, to accept the conveyance and/or to pay the agreed upon

purchase price. Buyers have also refused, and continue to refuse, to close the sale of the Property as required by the contract between the parties.

9. Sellers have duly performed all of their obligations under the terms of the contract above-referenced.

10. Buyers have not paid the agreed purchase price or any part of such price, and continue to refuse to do so, and have refused to close the sale of the Property, and continue to refuse to close the sale, thereby breaching the contract between the parties.

11. Based on the foregoing, Plaintiff requests specific performance of the subject contract by Defendants.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract/Actual Damages)

12. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 10 herein-above as if reiterated verbatim.

13. By virtue of the facts as referenced above, Sellers and Buyers entered into a contract the terms of which are described herein-above.

14. Buyers have not paid the agreed purchase price or any part of such price, and continue to refuse to do so, and have refused to close the sale of the Property, and continue to refuse to close the sale, thereby breaching the contract between the parties.

15. As a direct and proximate result of Buyers' breach of contract with Sellers, Sellers have suffered actual and special damages, including, but not limited to, loss of the purchase price of \$300,500.00 or the difference between said amount and the price that Sellers will be able to obtain in the future from another purchaser of the Property (i.e., the deficiency balance); mortgage and interest payments since the anticipated date of closing; plus such other actual, consequential, special, and

incidental damages as the evidence may show. Therefore, Sellers are entitled to a judgment against Buyers in the amount of \$300,500.00 and/or the deficiency balance, plus pre-judgment interest from the date of demand until the date of final judgment, and are further entitled to such other actual, consequential, special, and incidental damages as the evidence may show, and their costs, attorney's fees and expenses incurred in the prosecution of this action.

FOR A THIRD CAUSE OF ACTION
(Novation)

16. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 14 herein-above as if reiterated verbatim.

17. After the closing did not occur on April 25, 2008, as originally scheduled in the written agreement of March 27, 2008, between the parties, the Buyers retained an attorney, Samuel H. Jefcoat, Esquire, to assist them with the purchase of the Property.

18. As a result of further negotiations between the parties, a new agreement as to the terms of the contract between the parties was reached on or about August 11, 2008. The terms of the new agreement are attached as Exhibit C.

19. The new agreement between the parties did not include any limitations on remedies available to the parties in the event of a default under the agreement.

20. Sellers have always been and still are ready, willing, and able to perform the agreement, and on September 24, 2008, at the subsequently rescheduled closing of the sale, Sellers offered to convey the Property to Buyers by a sufficient deed to the Property to perform fully the contract on Sellers' part, and made due demand upon Buyers for payment of the amount due under the contract in the manner provided therein, namely, \$75,000.00 in cash and a \$225,500.00 Purchase Money Real Estate Mortgage to be granted to sellers. However, Buyers failed and/or refused to accept the

conveyance and/or to pay the agreed upon purchase price.

21. On or about October 1, 2008, shortly after the scheduled closing date, Sellers wrote a letter to the Buyers' attorney notifying him that the Sellers were ready, willing, and able to perform the agreement and demanding that the Buyers make payment of the amount due under the contract in the manner provided therein and that they close the sale. However, Buyers have failed and/or refused, and continue to fail and/or refuse, to accept the conveyance and/or to pay the agreed upon purchase price. Buyers have also refused, and continue to refuse, to close the sale of the Property as required by the contract between the parties.

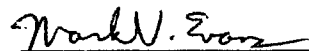
22. Sellers have duly performed all of their obligations under the terms of the contract above-referenced.

23. Buyers have not paid the agreed purchase price or any part of such price, and continue to refuse to do so, and have refused to close the sale of the Property, and continue to refuse to close the sale, thereby breaching the contract between the parties.

24. As a direct and proximate result of Buyers' breach of contract with Sellers, Sellers have suffered actual and special damages, including, but not limited to, loss of the purchase price of \$300,500.00 or the difference between said amount and the price that Sellers will be able to obtain in the future from another purchaser of the Property (i.e., the deficiency balance); mortgage and interest payments since the anticipated date of closing; plus such other actual, consequential, special, and incidental damages as the evidence may show. Therefore, Sellers are entitled to a judgment against Buyers in the amount of \$300,500.00 and/or the deficiency balance, plus pre-judgment interest from the date of demand until the date of final judgment, and are further entitled to such other actual, consequential, special, and incidental damages as the evidence may show, and their costs, attorney's fees and expenses incurred in the prosecution of this action.

WHEREFORE, Plaintiff prays that he be awarded judgment against Defendants for specific performance of the subject real estate contract or, in the alternative, for actual damages in an amount to be determined by the trier of fact; prejudgment interest at the rate of 8.75% per annum; post-judgment interest at the legal rate; litigation costs including reasonable attorney's fees incurred in the prosecution of this action; incidental and consequential damages as alleged herein and such other and further legal and equitable relief as to the Court seems just and proper.

Respectfully submitted,



Mark V. Evans, Esquire
147 Wappoo Creek Drive, Suite 202
Charleston, SC 29412
Telephone: 843-762-6640
Facsimile: 843-762-1500

Dated: September 20, 2013
Charleston, South Carolina

Attorney for the Plaintiffs

EXHIBIT

A

EXHIBIT "A"

All that certain piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in the State of South Carolina, County of Lexington, Tax District No. 4G, one-half (1/2) mile northeast of the Town of Gaston, containing 11.29 acres, more or less, known as Highway 321, Gaston, SC and being more particularly described on a plat of survey by Jeffrey H. Davenport, dated September 3, 2008, and recorded in the Register of Deeds Office for Lexington County on September 8, 2008, in Plat Book 13135, Page 14, said plat incorporated herein by reference.
Lexington County TMS # 010100-02-017.

EXHIBIT

B



RE/MAX®

Metro Associates

950 Lake Murray Boulevard • Irmo, SC 29063 • (803) 749-5800 • Fax (803) 749-5810



LAND, LOTS AND ACREAGE OFFER TO PURCHASE

(Standard Form of The Greater Columbia Association of REALTORS®, Rev. 01/05.) This form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®, REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics and Standards of Practice.

BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

THE ☐ BUYER ☒ SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. **DATE** A contract to purchase is offered this 20 day of March, 2008
by Ladislao Castrejon, Purchaser(s)
to Grady Walbride & Query, LLC, Seller(s).
2. **PROPERTY DESCRIPTION** Subject to terms and conditions herein, Seller agrees to sell and Purchaser agrees to buy the following described property with improvements and fixtures thereon:
Lot _____ Block _____ Section _____ Subdivision None
Address Hwy 321
Tax Map # 010100-02-017 City Gaston Zip 29053
County of Lexington, State of South Carolina
3. **PRICE** The sales price is \$ 275,000 330,000 302,500 L.C. A.L. to be paid as follows:
A. \$ 2,000 Earnest Money paid by ☐ cash, ☒ check, ☐ other held in trust by Remax Metro Associates
B. \$ 48,000 Balance of down payment at closing is to be in the form of a cashier's check or certified funds.
C. \$ 252,500 Loan amount (type marked below) to be obtained by Purchaser.
4. **FINANCING** CONVENTIONAL _____ SELLER _____ CASH (NO FINANCING REQUIRED) _____ OTHER TERMS _____
A. If Seller financing is included in the financing of this property, Selling Broker and/or Listing Broker and their Agents in this transaction make no representation as to the credit-worthiness of Purchaser and suggest that Seller determine for himself that Purchaser's credit is satisfactory.
B. In a cash transaction, Purchaser agrees to provide Seller or Seller's agent, within ten (10) business days of acceptance of this Contract, written verification of sufficient and available funds for the specified date of closing.
5. **CLOSING COSTS DISCOUNT POINTS** Purchaser's closing costs shall be paid by Purchaser. Purchaser's prepaid items shall be paid by Purchaser. Discount points (if any) shall be paid by Purchaser. If Seller pays closing costs, prepaid items, and or discount points on behalf of Purchaser, Seller will pay costs of Purchaser, not to exceed \$ 0.
6. **LOAN PROCESSING APPLICATION FINANCING** Purchaser agrees to apply for financing as stated above, from the institution of his choice, and agrees to provide Seller, within five (5) business days from the date of acceptance, confirmation from Lender that application has been made and funds advanced for credit report and appraisal. Purchaser to furnish Lender any documentation required for the processing of this loan in a timely manner. Purchaser's failure to apply as required above shall constitute a default under this Contract. Purchaser further hereby gives permission to Lender to disclose pertinent information concerning the Purchaser's loan to the Listing or Selling Brokers or Agents. If loan is rejected by initial lender, Purchaser or Purchaser's Agent must notify the Listing Agent immediately, and Seller shall then have the option to void Contract. Contract is contingent upon above financing. If loan cannot be obtained, earnest money will be refunded to Purchaser.
7. **ADDITIONAL CONTINGENCIES, CONDITIONS**

8. SURVEY, TITLE EXAMINATION, INSURANCE

The Listing and Selling Brokers and their Agents recommend that Purchaser have a survey of the subject property prepared. If a survey indicates that property does not meet the following minimum specifications 11 Acres (dimensions, square feet, area), Purchaser may elect to terminate the Contract by notifying Seller or Seller's Agent in writing of Purchaser's intent to terminate or Purchaser shall complete this sale according to the terms and conditions of this Contract.

The Listing and Selling Brokers and their Agents recommended that Purchaser select an attorney to examine the title to the property, and obtain all appropriate insurance coverage, including that required by the lender.

9. CONDITION OF PROPERTY

The Seller shall not remove any timber, dirt, minerals or otherwise affect the condition of the property after the signing of this Contract. All timber, dirt, minerals, etc., shall remain with the property and be a part of the property and be transferred to Purchaser. The Seller shall not bring any trash, refuse, debris, medical or hazardous waste, or other improper materials upon the property. In the event any condemnation proceeding is brought by any governmental authority, agency, utility, etc., prior to the closing, then Purchaser may elect to rescind this Contract and receive a refund of the earnest money deposit.

- A. The Seller represents that the property is [] or is not [☒] located in a flood zone.
- B. Seller represents that the property is [] or is not [☒] subject to a mandatory association fee (i.e., homeowner's association/ regime or otherwise). If property is subject to a mandatory fee, the fee is \$ _____ per _____ and shall be current at closing.
- C. Seller represents that the property is [] or is not [☒] subject to a special assessment of any governing body, including but not limited to a homeowner's association/regime, utility or otherwise. If the property is subject to a special assessment, the assessment has [] or has not [] been paid. If assessment has not been paid, it shall be paid by [] Seller in the amount of \$ _____ and/or [] Purchaser in the amount of \$ _____.
- D. If the property may be connected to public/community water or sewer systems, the tap fees of \$ Unknown shall be paid by _____.
- E. Seller represents that the property is [] or is not [☒] subject to a current lease or property management agreement. If agreements are in effect, Purchaser shall honor them. Agreements shall be attached to and made a part of this Contract.

10. WELL, SEPTIC SYSTEMS, ENVIRONMENTAL INSPECTIONS

All required reports and certifications concerning environmental matters, wells, septic systems, wetlands, hazardous materials or a special study area shall be done by professional inspectors or government authority qualified in the appropriate fields. Such reports or studies shall be done at the expense of Purchaser and shall be completed within twenty (20) business days after acceptance of this Contract by both parties. If Seller or Seller's agent does not receive Purchaser's written response to the inspections or studies and a copy of such reports within the same twenty (20) business day period, this section is nullified in its entirety.

- A. If Purchaser finds the results of said reports unacceptable, Purchaser may elect to terminate this Contract by notifying Seller in writing of Purchaser's intent. Should Purchaser terminate this Contract, Seller agrees to immediately sign all documents necessary for the release of this Contract and refund of Purchaser's earnest money.
- B. If Purchaser elects to proceed with this sale, Purchaser has the option of accepting the property in current condition as referenced by the reports or Purchaser must notify Seller or Seller's agent by signed addendum along with a copy of the reports specifying the defects Purchaser expects Seller to remedy.
- C. Seller may agree by written addendum within five (5) business days of written notification to remedy, repair or treat any defects or conditions at the Seller's expense. In return Purchaser agrees to complete this sale according to the terms of this Contract. Otherwise, Seller may give written notice to terminate this Contract within five (5) business days. Purchaser shall have the right to accept the property with whatever defects exist and complete this sale according to the terms and conditions of this Contract. To exercise this right, Purchaser must provide Seller or Seller's agent with written notice of such intention, within two (2) business days after receipt of Seller's notice to terminate, or this Contract is void. Purchaser's failure to notify Seller or Seller's agent in writing of any problem found by said reports within the time limits herein provided, or Purchaser's acceptance of the deed at closing, shall constitute full acceptance of the condition of the property and a waiver of Purchaser's right to object to any defects found by said reports.

11. CONVEYANCE DATE OF CLOSING

Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a proper statutory warranty deed free of encumbrances, except as herein stated. All statutory deed recording fees shall be the responsibility of Seller. The deed shall be prepared in the name of Loislaa Castrejon and delivered to the stipulated place of closing. This transaction shall be closed on or before April 25th 2008.

12. POSSESSION

Absent a written agreement to the contrary, Seller shall give Purchaser possession at closing, subject to tenant's rights or property management agreements which must be disclosed at time of Contract. Seller shall give Purchaser access to the herein described property for the purpose of a final inspection within twenty-four (24) hours prior to closing.

13. EXTENSION OF AGREEMENT

Time is of the essence. If Purchaser or Purchaser's agent has provided written loan commitment but not closed within the stipulated time limit of this Contract, both parties agree to extend this Contract for a period not to exceed ten (10) calendar days from the original closing date. In cash transaction, if terms and conditions of Section 4.B. have been met, both parties agree to extend this Contract for a period not to exceed ten (10) calendar days from the original closing date.

14. BROKERAGE FEE

All real estate brokerage fees as specified in the Listing Agreement or in the Buyer's Brokerage Representation Agreement if applicable, are earned upon the acceptance of this offer and are due and payable at the time of closing, subject to any contingencies specified herein.

15. EARNEST MONEY

Broker does not guarantee payment of check or checks accepted as earnest money. Earnest money is to be promptly deposited in Broker's escrow account, upon acceptance by both parties of this Contract. In the event of any action wherein Broker is made a party by virtue of acting as escrow agent, or in any action wherein the funds, held in escrow by Broker, are subject to an action in the nature of interpleader, and Broker is made a party, Broker shall be entitled to recover reasonable attorney's fees and costs, the same to be charged and assessed against Purchaser or Seller or both as the court may decide. Earnest money shall not be refunded for any reason until the check has cleared the financial institution on which it was written.

"The South Carolina Real Estate Practices Act allows the Broker holding the earnest money to deposit it into an interest bearing account. Purchaser agrees to and understands that he has been informed of his right to ownership of the interest and relinquishes to the Broker by this written agreement said right of ownership. The earnest money so noted _____ will ☒ will not be deposited into an interest bearing account with the interest accruing to the benefit of the Broker."

16. ADJUSTMENTS

Taxes, water, sewer charges, fuel oil, propane, electricity, natural gas, rents when applicable, and all other assessments including homeowner's association fees, regime fees or the like shall be adjusted as of the date of closing. Tax proration pursuant to this Contract are to be based on the tax information available on the date of closing, and are to be prorated or that basis unless otherwise stipulated in this Contract. Any increase or decrease of taxes shall be subject to an adjustment by Purchaser and/or Seller when the current year's taxes are determined.

17. ROLLBACK TAXES

If applicable, rollback taxes shall be the responsibility of Seller

18. NON-RESIDENT TAXES

Seller agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

19. FIRE OR CASUALTY

In case this property is damaged wholly or partially by fire or other casualty prior to delivery of deed, Purchaser or Seller shall have the right for ten (10) business days after the notice of such damage to terminate this Contract. Upon such termination, the earnest money deposit of Purchaser shall be returned to Purchaser and neither party shall have any further rights hereunder. If neither Purchaser nor Seller elects to terminate the Contract, the parties shall proceed according to the terms of this Contract.

20. DEFAULT

If Purchaser shall default under this Contract, Seller shall have the option of suing for damages or rescinding this Contract. In the event the Contract is rescinded, one-half of the earnest money shall then be paid to the Broker(s), not to exceed the commission due such Broker, and the remaining balance of earnest money shall be paid to Seller. Upon default by Seller, Purchaser shall have the option of suing for damages or specific performance, or rescinding this Contract. Upon default by Seller, if Purchaser elects to rescind this Contract, he will be refunded all sums paid hereunder and in addition shall be reimbursed by the Seller for actual costs incurred including but not limited to credit report, appraisal fee, survey and cost of title examination. In any action to enforce the provisions of this Contract, the prevailing party and Broker(s) shall be entitled to the award of their costs, including reasonable attorney's fees.

21. MEDIATION

Any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relation to this Contract, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Purchaser, Seller or any real estate Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Contract pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any Contract signed by the parties pursuant to the mediation conference shall be binding. South Carolina Code Ann. Section 15-48-10, et. seq. shall not apply to this Contract.

22. ENTIRE CONTRACT AND BINDING CONTRACT

The parties agree that this written Contract expresses the entire agreement between the parties, and that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract shall be binding on both parties, the principals, heirs, personal representatives, successors and assigns as state law permits.

23. EXPIRATION OF OFFER

This offer from Purchaser shall be withdrawn at _____ o'clock _____ .m (ET) on _____ unless accepted or countered by Seller in written form prior to such time.

24. FAX

Both Purchaser and Seller agree that receipt of a signed contract by facsimile (FAX) will be the same as receipt of an original signed contract.

25. SURVIVAL

If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the parties hereto until fully observed, kept or performed.

26. DEFINITIONS

In this Contract, a single business day is defined as a twenty-four (24) hour period, beginning at the time of acceptance of this Contract, excluding Saturdays, Sundays and South Carolina legal holidays.

27. HUD/CLOSING STATEMENT RELEASE

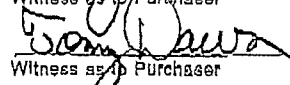
Seller and Purchaser authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Seller Broker copies of the HUD-1 settlement statement for the transaction.

28. DISCLAIMER

The parties acknowledge that the Listing and Selling Broker(s) and their Agent(s): (A) Give no warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems, or to the structure; (B) Give no warranty, express or implied, concerning the condition of the property, any matters which would be reflected by a current survey of the property, or the accuracy of the published square footage; (C) Give no warranty, express or implied, as to title; (D) Give no warranty, express or implied, as to the fitness for a particular purpose of the property or improvement thereto; (E) Give no warranty, express or implied, that the property being purchased is in compliance with all necessary zoning ordinances and restrictions; (F) Give no warranty, express or implied, as to projected income, value or other possible benefits to the Purchaser.

This is a legally binding contract. Purchaser and Seller should seek legal advice if the contents are not understood. Both Purchaser and Seller acknowledge the receipt of a copy of this Contract. Signatures below signify acceptance of all terms and conditions stated herein.

IN WITNESS THEREOF, this Contract has been duly executed by the parties hereto.

	<u>LADISLAW CASTRONE</u>	<u>3/27/08</u>	SSN _____
Witness as to Purchaser	Purchaser	Date	
	<u>Alberto Toranzo</u>	<u>3/27/08</u>	SSN _____
Witness as to Purchaser	Purchaser	Date	
_____		<u>3/27/08</u>	SSN _____
Witness as to Seller	Seller	Date	
_____	_____	_____	SSN _____
Witness as to Seller	Seller	Date	
_____	_____	_____	SSN _____
Listing Agent	Office	Telephone Number	_____
Selling Agent	Office	Telephone Number	_____

FINAL CONTRACT ACCEPTED BY BOTH PARTIES AT _____ O'CLOCK _____ .M. (ET) ON _____

ROA 40

EXHIBIT

C

PPB
FILED
2010 SEP 23 A 11:19
BETH A. CARPISG
CLERK OF COURT
LEXINGTON, SC

Evan

2 SamVetCoat.com Jodi

fx 803-321-3491

P

321-2321

321-6209

8-11-08

SamVetCoat

Jodi

Closing 8-27-08 11:00 Am

Sales Price 302,500

Earnest Money

2,000

in trust Remax Metro

Owner Financing Terms

75,000 Down

Mortgage Amount 227,500 @ 8% for 10 years

Commission

Remax Metro Associate 7.5%

690B Columbiana Dr

Columbia SC 29212

PPB

Agent

Tommy Dawson

803-261-1700

fx

803 744-5810

E

tommydawson@SC.RR.com

FILED
2008 SEP 23 A 11:19
BETH A. CAHILL
CLERK OF COURT
LEXINGTON, SC

Owner

Grady Query

147 Wappoo Creek Drive

Charleston SC 29412

P

843-795-9500

fx

843-762-1500

www.gsglaw.com

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
CASE NUMBER: 2010-CP-32-2038

Oliver Grady Query, and)
The Estate of Grady W. Query,)
By its Personal Representative,)
Oliver Grady Query,)
Plaintiffs,)

CERTIFICATE OF SERVICE

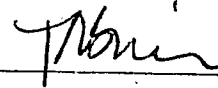
vs.)

Ladislao Castrejon, Alberto Lozano,)
and Jesus Brito,)
Defendants.)

I the undersigned hereby certify I served a copy of the Amended Complaint upon
Michael H. Montgomery, attorney for the Defendants by placing a copy of same in the United
States Mail with sufficient postage thereto and addressed as follows:

Michael H. Montgomery, Esquire
Allen Bullard, Esquire
Montgomery & Willard, LLC
P.O. Box 11886
Columbia, South Carolina 29211-1886

Dated: 9.20.13



STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED
IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
OCT 28 2010
CA No. 2010-CP-32-2038

Oliver Grady Query and The Estate of Grady
W. Query, By its Personal Representative,
Oliver Grady Query,

Plaintiffs,

v.

Ladislao Castrejon, Alberto Lozano, and
Jesus Brito,

Defendants.

DEFENDANT LADISLAO
CASTREJON'S ANSWER TO
PLAINTIFFS' AMENDED COMPLAINT

COPY

Defendant Ladislao Castrejon ("Defendant"), in answer to Plaintiffs' amended complaint, filed in the above-entitled matter, admits, denies, claims and alleges as follows:

BY AND FOR A FIRST DEFENSE

1. Each and every allegation of the complaint not specifically admitted herein is denied.

AS TO PLAINTIFFS' FIRST CAUSE OF ACTION

2. Upon information and belief, the allegations contained in paragraph 1 of the amended complaint are admitted.

3. As to the allegations contained in paragraph 2 of the amended complaint, Defendant admits that he is a resident of the State of South Carolina. The remaining allegations contained in paragraph 2 of the amended complaint are denied.

4. The allegations contained in paragraph 3 of the amended complaint are admitted.

5. Upon information and belief, the allegations contained in paragraph 4 of the amended complaint are admitted.

6. As to the allegations contained in paragraph 5 of the amended complaint, Defendant admits that he entered into a contract with Plaintiffs for the purchase of the property described therein on or about March 27, 2008 for \$302,500. Defendant also admits that the contract called for the transaction to be closed on or before April 25, 2008. The remaining allegations contained in paragraph 5 of the amended complaint are denied.

7. As to the allegations contained in paragraph 6 of the amended complaint, Defendant admits that he deposited \$2000 in earnest money with ReMax Metro Associates. Defendant lacks sufficient information regarding the truthfulness of the remaining allegations contained in paragraph 6 of the amended complaint and must, therefore, deny them at this time.

8. As to the allegations contained in paragraphs 7, 8, 9 and 10 of the amended complaint, Defendant admits that he has not purchased the property which is the subject of this action. Defendant denies that any enforceable contract existed between him and Plaintiffs in September 2008. The remaining allegations contained in paragraphs 7, 8, 9 and 10 of the amended complaint are either denied, or Defendant lacks sufficient information regarding their truthfulness, and must, therefore, deny them at this time.

9. The allegations contained in paragraph 11 of the amended complaint are denied.

AS TO PLAINTIFFS' SECOND CAUSE OF ACTION

10. In response to the allegations contained in paragraph 12 of the amended complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 11 of the amended complaint, where relevant.

11. As to the allegations contained in paragraph 13 of the amended complaint, Defendant admits that he entered into a contract with Plaintiffs on or about March 27, 2008.

Defendant craves reference to the contract itself for its terms and conditions and denies all allegation inconsistent therewith.

12. As to the allegations contained in paragraph 14 of the amended complaint, Defendant admits that he has not purchased the property which is the subject of this action. The remaining allegations contained in paragraph 14 of the amended complaint are denied.

13. The allegations contained in paragraph 15 of the amended complaint are denied.

AS TO PLAINTIFFS' THIRD CAUSE OF ACTION

14. In response to the allegations contained in paragraph 16 of the amended complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 15 of the amended complaint, where relevant.

15. As to the allegations contained in paragraph 17 of the amended complaint, Defendant admits that Sam Jefcoat was involved in drafting certain documents relating to the property which is the subject of this action. Defendant lacks sufficient information regarding the truthfulness of the remaining allegations contained in paragraph 17 of the amended complaint and must, therefore, deny them at this time.

16. Defendant lacks sufficient information regarding the truthfulness of the allegations contained in paragraphs 18, 19, 20, 21, 22 and 23 of the amended complaint and must, therefore, deny them at this time.

17. The allegations contained in paragraph 24 of the amended complaint are denied.

BY AND FOR A SECOND DEFENSE

18. The allegations contained in the complaint fail in their entirety to state a claim upon which relief may be granted against Defendant.

BY AND FOR A THIRD DEFENSE

19. The contract entered into by Defendant and Plaintiffs expired by its own terms on April 25, 2008, and was no longer of any force or effect after that date.

BY AND FOR A FOURTH DEFENSE

20. The Statute of Frauds bars any recovery against Defendant.

BY AND FOR A FIFTH DEFENSE

21. Specific performance is not an available remedy under the terms of the contract Plaintiffs seek to enforce.

BY AND FOR A FIFTH DEFENSE

22. Whatever damages, if any, that may have been sustained by Plaintiffs, which Defendant specifically denies, should be barred or reduced based on Plaintiffs' failure to mitigate such damages.

BY AND FOR A SIXTH DEFENSE

23. With respect to each and every purported cause of action, Plaintiff's claims are barred by the doctrines of unclean hands, laches, waiver and/or estoppel.

BY AND FOR A SEVENTH DEFENSE

24. The damages suffered by Plaintiffs, if any, were the result of the acts or omissions of other parties, named and unnamed in this action, for which Defendant bears no responsibility.

BY AND FOR AN EIGHTH DEFENSE

25. To the extent Plaintiffs alleges Defendant has any obligation or duty under the contract as to which full performance has not been rendered or excused, which is denied, not all conditions precedent to said obligations or duties occurred or were performed.

BY AND FOR A NINTH DEFENSE

26. The contract is unenforceable against Defendant due to the lack of essential terms.

BY AND FOR A TENTH DEFENSE

27. Plaintiffs' complaint is frivolous and Defendant is entitled to recovery against Plaintiff under Rule 11 of the South Carolina Rules of Civil Procedure and/or a judgment against the Plaintiffs for sanctions, costs and attorney fees as allowed by the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10, et. seq.

BY AND FOR A ELEVENTH DEFENSE

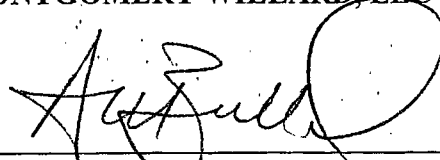
28. Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the applicable Rules of Civil Procedure.

WHEREFORE, Defendant having fully responded to the allegations set forth in the amended complaint, respectfully pray that Plaintiffs take nothing by way of their amended complaint and that said amended complaint be dismissed and this action be dismissed with prejudice, and for such other relief as the Court may deem equitable and proper.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Respectfully submitted,

MONTGOMERY WILLARD, LLC



MICHAEL H. MONTGOMERY
ALLEN BULLARD

Montgomery Willard, LLC

1002 Calhoun Street (29201)

Post Office Box 11886

Columbia, South Carolina 29211

(803) 779-3500

(803) 799-2755 (fax)

mhm@montgomerywillard.com

abullard@montgomerywillard.com

Attorneys for Defendant Castrejon

October 28, 2013.

1 State of South Carolina)
2 County of Lexington)
3) 2010-CP-32-2038
4 Oliver Grady Query, and)
5 The Estate of Grady W.) Hearing
6 Query, By its Personal)
7 Representative, Oliver)
8 Grady Query,)
9)
10 Plaintiffs,)
11 vs.)
12)
13 Ladislao Castrejon,)
14 Alberto Lozano, and Jesus)
15 Brito,)
16)
17 Defendants.)
18)
19)
20)
21)
22)
23)
24)
25)

Hearing, taken before Vickie M. Hester, a notary public in and for the State of South Carolina, commencing at the hour of 9:13 a.m., Thursday, November 21, 2013 at the Lexington County Judicial Center, 205 East Main Street, Courtroom A, Lexington, South Carolina.

Reported by
Vickie M. Hester

1. APPEARANCES

2 For the Plaintiff: Mark V. Evans, Esq.
Attorney Mark V. Evans
3 147 Wappoo Creek Drive
Suite 202
4 Charleston, South Carolina 29412

5 For Ladislao Castrejon Byron A. Bullard, Jr., Esq.
6 and Alberto Lozano: Montgomery Willard, LLC
Post Office Box 11886
7 Columbia, South Carolina 29211

8 For The Court: The Honorable James O. Spence
9 Lexington County Judicial Center
205 E. Main Street, Suite 204
10 Lexington, South Carolina 29072

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PROCEEDINGS

1
2 THE COURT: Good morning, everyone. I'd like to cover
3 some general court etiquette and procedure before
4 we begin -- before we begin the trial. And as you
5 know, we're here on Query versus Castrejon. This
6 case is 2010-CP-32-2038, pursuant to March 7th,
7 2011 order of reference. And we've set this trial
8 pursuant to our scheduling order.. We have Mr.
9 Evans for Plaintiff and Mr. Bullard for Defendant.
10 Before we begin, I want to go over just some
11 general courtroom matters. First thing is if the
12 attorneys will please pay very close attention, and
13 any witnesses, to this. All right? These are the
14 worst designed water pitchers in the world. If you
15 try to pour them out straight, all of the ice will
16 come rushing forward. You will flood your table
17 and all your documents. So be careful with the
18 water pitchers. They are a mystery to me. Second
19 thing is that I have a laptop up here, and I want
20 to explain to everyone what I'm doing with it.
21 I've got a trial schematic where I type things on.
22 I type notes and I type questions and things like
23 that. I'm not answering email. I'm not playing
24 cards. I'm not doing other work. I'm taking my
25 notes. As a corollary to that, don't take anything

1 for anything about how I look or act or breathe or
2 anything like that. If I type a little bit while
3 your guy's talking and type a lot while the other
4 person's talking, it doesn't necessarily mean
5 anything. If I look at everybody like this
6 (indicating), my dad was a Marine Colonel. I was a
7 college quarterback. That's my happy face. Okay?
8 And it just doesn't mean anything. So don't take
9 any of that anything other than what it is. So
10 just pay attention to that. The final thing is
11 this is a trial. It's done according to rules in
12 evidence. Normally during a trial attorneys will
13 object. If an attorney rises to state an
14 objection, everybody in the room needs to stop
15 talking for a couple of reasons. One is the court
16 reporter can't take down but what one person says
17 at a time. And we want everybody to be heard.
18 Second is for me to have the ability to make a
19 right ruling, I need to hear the objection, and
20 then I will listen to the other side and maybe go
21 back and forth. So just make sure you understand.
22 It's like normal etiquette. One person talks at a
23 time. I know a lot of times in trials the tempo
24 can increase a little bit. But if an objection is
25 made, everybody stop talking. I've talked with

1 your attorneys about how we're going to proceed
2 with the case. And we will tend to move forward
3 and just keep going. So if there's an issue about
4 I need to talk to my attorney or I need a restroom
5 break or I'm hungry, I want to eat, you need to
6 slip a note to your attorney and talk to them about
7 that. Because my presumption is I go until the
8 attorneys tell me we need to take a break. So they
9 -- I've talked to them about that, and we're all on
10 the same page there. So that being said, I would
11 now like Plaintiff's counsel to do the clerical
12 matter -- administrative matter we talked about and
13 then do a brief opening -- or back up. Let's do
14 clerical matters and then we'll hear the summary
15 judgment motion and then we'll go on to the other
16 thing. Yes, sir.

17 MR. EVANS: Thank you, Your Honor. Mark Evans for the
18 plaintiff. The clerical matters for the court are
19 first that it's our understanding that Mr. Lozano,
20 the defendant, is no longer in bankruptcy, so that
21 he would be actively participating in this case.
22 And the second matter is that Plaintiff elects to
23 proceed only on the second cause of action for
24 breach of contract.

25 THE COURT: Thank you. Mr. Bullard, I believe you have

1 a summary judgment motion.

2 MR. BULLARD: Yes, Your Honor. Just for purposes of
3 clarification, the plaintiffs I believe in their
4 amended complaint had causes of action for specific
5 performance, breach of contract and seeking damages
6 for breach of contract as a second cause of action.
7 And then the third cause of action for novation.
8 And for clarification purposes, have the plaintiffs
9 withdrawn the action for specific performance and
10 novation with prejudice -- or dismissed them with
11 prejudice?

12 MR. EVANS: That is correct.

13 MR. BULLARD: Thank you, Your Honor. Okay, as to the
14 summary judgment motion, I'll move into that. Just
15 by way of background, the matter we're here for is
16 a real estate contract, contract for purchase and
17 sale of real estate in Gaston, South Carolina. And
18 Mr. Query is -- the plaintiff, was the seller. And
19 he has brought suit against Mr. Castrejon, Mr.
20 Lozano and then Mr. Brito who I do not represent.
21 I represent the other two defendants, Lozano and
22 Castrejon. It's our position, and we filed a
23 motion for summary judgment, that there's no
24 genuine issues as to fact on whether Mr. Lozano or
25 Mr. Castrejon can be held in breach of the

1 contract. And I'll move into as far as Mr. Lozano
2 goes, the contract itself is Exhibit A to the
3 motion for summary judgment. And it's our position
4 that based on the four corners of the contract,
5 that Mr. Lozano is not a party to that contract.
6 The reason we take that position is if you look at
7 -- it's a three-page contract. And it looks like a
8 standard -- it identifies itself as a standard form
9 from the Greater Columbia Association of Realtors.
10 And if you look again at the body and the terms of
11 the contract, Mr. Lozano is not identified as a
12 purchaser. And if you read the contract as a
13 whole, again there are no terms in the contract
14 which impose any obligations on Mr. Lozano. He is
15 not required to do anything under the contract.
16 And by the same token you'll see that Mr. Lozano
17 doesn't agree to purchase the property. He makes
18 no agreement. Again, the body of the contract
19 lists Mr. Castrejon as the purchaser, and then
20 outlines things that Mr. Castrejon will do to
21 purchase the property. And it also of course
22 outlines things that Mr. Query and his father at
23 the time would do as sellers. It does not in the
24 body of the contract indicate that Mr. Lozano has
25 any obligations or any rights under the contract.

1 The body of the contract again imparts no benefits
2 on Mr. Lozano. And there's no promise from the
3 sellers to convey the property to Mr. Lozano.
4 There's a promise to convey the property to Mr.
5 Castrejon in Item 11. I think it's paragraph 11
6 that they -- the sellers agree to convey the
7 property to Ladislao Castrejon. But not to Mr.
8 Lozano. And therefore, there's really no
9 consideration for Mr. Lozano in this contract.
10 He's not getting anything under this contract. He
11 is not a party to it. Now, I will acknowledge that
12 his initials are on the contract. He's initialed
13 by the purchase price. He's initialed at the
14 bottom of the page on page 1 and 2. And he has
15 signed the contract. But again, it's our position
16 that those initials and those signatures again in
17 the body of the contract, the four corners of the
18 contract, the body of the contract gives him no
19 rights. He receives no benefit and he's not
20 required to do anything to perform. His testimony
21 in his deposition which is Exhibit B to the
22 contract -- I mean, to the motion, he says that it
23 was his understanding that he was just signing the
24 contract as a witness on behalf of Mr. Castrejon,
25 and that's why his signatures appear. But again,

1 the contract -- the body of the contract itself
2 does not convey -- there's no promise to convey the
3 property to Mr. Lozano, and there's no promise by
4 Mr. Lozano to do anything under this contract. So
5 it's our position that the contract failed because
6 there's no consideration or no rights, there are no
7 obligations as to Mr. Lozano. There is no
8 testimony in the record at this point to the
9 contrary. There are these signatures and the
10 initials, but there's been no testimony, no
11 affidavits, nothing submitted to contradict Mr.
12 Lozano and Mr. Castrejon's testimony which is --
13 has been submitted indicating that he was there
14 basically -- or solely for the purpose as a witness
15 for Mr. Castrejon. And again, the contract itself,
16 the terms, no rights, no obligations. Moving
17 further as to both defendants, we take the position
18 that at least from Mr. Lozano's point, if he is --
19 if the court does determine that he were a party to
20 this contract, we say nevertheless, neither he nor
21 Mr. Castrejon is required to do anything because
22 the contract is not enforceable. It is subject to
23 a condition precedent which is paragraph 6 of the
24 contract, the very last -- I mean, it's not the
25 last sentence, but the second-to-last -- the last

1 two sentences. "The contract is contingent upon
2 the above financing." Which is referenced in
3 paragraph 3. And it says, "If the loan cannot be
4 obtained, the earnest money will be returned to the
5 purchaser." The law in South Carolina, at least
6 that we have cited in our brief, we take the
7 position that it's a good law, is that if a
8 condition precedent is not met, then no duty arises
9 to perform under the contract. The condition
10 precedent here again is that Mr. Castrejon would
11 obtain the financing that's referenced in the
12 contract, which is I believe two hundred fifty-two
13 thousand -- a loan of \$252,500. Again, there's a
14 case cited in the -- that I've cited in the motion,
15 M&M Group, Inc. versus Holmes. Court of Appeals
16 has, in reviewing a similar type of contract
17 contingent on financing, found that the term
18 "contract is contingent upon financing or upon
19 above financing" is an unambiguous condition
20 precedent and that if the contingent -- if the
21 purchaser is -- is -- does not have the ability to
22 secure financing, then the contract is not
23 enforceable. The parties agree in the testimony
24 that's before the court that has been filed and is
25 on record agree that Mr. Castrejon attempted to get

1 financing from BB&T, that BB&T would not finance
2 this property for reasons that appear to be he
3 already had loans outstanding with them and they
4 weren't willing to -- willing to extend any more
5 credit to him. And Mr. Query has testified to that
6 in his deposition. Mr. Castrejon has testified to
7 that. And there's no dispute. He attempted to get
8 financing. He could not do so. Therefore, no duty
9 to perform arose under the contract. In addition,
10 paragraph 11 of the contract indicates that the
11 contract will expire on April 25th, 2008. Again,
12 the plaintiffs don't dispute that. There's no
13 evidence in the record to dispute that the contract
14 did not close on April 25th, 2008. You have sworn
15 testimony from Mr. Castrejon and Mr. Query, both
16 indicating that the property did not -- or the
17 transaction did not close. Therefore, the contract
18 terminated or expired by its own terms and is no
19 longer enforceable. I've cited a case here, Thayer
20 versus Damiano I guess, a contract which by its
21 terms has expired is legally defunct. What we
22 anticipate based on the discovery is that
23 plaintiffs will argue that there were some
24 subsequent discussions between the parties and that
25 an agreement was reached whereby the parties agreed

1 to modify or amend the contract, specifically that
2 they modify the financing terms and modify when the
3 contract could be closed by, or extended the
4 closing date. And I think the testimony indicates
5 that the modification to the loan or the financing
6 terms were that instead of down payment of \$50,000,
7 the -- Mr. Castrejon would put down \$75,000 and
8 that Mr. Query and his father would owner-finance
9 the remainder of the purchase price, the same
10 purchase price. But the owner financing is a
11 different amount. It's \$227,5000 instead of
12 \$252,500. And that -- I think they'll argue that
13 that satisfied the condition precedent, that there
14 was some modification. But there's nothing -- we
15 take the position that South Carolina law doesn't
16 allow you -- in circumstances where you're dealing
17 with a real estate transaction that South Carolina
18 law doesn't allow you to orally modify the terms of
19 a real estate contract. And of course I'll leave
20 them to argue what their modification or amendment
21 is. But those are the two things I believe they
22 will argue. But I think the cases are explicit
23 that such a modification -- if you were attempting
24 to modify a real estate contract, the modification
25 still has to comply with the Statute of Frauds

1 which is codified. Not only is it common law, it
2 is codified. And if I may, Your Honor, approach.

3 THE COURT: Yes, sir.

4 MR. BULLARD: I'll just hand you some papers. Basically
5 I've attached two cases to this cover sheet.

6 Generally a contract required to be in writing by
7 the Statute of Frauds cannot be orally modified.
8 You've got the Windham case there, Player versus
9 Chandler, State versus McIntyre, and Palmetto Bank
10 versus Cardwell. I don't -- yeah, they're all
11 short cases. Essentially the Windham case, the
12 Supreme Court went -- not only did the Supreme
13 Court affirm that a real estate transaction must be
14 in writing under the Statute of Frauds, in that
15 case you see in the highlighted portion -- I
16 highlighted the portion I'm going to talk about.
17 In that case in Windham the trial court refused to
18 hear any testimony on the oral modification. And
19 the Supreme Court said you're right, it's not
20 permissible. The evidence is not even admissible.
21 And we -- and they upheld the trial court saying
22 the trial court properly excluded evidence of any
23 oral modification of the real estate contract as
24 violative of Statute of Frauds. Thus, any attempt
25 to modify the contract violates the Statute of

1 Frauds and cannot be enforced because, and there's
2 no dispute, no evidence in the record to the
3 contrary. There is no writing evidencing these
4 modifications which is signed by the people to be
5 charged, Mr. Castrejon, Mr. Lozano. There is no
6 writing indicating the parties agreed to extend the
7 time to close. There's nothing signed -- again,
8 there's no writing and there's nothing signed by
9 either of the defendants indicating that they
10 agreed to extend the closing. In fact, there is a
11 writing that they rely on -- plaintiffs rely on as
12 evidence of the modification, which is Exhibit F in
13 the motion for summary judgment. And Mr. Query
14 testified in his deposition he didn't write it, his
15 father didn't write it, he doesn't know who wrote
16 it. And if you look at it, again Exhibit F, you'll
17 see on it that it has a closing attorney's name, it
18 has a real estate agent's name, it has the owner of
19 the property's name, it has terms of owner
20 financing on it. It doesn't list a seller and it
21 is not signed by anyone. Simply, what they're
22 asking -- what -- they're essentially trying to
23 enforce what is essentially a legally insufficient
24 attempt to modify a contract that expired and was
25 subject to a condition precedent. And it violates

1 the Statute of Frauds. Finally, we would submit
2 that even if -- even if the Court were to decide
3 that this contract or this modification did not
4 fall within the Statute of Frauds for some reason,
5 what -- even if you were to do that, if the Court
6 decided that our argument is insufficient, we would
7 further deposit that South Carolina law does not
8 permit the plaintiffs to maintain an action for
9 damages on a contract that has been removed from
10 the Statute of Frauds. If you'll permit me to pass
11 up a case.

12 THE COURT: Yes, sir.

13 MR. BULLARD: In the case of White versus McKnight,
14 which is part of the case that I handed up, the
15 court said it's impossible to maintain an action at
16 law for damages on account of a breach of a parol
17 contract obnoxious to the Statute of Frauds by
18 virtue of alleged par performance of the contract.
19 Again, if you can remove the contract from the
20 Statute of Frauds somehow, you still can't maintain
21 an action for damages. And here's -- here's the
22 Court's analysis, at least my perspective on it.
23 If you'll look at page 4 of the Court's opinion
24 they say -- they basically say if a party agreed by
25 a breach of contract relating to the acquisition of

1 him by an interest in real estate, so a real estate
2 contract, he has certain remedies available at law
3 in equity. In equity he can stand on the contract
4 and allege -- or seek specific performance, or he
5 can see rescission of the contract. And at law he
6 can either sue for damages or sue for value of
7 consideration paid by him. And then they analyze
8 in equity what you can get, and in -- at law what
9 you can get. And much like what we have here,
10 plaintiffs are not seeking equity. They have
11 withdrawn with prejudice their request for specific
12 performance. They are not seeking rescission and
13 they have not sued for the value of consideration
14 paid because obviously they didn't pay any
15 consideration. So what they are maintaining is an
16 action at law and suing for damages. In this case
17 -- in White, just like this, the plaintiffs were
18 only suing for damages at law in the contract. The
19 Court said that all the plaintiffs may be able to
20 recover in equity on the theory of some par
21 performance and obtain specific performance, they
22 could not recover damages for breach of contract,
23 no matter how compelling their proof. And I'll
24 read an excerpt from page 6. "It thus appearing
25 that it is impossible to maintain an action at law

1 for damages on account of the breach of a parole
2 contract obnoxious to the statute by virtue of
3 alleged par performance of the contract, the
4 evidence tending to establish the claim of the
5 plaintiff to such par performance becomes entirely
6 negligible, however convincing it may be and
7 however clearly referable exclusively to the parole
8 contract, it availleth nothing,"

9 THE COURT: All right. Will you go to page 8 and read
10 the last to paragraphs of the decision? And again,
11 what I'm asking you, what -- what was the ultimate
12 remedy in this case?

13 MR. BULLARD: Reliance damages.

14 THE COURT: Okay. And what did the last paragraph say?

15 MR. BULLARD: I think they remanded it back to the court
16 for determination of reliance damages.

17 THE COURT: It says, "Remanded to the court with leave
18 for plaintiff to move for amendment of his
19 complaint as he may be relied without prejudice to
20 and without intimating opinion thereon the right of
21 defendants to resist said motion upon the grounds
22 of election of remedies." So that would be the
23 remedy, if you're correct, that that case would say
24 would dictate.

25 MR. BULLARD: Okay.

1 THE COURT: I mean, is that -- I'm asking because I'm
2 just -- I'm reading this case for the first time.

3 MR. BULLARD: I understand. Would you bear with me for
4 just a moment?

5 THE COURT: Yes, sir.

6 MR. BULLARD: I can't quarrel with what it says.

7 THE COURT: Well, I'm not supposed to either.

8 MR. BULLARD: Yes, sir, I understand.

9 THE COURT: That's why I'm asking. And I'm going to ask
10 --

11 MR. BULLARD: Well, I -- go ahead.

12 THE COURT: No, go ahead.

13 MR. BULLARD: I was going to say the contract that
14 they're attempting to enforce is if we are to allow
15 them to go back and then allege specific
16 performance, the contract, again which is attached
17 to the motion, says that, "In the event of default,
18 the purchasers are at default under the contract,
19 seller has the option of suing for damage of the
20 rescinding of the contract." So he doesn't have
21 the option of specific performance. He can't go
22 back. He's enforcing this contract. If he wants
23 to abandon that and say that this is not the
24 contract, then he's got to pursue under a new
25 agreement or novation of some kind which is under

1 the Statute of Frauds unenforceable because there
2 is no signed writing by anyone. No one signed
3 writing.

4 THE COURT: But he -- I mean, my point is are you
5 arguing that under one theory what I could do, I
6 could say, All right everybody go home, you win,
7 but he's got a right to re-plead?

8 MR. BULLARD: I don't know that he has -- I mean, he may
9 be able to re-plead, but I don't know that he can
10 now by virtue of the Statute of Limitations. I
11 mean, he can re-plead anything obviously. But --
12 and we could raise that as a defense. I would
13 agree that you could do that.

14 THE COURT: Okay. All right. Just a question.

15 MR. BULLARD: Yes, sir. And he other case that's
16 attached, the Robert Harmon case, just is a more
17 recent Court of Appeals opinion that supports the
18 same general theory. That's why it's attached. I
19 think for purposes of the motion that is our
20 presentation.

21 THE COURT: Thank you. Mr. Evans?

22 MR. EVANS: Thank you, Your Honor. In the alternative,
23 plaintiff would request permission to amend to
24 allege specific performance if the Court rules
25 pursuant to that case that was just cited. Your

1 Honor, in response to the summary judgment motion,
2 in this case we have a written contract that's
3 signed by both defendants, Castrejon and Lozano.
4 And it allows the seller to sue for damages if the
5 contract is breached. That's in the contract. As
6 to Mr. Lozano, there's no question that he signed
7 two offers to buy this property that were -- his
8 signatures were witnessed by two different
9 witnesses. We think that creates a question of
10 fact by itself as to liability under this contract.

11 THE COURT: All right, hold on. Let me -- let me ask a
12 question about that. All right. The contract,
13 plaintiff is arguing that the contract says under
14 paragraph 1, "Contract purchase March 20, '08 by
15 Castrejon, purchaser, and Query, seller." All
16 right. And then it's initialed, it's initialed.
17 And then paragraph 11 it says Castrejon. And then
18 under purchaser it's got -- above a purchaser --
19 the first purchaser line it says Castrejon. And it
20 says -- also signed above purchaser it has Alberto
21 Lozano. So is it -- is that what you're referring
22 to that he signed above purchaser and that's a
23 question of fact? Is that what your argument is?

24 MR. EVANS: Yes, Your Honor.

25 THE COURT: All right. Who did your guy think he was

1 selling the property to?

2 MR. EVANS: He thought he was selling it to Mr. Lozano
3 and Mr. Castrejon when the contract was signed.

4 THE COURT: All right. And there's evidence in the
5 record somewhere in that?

6 MR. EVANS: Yes, Your Honor. And as far as Mr. Lozano's
7 liability, Your Honor, there's also in the record
8 that both the defendants testified that they are in
9 the restaurant business together as business
10 partners. They owned at least seven restaurants,
11 and none of these properties have ever remained in
12 one of their individual names after the property
13 was purchased. They were always put in the name of
14 an LLC. These two defendants are -- have been in --
15 -- I mean, lawful got of properties LLC together.
16 So their course of business has always been to buy
17 property and then put it in the name of an LLC.
18 They've never kept property --

19 THE COURT: All right. Let me go back to my initial
20 question. Is there -- I mean, I see where he
21 signed as purchaser. So that, to me, is one level
22 of he signed on a block that said purchaser. He's
23 done this before obviously. Did your guy think he
24 was selling it to both of them? I mean, was that --
25 -- I mean, is that in the record somewhere? Is it

1 in a deposition? Is it in a --

2 MR. EVANS: Yes, Your Honor. It's in the pleadings. I
3 know it is. And it is -- it is in the discovery
4 that when this contract was signed -- when the
5 contract -- the offer was sent to Mr. Query, he
6 signed it after they signed it so that the contract
7 could be forwarded to a bank for review.

8 THE COURT: All right. So your -- so your position on
9 that is there's a question of fact, but there is --
10 he signed over a block that said purchaser, and
11 your guy thought he was dealing with him?

12 MR. EVANS: Correct. And he initialed each page.

13 THE COURT: He initialed each page.

14 MR. EVANS: And he initialed where the price was
15 negotiated. They put in an initial offer that was
16 not accepted. Then they came back to the listing
17 agent's office and the price was negotiated between
18 them and Mr. Query. And he initialed the final
19 sales price.

20 THE COURT: Okay. All right. Go on into the second
21 point which is the condition precedent as to
22 financing.

23 MR. EVANS: Your Honor, the contract itself does not in
24 paragraph 4 -- there is no selection of any
25 particular type of financing in paragraph 4.

1 Paragraph 3 does say that there's a loan amount to
2 be obtained by the purchasers. But there's nothing
3 in the contract that says this contract is
4 contingent on any particular type of financing.
5 And we have already provided the court with the
6 August 12th, 2008 email from the closing attorney's
7 office stating the agreement between the parties
8 that this transaction's going to proceed on owner
9 financing. So there's no question that financing
10 of the loan was agreed upon. We have strong
11 evidence on that point. And that -- that same
12 email also notes that the closing is now going to
13 be in August 2008.

14 THE COURT: All right.

15 MR. EVANS: And Mr. Castrejon also testified in his
16 deposition that he knew the closing had been
17 rescheduled for August and that it was going to be
18 owner financing. That's in his deposition, and
19 that's going to be part of our case. And -- and,
20 Your Honor, this is a document in writing. You
21 know, we have -- we have a written contract to
22 start with that was modified. We've cited a 2008
23 Court of Appeals case which was a real estate
24 contract case, Madran versus Bradford, 378 S.C.
25 187, which says a written contract may be modified

1 by the parties thereto in any manner they choose
2 notwithstanding agreement prohibiting its
3 alteration except in a particular manner. So there
4 -- there is a written contract. And there's also
5 writings that evidence modifications to the
6 contract that the -- really the only modification
7 is that the closing date was extended twice.

8 THE COURT: All right. So your argument against
9 plaintiff's argument of condition precedent was he
10 had to get financing. Was financing a condition
11 precedent?

12 MR. EVANS: Yes, Your Honor. There was a condition
13 precedent that he obtain a loan. That is in
14 paragraph 3 of the contract.

15 THE COURT: All right. And then but your argument is
16 that he obtained a loan, but didn't put -- it did
17 not put specific terms?

18 MR. EVANS: Did not specify the type of financing which
19 --

20 THE COURT: It didn't say he had to have a 90 percent
21 loan at a certain interest rate? It just said he
22 had to get financing?

23 MR. EVANS: Correct, Your Honor. And -- and the options
24 are bank financing or -- or owner financing. I
25 mean, the contract also says that you can pay cash.

1 But we admit that paragraph 3 says that he agrees
2 he's going to obtain a loan in a certain amount.
3 And both the closing attorney, his attorney and him
4 himself in his deposition testified that this
5 transaction was going to close on owner financing.
6 So that satisfies any condition precedent for
7 financing of a loan amount.

8 THE COURT: All right. Let's go to the third point
9 there. Contract expired, didn't close, time of the
10 essence issues.

11 MR. EVANS: Your Honor, waiver is a question of fact.

12 And we have the August 12th, 2008 email from the
13 closing attorney stating the new closing date by
14 his own attorney.

15 THE COURT: Was that his attorney?

16 MR. EVANS: That's correct. His closing attorney. This
17 -- Mr. Jeffcoat was his closing attorney from day
18 one. When this contract was signed by the parties
19 on March 27th, 2008, it was already in the record
20 that Mr. Jeffcoat was the closing attorney for the
21 purchasers.

22 THE COURT: All right. How did time -- is time of the
23 essence in this -- is this a time of the essence
24 contract?

25 MR. EVANS: That is stated in the contract, Your Honor.

1 But any term of the contract can be waived by the
2 parties.

3 THE COURT: All right. So in this last case that says
4 you can't maintain an action for law of breach of a
5 parol, I guess an oral obligation, you're claiming
6 there wasn't an oral obligation, there was a
7 written obligation?

8 MR. EVANS: That's correct, Your Honor. But the case we
9 cited also -- there was a finding there that the
10 party by words, actions and conduct had modified
11 that contract. But in our case we have an
12 addition. We have writings. We have written
13 correspondence where the closing date was extended
14 by agreement of the parties.

15 THE COURT: All right. Anything further?

16 MR. EVANS: No, Your Honor. It's just our position that
17 we have a written contract here. It's the only
18 contract that's in the closing attorney's file.
19 It's the -- it's the contract that was going to be
20 closed on at the -- at the second rescheduled
21 closing date, September 24th. All obligations on
22 the part of the seller had been performed, and the
23 -- the purchasers have no legally valid defense to
24 not honoring the contract they signed.

25 THE COURT: All right. Thank you. All right. I'm

1 going to deny your --

2 MR. BULLARD: May I address the arguments of plaintiffs?

3 THE COURT: Sure.

4 MR. BULLARD: I'm sorry. I just wanted to -- plaintiffs
5 have argued that -- that I think -- if I misquote
6 it, obviously just don't take what I say for fact.
7 But I think plaintiffs have argued that because Mr.
8 Lozano and Mr. Castrejon had owned properties
9 before and had placed those -- some of those
10 properties, maybe all of them, I'm not sure exactly
11 what the testimony is, but there's some testimony
12 they placed those properties into LLCs of some
13 kind. There's no evidence in the record -- in the
14 record before the court right now that Mr. Query
15 knew any of that at the time that he entered into
16 this contract. To --- so to try and say now that
17 that's the way they did business, he can't use that
18 fact to say that Mr. Query knew that. And so they
19 -- he knew he was contracting with both of them.

20 THE COURT: I'm not -- I'm not relying on that at all.

21 I'm not -- I'm not relying on that point at all.

22 MR. BULLARD: In addition, in their argument as to a
23 condition precedent that there's no type of
24 financing indicated, again there's no specific type
25 of financing. It doesn't -- there's no check in

1 conventional or seller or cash or anything like
2 that. I think that's clear from the face of the
3 contract. But there is an indication of what
4 financing they have to get, \$252,500, which they
5 never got. There was never a offer. And owner
6 financing didn't cover there. It was a different
7 deal and modification began that's oral. The
8 writing that they're citing to you is something I
9 believe, and certainly take the evidence as you've
10 heard it, I know you will, but Mr. Evans has
11 indicated that he sent the court an email. And I
12 have a copy of it here from November 19th where he
13 -- he emailed a copy of an email from a closing
14 attorney. That's not in the record before you.
15 That's an email that was sent to the -- to you.
16 Now, you may want to enter that into the record. I
17 understand that's your prerogative. But for
18 purposes of this motion hearing, that's not in the
19 record. Even if it were, it's an email from a
20 closing attorney. And I don't know, but I think
21 they're arguing that the closing attorney had some
22 -- some sort of apparent authority to bind Mr.
23 Castrejon and Mr. Lozano. But there is no evidence
24 in the record that Mr. Lozano, who is over here,
25 and Mr. Castrejon, either one of them told Mr.

1 Query that that attorney had the authority to
2 modify a written contract and take it out of the
3 Statute of Frauds and sign. And there's no
4 signature on that -- there's no signature on the
5 email. Although, you know, whether or not an email
6 from somebody counts as a signature and signed
7 writing, I don't know the law on that. So I won't
8 argue that. I would take the position it doesn't,
9 but regardless, for -- for Mr. Jeffcoat, who is the
10 closing attorney, to have authority, Mr. Castrejon
11 and Mr. Lozano have to tell Mr. Query that. And
12 the only testimony in evidence before the court --

13 THE COURT: Wait. Wait. Wait. Wait. Wait.

14 MR. BULLARD: Yes, sir.

15 THE COURT: Wait. Wait. Wait. Wait. You're saying
16 that the only way authority can be conveyed to a
17 third party is if somebody tells you --

18 MR. BULLARD: The principal.

19 THE COURT: -- that that person is acting on my behalf?

20 MR. BULLARD: Apparent authority. You can convey actual
21 authority and there can be some writing and some
22 sort of indication. But I think -- I don't think
23 there's any indication that there's any writing
24 where Mr. Castrejon or Mr. Lozano for that matter
25 gave Mr. Jeffcoat authority to extend time --

1 extend -- or alter or modify this written contract.

2 I -- I'll pass up the case of apparent authority

3 I'm talking about if that's all right with you.

4 THE COURT: Absolutely.

5 MR. BULLARD: Again, there's no evidence before the

6 court that either of the defendants gave Mr.

7 Jeffcoat any actual authority. So I think what the

8 plaintiffs are having to rely on is that in their

9 mind he had apparent authority to modify this

10 contract. And what I would say is --

11 THE COURT: Had they been dealing with this attorney

12 before, or was this -- was -- did this email -- I'm

13 not sure how it goes in the role of discovery and

14 all of that responses. But what you're telling me

15 is that this -- who was the attorney? Jeffcoat?

16 MR. BULLARD: Sam Jeffcoat in Newberry.

17 THE COURT: Sam Jeffcoat in Newberry just out of the

18 blue sent somebody an email that said this contract

19 is put off until this date?

20 MR. BULLARD: No, that's not what I'm saying. I'm --

21 I'm sorry, I didn't -- I'm not trying to mislead

22 you, Your Honor. I think there was an indication

23 from my clients that Mr. Jeffcoat was their

24 selection as a closing attorney. And what goes

25 along with that is he's going to close the

1 agreement. You know, we've reached a contract,
2 he's going to close the transaction.

3 THE COURT: Oh.

4 MR. BULLARD: I think -- let me say to the extent this
5 matters, Mr. Query is an attorney. He's not a
6 layman. And my clients are laymen. But you tell
7 somebody that this is going to be -- the closing --
8 this is my closing attorney, I don't think that
9 that -- unless you affirmatively say, "And by the
10 way, he's going to negotiate further this
11 contract," that you -- that he has authority to
12 change the terms of the contract. And there's no
13 proof again before the court -- there's no --
14 nothing in this record that Mr. Jeffcoat negotiated
15 this contract.

16 THE COURT: All right.

17 MR. BULLARD: That email is from August of 2008. This -
18 -

19 THE COURT: All right. Hold -- hold on. Stop --

20 MR. BULLARD: I'm sorry.

21 THE COURT: Stop for a minute. Because I'm -- I'm
22 confused.

23 MR. BULLARD: Yes, sir.

24 THE COURT: What you've said on one hand is your guys
25 hired Mr. Jeffcoat to do the closing. And that's

1 not in dispute.

2 MR. BULLARD: I think Mr. Castrejon did.

3 THE COURT: All right. Mr. Castrejon hired him to do
4 the closing. And the other side knew that he was
5 the closing attorney because there had been --
6 there had been discussions?

7 MR. BULLARD: I think it was conveyed to them. I'm not
8 exactly sure how. But I think it was conveyed
9 maybe through the real estate agent for Mr. Query.

10 THE COURT: Okay. And -- and in the nature of real
11 estate closings there's always a closing date.

12 MR. BULLARD: Yes, sir, I would agree.

13 THE COURT: All right. And very often due to a lot of
14 factors the closing gets postponed.

15 MR. BULLARD: Yes, sir.

16 THE COURT: Termite letter doesn't -- something happens
17 where it doesn't close on the date. So what you're
18 saying then is if it doesn't close on that date,
19 you can't rely on the attorney who's doing the
20 closing telling the other side you can't close
21 today because the bank checked didn't come and
22 we're going to close tomorrow because he would have
23 to furnish proof that his people allowed him to --
24 to do that for the extra day or an extra week.

25 MR. BULLARD: And I'm sorry, I didn't make clear. What

1 I'm saying is he can't modify the contract,
2 especially -- and I guess I shouldn't focus on what
3 you're talking about, the closing date. Certainly
4 if the closing date is set and the closing attorney
5 says, you know, we've got to move it, I understand
6 that you can rely on that.

7 THE COURT: Right.

8 MR. BULLARD: I think that's part and parcel of what a
9 closing attorney does. What I'm saying is a
10 closing attorney does not by his nature of that
11 assignment negotiate terms -- basically they're
12 saying the closing attorney negotiated, if I
13 understand them correctly, a change in the
14 financing terms from what's in this contract to
15 owner financing.

16 THE COURT: Well, let me ask you something. Who -- if --
17 -- if you've got a real estate closing and somebody
18 has an attorney, who's the side supposed -- they
19 can't -- they can't talk to the party. They have
20 to talk to the attorney.

21 MR. BULLARD: Yes, sir.

22 THE COURT: I mean, they're ethically prohibited from
23 going and talking to them. And if the attorney
24 who's representing tells them we're going to do
25 this, how can you say there has to be some kind of

1 authority given in that situation when they can't
2 go talk to the clients, they have to talk to the
3 attorney?

4 MR. BULLARD: I agree with what you're saying, Your
5 Honor. And again, I apologize for not being clear.

6 THE COURT: All right. That's no problem.

7 MR. BULLARD: In this written contract that was supposed
8 -- supposed to close in April there's no indication
9 in the record, and I think you'll see from this
10 email that Mr. Evans sent you, is there's no --
11 there's no indication that Mr. Jeffcoat was
12 involved in this case at all until August of 2008
13 which is four months after this original contract
14 was supposed to have closed. There's no indication
15 that he was their attorney when this thing was --
16 when the written contract was negotiated. That
17 comes later in the emails and correspondence in
18 August and September of 2008, four and five months
19 later.

20 THE COURT: All right. And --

21 MR. BULLARD: And that's what I'm saying. He can't --
22 they can't rely on him to negotiate terms of a
23 contract -- I mean, basically the attorney wasn't
24 involved until then. And they're saying no, the
25 attorney negotiated this new deal and his email is

1 the evidence of the writing between the defendants
2 and the plaintiff. And I'm saying that there's no
3 -- there's no -- nothing in this record that Mr.
4 Jeffcoat was involved and negotiated these terms.
5 It's just an email where he's saying here are the
6 terms that we understand. I'm closing your loan.
7 So there's no authority --

8 THE COURT: And he sent that on behalf of his clients?

9 MR. BULLARD: Yes. There's no question that Mr.
10 Jeffcoat was -- was the closing attorney.

11 THE COURT: Okay. All right.

12 MR. BULLARD: Again, I would argue that even if you were
13 to accept that he had authority to change the
14 closing date and modify the contract, there's still
15 no signed writings to take this out of Statute of
16 Frauds.

17 THE COURT: Okay..

18 MR. BULLARD: That's all.

19 THE COURT: All right. Thank you. All right.

20 UNIDENTIFIED SPEAKER: Can we take a bathroom break real
21 quick?

22 THE COURT: Can you wait five minutes?

23 UNIDENTIFIED SPEAKER: Sure.

24 THE COURT: All right. I'm going to respectively deny
25 the motion for summary judgment. I think there are

1 questions of fact on all three issues. The one man
2 signed above the line called purchaser. Each page
3 was initialed. The condition precedent argument,
4 there were no specific finance conditions. It
5 didn't say an 80 percent, 90 percent loan, 15 years
6 or this stuff. And then all that opening questions
7 about the owner financing. I find that there is a
8 question of fact about what happened after the
9 stated expiration date. I'll remind everybody that
10 summary judgment motion is not a finding on what
11 the ultimate resolution is. It is merely that
12 there's a question of fact. So I'll ask Mr. Evans
13 after today or tomorrow, it will be his
14 responsibility to draft just a short order that
15 says motion for summary judgment denied due to
16 question of fact under Rule 56 language. And now
17 let's be back at 10:20. All right? We've had a
18 bathroom request. Be back at 10:20. You're
19 excused until 10:20.

20 (Off the record from 10:04 a.m.
21 until 10:20 a.m.)

22 THE COURT: I've made a ruling on the summary judgment
23 motion. I am going to dispense with plaintiff's
24 and defendants' opening because I believe after the
25 last hour plus of summary judgment argument I'm

1 well familiar with each side's case position. So
2 at this point the plaintiff call their first
3 witness. Come forward and be --

4 MR. EVANS: Thank you, Your Honor. Plaintiff calls
5 Elizabeth Keys to the stand.

6 THE COURT: Come forward and be sworn, please.
7 Whereupon,

8 Elizabeth Keys, being duly sworn and cautioned
9 to speak the truth, the whole truth, and
10 nothing but the truth; testified as follows:

11 BAILIFF: Thank you. Give your full name to the court
12 reporter, spell the last.

13 MS. KEYS: It's Elizabeth Brown Keys, K-e-y-s.

14 BAILIFF: You may be seated.

15 MS. KEYS: Sit here?

16 BAILIFF: Yes, sir -- ma'am. Yes, ma'am.

17 EXAMINATION

18 BY MR. EVANS:

19 Q. Good morning, Ms. Keys. Please state your
20 occupation.

21 A. I'm an appraiser.

22 Q. And do you work with a particular company?

23 A. I work for Integra Realty Resources.

24 Q. And how long have you been employed with them?

25 A. Since 2006.

1 Q. And were you asked to perform a appraisal of the
2 commercial property that's the subject of this
3 case?

4 A. Yes.

5 Q. And at the time that a request was made for you to
6 do an appraisal, did you know anything about what
7 this case was about?

8 A. The only thing I was aware of was that there had
9 been a contract, that it didn't close. But that
10 was -- that was really all of the detail that I
11 had.

12 Q. Did you have any idea of what your appraisal would
13 be used for in this case?

14 A. Other than general court testimony, I really didn't
15 -- I didn't know or delve into the details of how
16 it would impact it positively or negatively.

17 Q. (Speaking to The Court): Your Honor, I believe the
18 parties are stipulating to the qualifications of
19 the respective expert witnesses on the appraised
20 value of the property.

21 THE COURT: Mr. Bullard?

22 MR. BULLARD: We would stipulate that she's an expert in
23 appraising.

24 THE COURT: All right. And as I understand, what the
25 stipulation is is everybody -- both sides are

1 stipulating the appraiser's an expert. You're not
2 -- that doesn't mean you agree with the valuation.

3 MR. BULLARD: That's correct, Your Honor.

4 MR. EVANS: Correct.

5 THE COURT: Yes, sir.

6 EXAMINATION BY MR. EVANS RESUMED:

7 Q. Ms. Keys, do you recognize this document?

8 A. Yes. That's the appraisal that I did. There was a
9 retrospective appraisal for September 24th, 2008.
10 But I did that in November of 2013.

11 Q. Okay. And as part of arriving at your opinion of
12 the fair market value of this property on September
13 24th, 2008, can you give us a overview of the steps
14 that you took to arrive at your opinion?

15 A. In general terms I'm familiar with the Gaston area.
16 And I did some general research as far as
17 demographics, population, the typical growth in the
18 area. I researched sales. This was a land
19 property with 11.29 acres. So I researched sales.
20 I felt a range of three acres to 20 acres was
21 reasonable. And I identified sales within a
22 reasonable time frame that I felt were comparable
23 for this property.

24 Q. Okay. And did you determine some comparable sales
25 that had occurred in this area that were used as

1 part of the basis of your opinion?

2 A. I'm not sure I understand -- understand exactly
3 what you're asking. I identified land sales that I
4 thought were comparable. The range of sales that I
5 looked at, the three acres to 20 acres, there were
6 very few, very limited sales at this time period
7 that I felt were comparable. I looked in areas
8 that were comparable areas of Lexington County and
9 a little bit into Calhoun County that were
10 comparable as far as exposure, size and use of the
11 property. I also, you know, identified other sales
12 in the areas that didn't fit the -- didn't fit into
13 the criteria that I originally looked at that I
14 didn't feel were comparable and I didn't include in
15 my appraisal.

16 Q. And what range per acre did you find should be used
17 for similar properties in the area around this 11
18 acres?

19 A. The sales that I identified ranged from \$16,700 per
20 acre to \$30,612 per acre.

21 Q. And based on your research and review of sales for
22 comparable properties, what value per acre did you
23 determine would reasonably apply to this acreage
24 we're here about today?

25 A. I concluded \$24,000 per acre.

1 Q. Okay. And, Ms. Keys, have you -- were you
2 previously employed in some capacity with the
3 county during tax appraisals in the same area?

4 A. I was from 2005 to I think May of 2006. I was
5 employed with the Lexington County Assessor's
6 Office. And the areas that I was responsible for
7 were Gaston and Swansea.

8 Q. And today what percentage of your work is in the
9 area of commercial property?

10 A. Probably 99 percent.

11 Q. And of that 99 percent what percentage of your work
12 involves appraisals of essentially vacant land
13 would you estimate?

14 A. About 40 percent.

15 Q. And so based on the research that you did and the
16 various techniques that you applied, what was your
17 opinion as to the fair market value of this 11.29
18 acres in Gaston as of September 24th, 2008?

19 A. I concluded \$270,000.

20 Q. Okay. And, Ms. Keys, could you please describe the
21 general condition of the real estate market in fall
22 of 2008 around the time of this appraised value
23 that you arrived at?

24 MR. BULLARD: I'm going to object. I think that's
25 outside the scope of her expertise.

1 THE COURT: She's been qualified as an appraiser. And

2 he's asked her what was the general marketing --

3 MR. EVANS: I can restate the question, Your Honor.

4 THE COURT: Yes, sir, please do.

5 EXAMINATION BY MR. EVANS RESUMED:

6 Q. In your opinion around the time that we asked you
7 to look at this appraisal, September 24, 2008, what
8 was the state of the appraised values of property
9 in the Gaston area around September 24th, 2008 and
10 the months following?

11 A. Nationally market conditions had started to change.
12 But in the Columbia market, and specifically in
13 Gaston, we haven't -- we aren't fully understanding
14 the impacts of the market condition changes. And
15 at that point market conditions were still having a
16 positive impact on value. It was probably late
17 2008, early 2009 before market conditions started
18 to turn, or the realization that market conditions
19 were -- were having a negative impact. It didn't
20 happen until after this time period.

21 Q. And, Ms. Keys, when you appraise a property, the
22 comparable sales that you use to arrive at your
23 appraisal, what period of time would you normally
24 look back for comparable sales?

25 A. For a commercial appraisal I try not to go past

1 three years. But the -- I try to use a reasonable
2 approach. The most current are the best. And that
3 -- and that way you're not accounting for
4 subjective market condition changes. But the time
5 frame that I included, the sales that I used were
6 from late 2007 and to mid year 2008.

7 Q. Okay. So the comparable sales that you looked at
8 to arrive at your appraisal for this property, the
9 11 acres, was partially based on sales that had
10 occurred during the previous year or year and a
11 half?

12 A. Right.

13 Q. And -- and in your opinion was the market in better
14 condition at that time than in September 24th,
15 2008, looking back now?

16 A. From the September 24th, 2008 time period things
17 had been continued to improve from the time of the
18 sales to that current date.

19 Q. And did you also appraise this property in 2011?

20 A. I did.

21 Q. And do you recall what your appraised value of the
22 property was at that time?

23 MR. BULLARD: I'm going to object to it being outside
24 the -- being irrelevant to the issues we're here
25 for.

1 THE COURT: All right. What's the relevance to what it
2 was in 2011?

3 MR. EVANS: It just shows the change in the market, Your
4 Honor, from 2008 to two and a half years later,
5 what the -- had happened to the appraised value of
6 this property. We expect to tie that in during Mr.
7 Query's testimony later on. It's just one
8 question.

9 THE COURT: Okay. I'll allow it in as long as you make
10 it up.

11 WITNESS ANSWERS:

12 A. The appraised value that I concluded to in 2011,
13 and I don't -- I'd have to see what the exact date
14 was, was 170,000.

15 EXAMINATION BY MR. EVANS RESUMED:

16 Q. Okay. So the appraised value of this property went
17 from \$270,000 in September of 2008 to \$170,000 on
18 what date in 2011?

19 A. June 2nd, 2011.

20 Q. And I believe the final question I have for you,
21 Ms. Keys, is have you had an opportunity to review
22 at least part of the other appraisal that's been
23 submitted in this case?

24 A. I've seen portions of the appraisal that was done
25 by Joe Rosen.

1 Q. And did you see the portion that dealt with the
2 comparable sales that he used to arrive at his
3 appraisal?

4 A. Yes.

5 Q. And those comparables that he used, did you review
6 those when you were doing your appraisal?

7 A. I did. I looked at each of the sales and found
8 that they weren't comparable to this property.

9 Q. And why did you find they were not comparable to
10 this property?

11 A. They were approximately two acres or less in size.
12 And the use would be different than what we
13 considered the highest and best use of the subject
14 property.

15 Q. A couple of those comparables that Mr. Rosen used
16 involved a bank and a gas station, whereas this
17 property here is basically vacant land; is that
18 correct?

19 A. That's correct. Well, the -- they were land sales
20 that were later improved with a convenience store
21 and a -- and a bank ATM.

22 Q. Okay, Your Honor, we would move Ms. Keys appraisal
23 of this property into evidence as Exhibit 1 for the
24 plaintiff.

25 MR. BULLARD: No objection.

1 THE COURT: Without objection. Plaintiff's Number 1.

2 (Plaintiff's Exhibit Number 1

3 Marked)

4 MR. EVANS: No further questions at this time.

5 THE COURT: Cross, Mr. Bullard?

6 MR. BULLARD: Yes, sir.

7 MR. BULLARD: Do you have a copy of your appraisal?

8 WITNESS: I do.

9 MR. BULLARD: I'm just going to use the exhibit if I
10 could. (To The Court): I'm going to ask questions
11 about the exhibit, so I'll let you look at the
12 exhibit.

13 THE COURT: Thank you. Do you have a copy?

14 MR. BULLARD: I have a copy, yes, sir. I've just got to
15 locate the right page.

16 EXAMINATION BY MR. BULLARD:

17 Q. Okay. If you'll turn to page 27 in your appraisal.
18 That's a picture highlighting the property we're
19 talking about today, right?

20 A. Right.

21 Q. Okay. And this road that runs to the -- if we're
22 looking at the picture, to the right of the
23 property, that's 321 -- Highway 321, right?

24 A. Correct.

25 Q. And it's somewhere around Gaston?

1 A. Right.

2 Q. All right. And I think you said -- or tell me what
3 you said the -- the best use of this property was.

4 A. The highest and best use I consider to be either
5 retail or some type of industrial use.

6 Q. Okay. Retail? All right. And did you say that
7 the comps that are in Mr. Rosen's appraisal -- I
8 know we don't have that here yet, but you said you
9 didn't think that they were comps because they were
10 too small?

11 A. The approach -- there's a lot of different
12 approaches that can be used to appraise any
13 property type, but a parcel of land. This one was
14 11.29 acres. The size of the ones that Mr. Rosen
15 identified as a whole were smaller than what would
16 be desirable to use to compare with this property.

17 Q. And they were less than three acres?

18 A. They were approximately two acres or less.

19 Q. Okay. And you stated you did consider them, or you
20 didn't?

21 A. I looked at them. When I did an initial search of
22 -- of the market, I looked at sales generally from
23 three acres to 20 acres. These -- the sales that
24 Mr. Rosen used fell below that. So but in doing my
25 inspection and being familiar with the area, I saw

1 where the new bank ATM was constructed on one site
2 and the Pit Stop Convenience Store had been
3 constructed. And looked at those sales -- you
4 know, particularly those two. And just considered
5 them and decided that they were not in comparing
6 with an 11.29-acre parcel were not comparable.

7 Q. Okay.

8 A. I could have taken a different approach and
9 subdivided the property out and, you know, taken
10 the road frontage of 321 and looked at just two
11 acres of that and had a different set of sales for
12 the non-road frontage. I mean, there's different
13 ways to -- to tackle it. But as a whole they were
14 not comparable.

15 Q. Okay. The comparables that Mr. Rosen used, were
16 they all -- did they all have frontage on 321?

17 A. They did.

18 Q. Were they all in the Gaston area?

19 A. They were.

20 Q. Okay. And again, you said you could -- if you'll
21 look at page 25 of your report, you were mentioning
22 something about you could -- there was another
23 approach you could take. You could subdivide the
24 property. Are you speaking of maybe taking the
25 area in front of the electrical easement here and

1 appraising that?

2 A. Well, --

3 Q. Is that what you're talking about?

4 A. Well, what I was talking about the -- the road
5 frontage from 321, if -- they had to stop
6 approximately 400 plus feet across that frontage.
7 You could measure back and come up with a two-acre
8 parcel that might be used for some type of other
9 retail purpose. But by doing that, you'd also have
10 to have an easement to the rear portion of the
11 property. You'd have to, you know, take that from
12 that consideration. And then you'd have a
13 different set of comparable sales to identify the
14 value for the rear portion. So -- so I'm not
15 saying that Mr. Rosen's land sales -- because they
16 are in very close proximity -- are -- are just not
17 valid. But from an 11.29-acre parcel, I just
18 didn't feel that they were the most appropriate to
19 use.

20 Q. And you say anybody who buys this property is going
21 to have to have an easement to the back of the
22 property?

23 A. No.

24 Q. Couldn't they just, I mean, just not use the back
25 of the property?

1 A. No. What I'm saying is that if it was -- if you
2 developed or sold off say the first two acres of
3 the property without land-locking the rear portion,
4 you'd have to have access to that rear portion.

5 Q. Let me just ask you this. Couldn't somebody just
6 buy 11.29 acres and just use the frontage and not
7 worry about what's behind it?

8 A. Absolutely.

9 Q. And wouldn't that frontage have value because it's
10 on 321?

11 A. Right. But where I disagree with Mr. Rosen's
12 appraisal is that he applied that value to the
13 entire 11.29 acres. I would have applied the -- a
14 comparable value to two acres and a different set
15 of values to the -- the remaining 9.29 acres using
16 round numbers.

17 Q. I understand. Now, on your appraisal on page 20
18 when we talked earlier about this, you had an
19 outlook and a conclusion here that I asked you
20 about. And you said well, this wasn't accurate.
21 Is that right, or am I misremembering that?

22 A. No. I had -- like I mentioned I had appraised this
23 property previously in 2011. And I had a typo from
24 -- that had remained in the report from the -- the
25 market conditions.

1 Q. What was it that you told me how this should read
2 instead of how it does read?

3 A. Well, the last sentence I said we anticipate the
4 property values will remain -- a complete typo, but
5 remain -- continue to decline until economic
6 conditions stabilize. That sentence should be
7 struck altogether because the marketing conditions
8 had not begun to decline at that point.

9 THE COURT: Wait a minute. I want to make sure I
10 understand. So you're saying the entire last
11 sentence starting with "We" should be struck?

12 WITNESS: Right.

13 EXAMINATION BY MR. BULLARD RESUMED:

14 Q. And it should say that the market conditions appear
15 to be stable at that time in 2008?

16 A. Right.

17 THE COURT: Wait a minute. Hold on. I'm -- I'm
18 confused. Because I thought you said you struck
19 the whole statement. And then you said something
20 different.

21 MR. BULLARD: That it should have read that the market
22 conditions in 2008 were stable.

23 WITNESS: You could either strike the entire sentence or
24 the -- the beginning sentence says the area's in a
25 stability stage of life cycle. So it's restating

1 what I've already said in there. I would have no
2 problem adding that additional sentence. But the
3 last sentence of that is just incorrect.

4 THE COURT: Because it says -- because it says remain
5 and continue because of the earlier --

6 WITNESS: It was just something that remained in the
7 report in error.

8 THE COURT: All right. I've got you. I just wanted to
9 make sure I understood what you both were saying.

10 EXAMINATION BY MR. BULLARD RESUMED:

11 Q. All right. Look at page 33. And this is your
12 comparables?

13 A. Correct.

14 Q. And number 1 is in -- where is that? West
15 Columbia?

16 A. That's correct. It's -- it's just off of 321
17 heading just north of the subject.

18 Q. It's not -- it doesn't -- it's to frontage on 321?

19 A. Garners Terrace and 321 intersect. And this is
20 right off of 321.

21 Q. Okay. And then ----

22 A. But, no, there's no frontage on 321.

23 Q. And number 3, that's in -- where is that?
24 Springdale? Is that also --

25 A. It's West Columbia area. Platt Springs Road.

1 Q. Platt Springs Road?

2 A. Correct.

3 Q. Number 2 is in Edmond? It's depicted over there to
4 the left; is that right?

5 A. Correct.

6 Q. All right, that's all the questions I have. Thank
7 you.

8 THE COURT: Anything on redirect?

9 MR. EVANS: Nothing, Your Honor.

10 THE COURT: You can step down.

11 MR. EVANS: Plaintiff calls Mr. Grady Query to the
12 stand.

13 THE COURT: Mr. Query, come forward and be sworn,
14 please.

15 Whereupon,

16 Grady Query, being duly sworn and cautioned to
17 speak the truth, the whole truth, and nothing
18 but the truth, testified as follows:

19 BAILIFF: Thank you. Give your full name to the court
20 reporter and spell the last.

21 MR. QUERY: Oliver Grady Query, Q-u-e-r-y.

22 BAILIFF: Thank you, sir. You may be seated.

23 MR. EVANS: Judge, is it all right for Ms. Keys to exit
24 the courtroom, leave?

25 THE COURT: Mr. Bullard?

1 MR. BULLARD: Yes, sir, I have no objection.

2 THE COURT: Without objection. Thank you.

3 MR. EVANS: Thank you, Your Honor.

4 EXAMINATION

5 BY MR. EVANS:

6 Q. Mr. Query, you're the named plaintiff in this case;
7 is that correct?

8 A. I am.

9 Q. And what is your occupation?

10 A. I'm an attorney in Charleston.

11 Q. And prior to the contract we're here about today,
12 did you used to own this 11 acres with your father?

13 A. I did.

14 Q. And has he passed away?

15 A. Yes.

16 Q. And was there a deed of distribution from his
17 estate to you?

18 A. Yes. I was the only heir. But my mother and my
19 sister predeceased my father.

20 Q. Okay. The subject property -- (Speaking to The
21 Court): And, Your Honor, is it all right if I just
22 continue to refer to it as the subject property
23 rather than 11.29 acres in Gaston, South Carolina?

24 THE COURT: I think -- I think -- that's fine with me.

25 MR. BULLARD: I have no objection to that, Your Honor.

1 EXAMINATION BY MR. EVANS RESUMED:

2 Q. Mr. Query, did you sign a listing agreement to sell
3 this property?

4 A. I did.

5 Q. (Speaking to The Court): Just give me one second,
6 Your Honor. I beg The Court's indulgence one quick
7 second, Your Honor. I've got -- I've got to put my
8 hands on these exhibits.

9 EXAMINATION BY MR. EVANS RESUMED:

10 Q. I want to show you this document and ask you if you
11 recognize it.

12 A. Yes. This is the listing agreement that we entered
13 into with Tommy Dawson.

14 Q. Okay. And what company was he employed with?

15 A. ReMax I believe.

16 Q. (Speaking to The Court): I offer this as
17 Plaintiff's Exhibit 2, Your Honor, the listing
18 agreement.

19 MR. BULLARD: No objection, Your Honor.

20 THE COURT: Without objection.

21 (Plaintiff's Exhibit Number 2
22 Marked)

23 EXAMINATION BY MR. EVANS RESUMED:

24 Q. Okay. At some point, Mr. Query, did Mr. Dawson
25 forward to you an offer to purchase this property?

1 A. Yes. He called me and told me we had an offer and
2 sent it up to me -- or down to me.

3 Q. Is that document in your hand the offer that you
4 received from Mr. Dawson?

5 A. Yes, it is.

6 Q. (Speaking to The Court): I offer that as
7 Plaintiff's 3, Your Honor.

8 MR. BULLARD: No objection, Your Honor.

9 THE COURT: Without objection. Is that the -- is that
10 the base contract that's been attached to
11 everything?

12 MR. EVANS: Not exactly. It's -- it's an offer. It's
13 from three days before.

14 THE COURT: And what date is it?

15 MR. EVANS: Two or three days. The 24th of March.

16 THE COURT: All right. So that's -- if you'll just for
17 the record tell me it's what date?

18 MR. EVANS: It's signed March 24th, 2008, Your Honor.
19 It's the initial offer to purchase the subject
20 property by defendants, Castrejon and Lozano, to
21 Mr. Query.

22 THE COURT: Okay. Thank you.

23 MR. BULLARD: Would you like me to hand it up?

24 THE COURT: No, you can just leave it there. I just --
25 I just want to make sure I'm keeping correct tab of

1 dates of various documents. Without objection.

2 (Plaintiff's Exhibit Number 3

3 Marked)

4 EXAMINATION BY MR. EVANS RESUMED:

5 Q. All right, Mr. Query, was that offer accepted?

6 A. It was not.

7 Q. Okay. Were there any negotiations as to the sales
8 price?

9 A. Yes. I countered through Mr. Dawson and he was
10 talking directly to the gentlemen that had come to
11 his office interested in buying the property.

12 Q. Okay. I want to show you the contract that we've
13 been discussing here today. Is that the contract
14 that the defendants signed to purchase your
15 property dated March 27th, 2008?

16 A. It is.

17 Q. I offer that as Plaintiff's Exhibit 4. This is
18 just the same document, but it's got your signature
19 on it. So I want to introduce this as Plaintiff's
20 Exhibit 4.

21 MR. BULLARD: No objection.

22 THE COURT: March 27th. Without objection.

23 (Plaintiff's Exhibit Number 4

24 Marked)

25 EXAMINATION BY MR. EVANS RESUMED:

1 Q. And, Mr. Query, on Plaintiff's Exhibit 4, the offer
2 to purchase signed by all parties on March 27th,
3 2008, in paragraph 3 are there -- is there a
4 reflection of a negotiation over the sales price?

5 A. Yeah. I think Tommy sent it to me with the
6 original 275 offer that was unacceptable. I
7 countered apparently at 330,000. That also was
8 stricken through. And then we agreed on a price of
9 302,500. And that was initialed by the buyers.

10 Q. So was an agreement reached as to the sales price
11 between you and the purchasers?

12 A. Yes, it was.

13 Q. And you ended up signing this March 27, 2008 offer
14 to purchase from defendants, Castrejon and Lozano?

15 A. I did.

16 Q. Now, I'll refer you to paragraph 3 of this
17 document. Does paragraph 3 state that there's a
18 loan amount to be obtained by the purchaser?

19 A. Yes.

20 Q. And does paragraph 4 specify any particular type of
21 financing?

22 A. No, it did not.

23 Q. To your knowledge, did the purchaser apply for some
24 type of bank financing?

25 A. I don't know. But I understood that they were

1 going to talk to their regular bank.

2 Q. And paragraph 11 states that there will be a
3 closing on this contract on or before April 25th,
4 2008. To your knowledge did the -- was the
5 purchaser able to get a decision on bank financing
6 by that date?

7 A. My recollection is that the first time that we
8 extended the closing was that the buyers wanted to
9 continue talking to their bank about the
10 possibility of financing.

11 Q. Did the parties agree to extend the closing date so
12 that the purchaser could attempt to get a decision
13 from his bank?

14 A. Yes, we did.

15 Q. Do you know whether the purchasers were able to
16 obtain bank financing for this loan?

17 A. I don't know. My -- the next recollection that I
18 have is that they either were unable to or they
19 were not satisfied with the negotiations with the
20 bank. And Tommy called me and asked me if we would
21 entertain owner financing.

22 Q. Tommy, you mean Mr. Dawson?

23 A. That's correct.

24 Q. And what was your response to the question about
25 owner financing?

1 A. I told him as long as they were going to pay the
2 \$50,000 down, I had no problem with that.

3 Q. And approximately how long after the discussions of
4 bank financing did the conversation move to owner
5 financing?

6 A. In all honesty, I'm not sure.

7 Q. Okay. And did you agree to provide owner financing
8 --

9 A. I did.

10 Q. -- on this loan?

11 A. I did.

12 Q. Okay. (Speaking to The Court): Your Honor, at
13 this point we would offer a stipulation between the
14 parties as to the closing file of Mr. Jeffcoat into
15 evidence.

16 THE COURT: Plaintiff's Number 5, a stipulation is
17 Attorney Jeffcoat's closing file. Is that
18 accurate?

19 MR. BULLARD: If I could read the stipulation we've
20 agreed to?

21 THE COURT: Yes, sir.

22 MR. BULLARD: "The parties agree and stipulate that the
23 testimony of the custodian or other qualified
24 witness is not necessary as a condition precedent
25 to admissibility at trial pursuant to the

1 requirements of South Carolina Rules of Evidence,
2 nor to authenticate such documents pursuant to the
3 requirements of South Carolina Evidence Rule 91.
4 The parties reserve the right to object to the
5 introduction of any of these documents on other
6 evidentiary grounds."

7 THE COURT: Is it admitted with the qualifications so
8 stated?

9 MR. BULLARD: Yes, sir.

10 MR. EVANS: And, Your Honor, as part of that exhibit
11 through plaintiff's we would like to attach a copy
12 of the closing file of Mr. Jeffcoat to the
13 stipulation itself.

14 THE COURT: I don't think there's any problem with that.
15 Mr. Bullard?

16 MR. BULLARD: No, sir.

17 (Plaintiff's Exhibit Number 5
18 Marked)

19 EXAMINATION BY MR. EVANS RESUMED:

20 Q. Mr. Query, I'll show you what's marked as page 49
21 of Mr. Jeffcoat's closing file and ask you if you
22 recognize that document.

23 A. Can I just take a look at it? Thank you.

24 Q. And did you receive this document?

25 A. I did.

1 Q. Okay. We move that into evidence as Plaintiff's
2 Exhibit 6.

3 THE COURT: Plaintiff's 6. But what is it?

4 MR. EVANS: It's the August 12, 2008 email from Mr.
5 Jeffcoat's office to Mr. Query.

6 THE COURT: August 6th --

7 MR. EVANS: August 12th, 2008.

8 THE COURT: August 12th, 2008.

9 MR. EVANS: And that will be Plaintiff's Exhibit 6 I
10 believe. Five I will supply, which is a copy of
11 the stipulation and the actual closing file.
12 Here's the stipulation, Madam -- and I'll give you
13 a copy of the closing file.

14 MR. BULLARD: No objection. This is exhibit -- this is
15 Number 6, the email?

16 MR. EVANS: Correct.

17 MR. BULLARD: No objection.

18 THE COURT: No objection.

19 (Plaintiff's Exhibit Number 6
20 Marked)

21 EXAMINATION BY MR. EVANS RESUMED:

22 Q. Mr. Query, could you please read the first sentence
23 of this email you received from Mr. Jeffcoat's
24 office?

25 A. "Mr. Query, we are assisting Mr. Castrejon with the

1 purchase of your property mentioned above. I am
2 preparing the closing paperwork for the closing
3 scheduled for Wednesday, August 21st, 2008 at 11
4 a.m., and I have a few questions."

5 Q. Thank you. Now, the -- this closing that's being
6 referred to in August 2008, that was for the
7 subject property?

8 A. Yeah. This actually came sort of down the line
9 because subsequent to the contract having been
10 signed and -- and Tommy receiving the earnest
11 money, we had to wait for them to talk further with
12 their bank. And then I received a call from Tommy
13 about owner financing and agreed that I would
14 finance the \$252,500 that was specified in the
15 original contract. And then -- and all of that
16 continued to go on through the parties actually
17 contacting Mr. Dawson, and then Mr. Dawson would
18 convey that -- their offer or their request to me.
19 And as I said, I had -- I agreed to the owner
20 financing. So that went on down the line for a
21 while. And then someone, either Jodi Hudnall or
22 Mr. Jeffcoat, called and said that a third party
23 was going to participate in the -- in the purchase
24 in some form. I didn't understand whether he was
25 just providing money or whether he was going to be

1 a buyer I think at that time. And he said that
2 they wanted to increase the amount of their down
3 payment.

4 MR. BULLARD: Your Honor, I object. I believe we're
5 getting into hearsay at this point. Somebody told
6 him something.

7 MR. EVANS: Your Honor, it's -- it's direct negotiations
8 of the terms of this contract, any modification of
9 the terms of the contract.

10 THE COURT: Well, I understand that. But he's objecting
11 saying that it's hearsay, that somebody who's not
12 in the court was telling him something. So if it's
13 hearsay, is there any exception that makes it
14 admissible?

15 MR. EVANS: Well, any communications -- we take the
16 position, Your Honor, that any communications to
17 Mr. Query from the closing attorney's office is not
18 hearsay, that it's communications of the party that
19 he represents. And --

20 THE COURT: All right. So you're saying that if an --
21 so there's -- there's an attorney hearsay
22 exception?

23 MR. EVANS: Well, it's -- that is not hearsay, Your
24 Honor. It's a -- it's a communication between an
25 individual and the attorney for another party so

1 that the attorney represents the party.

2 THE COURT: All right. Who did the witness say told him
3 this? I wasn't -- I think he said he was not sure
4 who told him. Did you say Mr. Dawson told you, or
5 that Mr. Jeffcoat told you? Or who told you this
6 information?

7 WITNESS: Your Honor, the first communication regarding
8 the owner financing was from Mr. Dawson. And he
9 was conveying, as I understood it, on behalf of the
10 buyers an offer to me.

11 THE COURT: All right. And all -- and all that's come
12 in unobjected. So that's already come in about
13 what Mr. Dawson, who's not here, has said. And
14 that's all come in unobjected.

15 MR. EVANS: Mr. Dawson is here, Your Honor.

16 THE COURT: Okay.

17 WITNESS: And then the subsequent modification was Mr.
18 Jeffcoat's office. And I would be -- I cannot say
19 for certain whether his paralegal, Ms. Hudnall,
20 told me or whether Mr. Jeffcoat did. I spoke to
21 both of them during that time, and they said that
22 the buyers wanted to increase the down payment to
23 \$75,000.

24 MR. BULLARD: And what may have been told to him by
25 whichever of these people, Mr. Jeffcoat or Ms.

1 Hudnall, I object to that on hearsay grounds and
2 move that that testimony be stricken.

3 THE COURT: Again tell me -- tell me if it's clearly
4 either Mr. Jeffcoat or a paralegal who's not here.

5 MR. EVANS: Well, that's -- that's correct, Your Honor.
6 But we do have some documentation in the file to
7 back this up. But again, Mr. Query, as Your Honor
8 has already noted, cannot talk directly to a party
9 who's represented by an attorney. His only
10 communication about this contract has to be through
11 that party's attorney.

12 THE COURT: I -- I understand that. But his -- his -- I
13 don't think his objection is based on who you can
14 talk to, who represents. I think his objection is
15 I can't cross him because he's not here.. So -- so
16 what I'm going to do is -- and again I'll explain
17 this. We're a non-jury. This is a non-jury trial,
18 and I'm the finder of the facts and the -- and the
19 law. And as Justice Pleicones has instructed us
20 often, we let everything in and then we choose to.
21 And then in our order we specifically state
22 findings of fact, whether they're in or out. Now,
23 what I'm going to say on this is I'm going to --
24 I'm going to sustain the motion. You're free to
25 later -- because we don't have a jury this is going

1 to influence because I'm the guy you've got to
2 influence. Now, if you can say that this exception
3 -- this exception to the hearsay, it should go in,
4 then tell me in the post-trial memo. But it's
5 clearly hearsay because neither the paralegal nor
6 the -- nor the Jeffcoat attorney is here. And
7 those are the two people. And I have not heard an
8 exception offer to it. So --

9 MR. BULLARD: Your Honor, again I understand your ruling
10 and I have no quarrel with it. I just want to know
11 whether I need to continue to object to preserve
12 this objection because I anticipate that, of
13 course, Mr. Query's going to testify to more
14 hearsay. Do I need to continue to object in every
15 instance?

16 THE COURT: Well, if you will. Because different
17 statements can have different exceptions to
18 hearsay.

19 MR. BULLARD: Yes, sir, Your Honor. I will -- I will do
20 so.

21 THE COURT: So if you would. There are a lot of
22 exceptions to the hearsay rule.

23 MR. BULLARD: Well, I will do so, Your Honor.

24 THE COURT: Yes, sir.

25 EXAMINATION BY MR. EVANS RESUMED:

1 Q. At some point during the negotiations over the
2 owner financing, Mr. Query, did you agree to accept
3 \$75,000 down instead of the \$50,000 down that was
4 stated in the written contract?

5 A. I did.

6 Q. Now, Mr. Query, the August 2008 closing, was that -
7 - that's referred to in Plaintiff's Exhibit 6, was
8 that based on a written contract between the
9 parties?

10 A. We were still operating under the same contract.

11 Q. And are you referring to the Plaintiff's Exhibit 4,
12 the offer made by defendants, Castrejon and Lozano,
13 that you signed on March 27, 2008?

14 A. Yes. We were simply extending the time for closing
15 for the convenience of purchasers and modifying the
16 financing at their request.

17 Q. Was there ever any other contract, oral or written,
18 between the parties other than the March 27, 2008
19 offer to purchase that was signed on that date by
20 defendants, Castrejon, Lozano and yourself?

21 MR. BULLARD: Object to the form. I heard several
22 questions in there actually he's asking.

23 THE COURT: Well, I heard a bunch of names. I thought I
24 heard him say was there ever any other contract or
25 offer to purchase other than -- I mean, if you can

1 break it into contract or offer to purchase then.

2 If you'll rephrase the question.

3 MR. EVANS: Okay, Your Honor. I realize it's a long
4 question. And I'll try -- I'll break it down.

5 EXAMINATION BY MR. EVANS RESUMED:

6 Q. Was there any -- was there ever any other contract,
7 oral or written, Mr. Query, between you and the
8 defendants to buy your property other than the
9 March 27th, 2008 contract?

10 A. No. I considered that I was bound to sell based
11 upon that contract. And I believed that they were
12 bound to purchase.

13 Q. And if you breached the contract and refused to
14 sell, isn't it correct they could have sued you for
15 specific performance?

16 A. That's provided for in the contract I believe.

17 MR. BULLARD: Your Honor, I object on one, it's leading,
18 two, it calls for him to speculate on what the
19 defendant's would have done, three, I don't know
20 why it's even relevant. I hate to keep getting up.
21 But I understand --

22 THE COURT: I understand. That's sustained.

23 EXAMINATION BY MR. EVANS RESUMED:

24 Q. Now, Mr. Query, referring to Plaintiff's Exhibit 6,
25 the email to you from Mr. Jeffcoat's office,

1 question number one asks whether you plan to attend
2 the closing or did you want the documents sent to
3 you for signing.

4 A. That's correct.

5 Q. And what was your response to Mr. Jeffcoat's
6 office? Were you planning to attend?

7 A. My best recollection at the time that I received
8 this was that I did plan to attend. That later
9 changed.

10 Q. And did the date of the closing actually change
11 also from this email?

12 A. Well, I think the date was misstated even in that
13 email. But at any rate, it did change to a -- a
14 later date. And Mr. Jeffcoat specifically
15 requested that we --

16 MR. BULLARD: Your Honor, I'm going to object. He's
17 getting ready to -- I believe he's getting ready to
18 talk -- discuss hearsay again.

19 THE COURT: Well, is it -- all right. Let him ask the
20 question.

21 MR. BULLARD: Yes, sir. It was the answer. It wasn't
22 the question necessarily.

23 THE COURT: All right.

24 WITNESS CONTINUES:

25 A. I think that Mr. Jeffcoat asked to extend the

1 closing so that they --

2 MR. BULLARD: Again, that's what I'm objecting to, what

3 Mr. Jeffcoat asked him to do.

4 MR. EVANS: We'll move on, Your Honor.

5 EXAMINATION BY MR. EVANS RESUMED:

6 Q: Did Mr. Jeffcoat send you the documents to sign for
7 this closing?

8 A: At some point, yes. We discussed which were to be
9 prepared by my office and which were to be prepared
10 --

11 MR. BULLARD: Again, I'm just putting it on the record,
12 any testimony regarding what he discussed with Mr.
13 Jeffcoat, Mrs. Hudnall or anyone else in Mr.
14 Jeffcoat's office, I'm objecting to.

15 THE COURT: All right. To the extent that that
16 objection goes to, again without an exception being
17 offered, that that goes to what Mr. Jeffcoat said,
18 it would be sustained. To the extent he's saying
19 we discussed and he's talking about what he said,
20 that's permissible.

21 MR. BULLARD: Yes, sir. I'm just trying to comply with
22 the court's ruling. I hate to -- I don't like
23 jumping up all the time, and I apologize.

24 THE COURT: I understand. I understand. But the rules
25 are what they are. And you want a good record.

1 MR. BULLARD: Yes, sir.

2 THE COURT: I'm not offended.

3 MR. BULLARD: All right. Thank you.

4 EXAMINATION BY MR. EVANS RESUMED:

5 Q. As part of --

6 A. I believe that I told Mr. Jeffcoat or his -- a
7 member of his staff that either we would be glad to
8 prepare some of the documents or they could prepare
9 all of the documents. And I quite honestly can't
10 remember which of us decided to do which. But all
11 the documents were prepared and presented to me for
12 signature after they were prepared.

13 Q. Thank you. Could you please read question number 2
14 on that email?

15 A. "Since this is owner financing, do you plan to
16 prepare the note and mortgage yourself and forward
17 to me, or would you like me to prepare it?"

18 Q. Mr. Query, as part of the owner financing that's
19 referred there -- referred to you there in question
20 2, did you send an amortization schedule to Mr.
21 Jeffcoat showing the total principal and interest
22 payments that would be due over the term of the
23 owner financing?

24 A. I did.

25 Q. And I want to show you this document and ask you if

1 you recognize it.

2 A. Yes. This is the amortization schedule that I sent
3 to Mr. Jeffcoat's office.

4 Q. We would introduce that into evidence -- move to
5 introduce it as Plaintiff's Exhibit 7, Your Honor.

6 THE COURT: Mr. Bullard?

7 MR. BULLARD: No objection, Your Honor.

8 THE COURT: Without objection.

9 (Plaintiff's Exhibit Number 7
10 Marked)

11 EXAMINATION BY MR. EVANS RESUMED:

12 Q. And according to that amortization schedule, Mr.
13 Query, Plaintiff's Exhibit 7, what is the total
14 amount of interest that you expected to receive as
15 part of the owner financing on this sale?

16 A. One hundred three thousand, four hundred four
17 dollars and twenty-nine cents.

18 Q. Mr. Query, the -- the total interest due according
19 to that schedule, are you claiming that as part of
20 the damages in this case from the breach of
21 contract by defendants?

22 A. Yes.

23 Q. Mr. Query, all of these questions that you received
24 from Mr. Jeffcoat's office, the six questions
25 dealing with this August 2008 closing, were all of

1 those matters handled, so that the closing could
2 occur?

3 A. Yes.

4 Q. Was there anything else that needed to be done by
5 you as the seller for this closing to occur?

6 A. I needed to execute the deed and sign the HUD
7 statement were the only things that remained.

8 Q. The closing that's referred to in Plaintiff's
9 Exhibit 6 in August 2008, did that closing occur?

10 A. Not -- no, not in August 2008.

11 Q. And why did it not occur in August 2008?

12 A. To allow time to prepare a current survey.

13 Q. Did the parties agree to reschedule the closing so
14 that the survey could be performed?

15 A. We did.

16 Q. And was that survey performed?

17 A. It was.

18 Q. And did you receive a copy of the survey?

19 A. I did.

20 Q. And is this a copy of the survey that you received?

21 A. Yes.

22 Q. (Speaking to The Court): I'll move that into
23 evidence, Your Honor, as Plaintiff's Exhibit 8 I
24 believe.

25 THE COURT: Mr. Bullard?

1 MR. BULLARD: No objection.

2 THE COURT: Without objection.

3 (Plaintiff's Exhibit Number 8

4 Marked)

5 EXAMINATION BY MR. EVANS RESUMED:

6 Q. In the bottom right-hand corner of the survey, Mr.
7 Query, does it show that this survey was performed
8 on September 3rd, 2008?

9 A. It does.

10 Q. And right above that recorded with Lexington County
11 Planning Commission on September 8th, 2008?

12 A. Yes.

13 Q. And who does the document -- this plat, who does --
14 who was this survey performed for according to this
15 document?

16 A. Oh, I'm sorry. The survey for Ladislao -- I may
17 not pronounce that correctly -- Ladislao Castrejon
18 and Jesus Brito.

19 Q. So is it your recollection, Mr. Query, that the
20 August 2008 closing was rescheduled to September
21 2008?

22 A. Yes. In fact, my -- the amortization that I sent
23 to Mr. Jeffcoat's office indicated a start date of
24 September 24th, 2008.

25 Q. And I want to show you this document and ask you if

1 you recognize that.

2 A. I do.

3 Q. Is this a document sent from your office?

4 A. Yes. This was sent by my assistant to Mr.
5 Jeffcoat's office to Ms. Hudnall.

6 Q. Was this document sent at your direction?

7 A. It was.

8 Q. (Speaking to The Court): We'll move this into
9 evidence as Plaintiff's -- is it 9?

10 THE COURT: What is it?

11 MR. EVANS: It's a -- it's a fax transmittal sheet from
12 Mr. Query's office to the office of Mr. Jeffcoat
13 dated September 23rd, 2008. And the subject is
14 Castrejon closing for Gaston.

15 MR. BULLARD: Are you waiting for me? I'm sorry. No
16 objection, Your Honor.

17 (Plaintiff's Exhibit Number 9
18 Marked)

19 EXAMINATION BY MR. EVANS RESUMED:

20 Q. Mr. Query, could you please read what the message
21 says near the bottom of this page, Plaintiff's
22 Exhibit 9?

23 A. "Attached please find the relevant signature pages.
24 I will mail the originals to you today. Tracey
25 O'Brien, assistant to Grady Query."

1 Q. And what signature page is -- is this document
2 referring to?

3 A. The deed and the HUD for the sale of the Gaston
4 property.

5 Q. And were those documents forwarded to the closing
6 attorney so the closing could occur on September
7 24th, 2008?

8 A. They were hand carried there by -- oh, the
9 signature pages were, yes.

10 Q. So the signature pages were faxed. And this --
11 this document says that your assistant would mail
12 the originals to his office on that date. Were
13 those originals mailed to Mr. Jeffcoat's office?

14 A. No. I think Tracey had more faith in the postal
15 service than I did, so they were -- I took -- I met
16 Mr. Dawson and he took them to the closing
17 attorney's office on the 24th.

18 Q. And at the closing scheduled for September 24th,
19 2008 did any of the defendants appear at the
20 closing and close on this transaction?

21 MR. BULLARD: I'm going to object, Your Honor. There's
22 not been a proper foundation laid for him to have
23 that knowledge of that.

24 MR. EVANS: I'll restate the question, Your Honor.

25 THE COURT: Restate the question.

1 EXAMINATION BY MR. EVANS RESUMED:

2 Q. Did the September 24th, 2008 closing occur?

3 A. No. At least not insofar as the buyers were
4 concerned. We delivered the deed and the HUD.

5 Q. And did the purchasers or any of the defendants
6 ever close on the sale of this property?

7 A. No.

8 Q. Now, after this sale did not close, did you
9 continue to try to sell this property?

10 A. Yes.

11 Q. And did you have any success in that regard?

12 A. We had a highly contingent offer from a group that
13 wanted to build one of the satellite hospital
14 facilities, a number of which had been built around
15 South Carolina. I'm probably not calling it by its
16 proper terminology. But that was all -- I mean, we
17 were told up front that that was all contingent
18 upon and subject to a government grant, and it
19 never went anywhere.

20 Q. And to your recollection, Mr. Query, the June 2011
21 appraisal that Ms. Keys referred to during her
22 testimony that she actually performed, was that
23 survey to your knowledge done in connection with
24 that proposed sale to that group you just told us
25 about?

1 MR. BULLARD: Again, I'm going to object. Improper --
2 not proper foundation laid for him to have
3 knowledge of that.

4 MR. EVANS: I'll move on, Your Honor.

5 THE COURT: Well, all right.

6 EXAMINATION BY MR. EVANS RESUMED:

7 Q. Do you recall how long -- approximately how long
8 after the September 2008 closing we're talking
9 about when this other group was trying to buy the
10 property?

11 A. No. I'm sorry.

12 Q. Okay. Was this property actively marketed during
13 the six months from March 2008 to September 2008
14 while it was under contract to the defendants?

15 A. No. I considered it sold.

16 Q. As a result of this closing not occurring with the
17 defendants, are there other costs that you've had
18 to pay as a result of the defendants' actions?

19 A. Yes. I've continued to pay taxes on the property.
20 I've continued to pay mortgage payments and
21 interest. I have had to pay you -- or I owe you.

22 Q. Thank you, Mr. Query. Please answer any questions
23 from opposing counsel.

24 THE COURT: Cross, Mr. Bullard?

25 MR. BULLARD: I'll try and go ahead. I'd like to take a

1 break. But I understand you'd rather not split up
2 the -- you don't want to split the witness, right?

3 THE COURT: I mean, how long do you want to --

4 MR. BULLARD: Just a second. Like two minutes.

5 THE COURT: Yeah, sure.

6 MR. BULLARD: Can I do that?

7 THE COURT: Yeah, you can have a brief --

8 MR. BULLARD: I just want to go to the bathroom and come
9 right back in.

10 THE COURT: Sure. We'll take -- let's come back 11:35,
11 in case there's someone in there. I'll remind
12 everybody you're under oath. Don't talk to
13 anybody.

14 MR. BULLARD: I'll come right back.

15 (Off the record from 11:26 a.m.
16 until 11:36 a.m.)

17 THE COURT: We're back on the record. Mr. Bullard,
18 Cross.

19 MR. BULLARD: Thank you, Your Honor.

20 EXAMINATION BY MR. BULLARD:

21 Q. Mr. Query, I think you told me before, and I just
22 want to confirm with you, that prior to filing this
23 litigation, you had no contact of any kind with Mr.
24 Lozano or Mr. Castrejon.

25 A. I think that's correct.

1 Q. You didn't talk to them at all, you didn't send
2 them emails, correspondence of any kind; is that
3 right?

4 A. Talked to them and corresponded to them through
5 either Mr. Dawson or Mr. Jeffcoat.

6 Q. But not directly with either one of them?

7 A. Correct.

8 Q. Now, in April -- well, let's go back. I think you
9 said there was an existing mortgage on the property
10 when you contemplated this sale with Mr. Castrejon,
11 right?

12 A. Yes, there was an existing mortgage.

13 Q. I'm going to hand you a document and ask you if you
14 can identify it.

15 A. Yes, sir.

16 Q. Is that the mortgage -- it's dated 2005. Is that
17 the mortgage that was existing on the property in
18 2008?

19 A. That's correct.

20 Q. I'd like to move that into evidence as Defendant's
21 Exhibit.

22 MR. EVANS: We object, Your Honor. It's irrelevant to
23 any issues in this case. It's got nothing to do
24 with the issues.

25 THE COURT: All right. Well, I'll let you tell me the

1 relevance. And then I'll --

2 MR. BULLARD: Sure. I'm just going to ask him -- I'll

3 say it a different way. Part of the claims that

4 they are making I understand for damages are

5 mortgage, taxes -- or payment of a mortgage that

6 they had to continue paying -- or Mr. Query had to

7 continue paying. It's my position and I intend to

8 show the Court that that was a mortgage existing

9 and that in 2011 after this transaction a new

10 mortgage was entered into for this property

11 securing a much larger amount, and that those

12 larger amounts should not be taxed against my

13 clients as damages should the court determine that

14 damages should be awarded. Because he

15 intentionally encumbered the property for more

16 money. So I'm establishing a baseline of what

17 existed at the time, and then I intend to introduce

18 the mortgage from 2011 that is higher than that

19 mortgage for that purpose.

20 THE COURT: Let me just ask a theoretical. If the

21 property had closed, that mortgage would had to

22 have been paid off, right?

23 MR. BULLARD: Yes, sir. I would -- I would -- well, I

24 assume it would have been.

25 THE COURT: How is that not relevant?

1 MR. EVANS: No, Your Honor. With owner financing it
2 would not have been paid off. But we will
3 stipulate, Your Honor -- we will stipulate that Mr.
4 Query would not be entitled to any mortgage
5 interest due to a modification of that mortgage at
6 a later date. We stipulate to that. So we don't
7 think there's any need to go into the 2011
8 mortgage.

9 MR. BULLARD: Well, I would -- I'd still like to examine
10 --

11 THE COURT: Well, he's got a right -- I'm going to allow
12 that in. And you can -- you can -- this goes --
13 this goes more towards the damage calculation and
14 what's in and what's out if you win. So I'm going
15 to allow that in. You can argue the relevance and
16 how much it's in or out, but that's something on
17 record at the closing.

18 MR. EVANS: Your Honor, we're not seeking those damages.

19 MR. BULLARD: Well, if they want to explain what they're
20 stipulating to in a little more detail, it might be
21 something we need to explore.

22 THE COURT: Well, that would be helpful, yes, sir.

23 MR. EVANS: We are not seeking damages for mortgage
24 interest paid by Mr. Query or property taxes paid
25 by Mr. Query on this property after the -- after

1 the closing fell through.

2 THE COURT: All right. What are -- what damages are you
3 seeking?

4 MR. EVANS: We're seeking general damages being the
5 difference between the contract price and the fair
6 market value at the time of the breach plus pre-
7 judgment interest and lost interest income from the
8 owner financing as special damages. Plus, under
9 the contract costs and reasonable attorney's fees.

10 THE COURT: All right. It sounds like he's not claiming
11 any of that.

12 MR. BULLARD: Okay. Can you give me a second to process
13 it?

14 THE COURT: Yes, sir.

15 MR. BULLARD: Because you may both be right that we
16 don't need to talk about this. Just --

17 THE COURT: Yes, sir. You can have a few moments.

18 MR. BULLARD: I just want to --

19 THE COURT: Yes, I understand.

20 MR. EVANS: Can Mark and I talk to you and get it sorted
21 out?

22 THE COURT: Absolutely. Now, Madam, this obviously --
23 their conversation is not on the record. You can
24 note that they're talking, but if you pick up
25 anything, please do not convey it in your

1 transcript.

2 (Side Conference Between Mr.
3 Bullard, Mr. Evans and The Court)

4 MR. BULLARD: My understanding again, and I think Mr.
5 Evans articulated it just fine last time, I just
6 wanted to make sure, that Plaintiffs are only
7 seeking general damages, which is the difference in
8 the value of the property and the contract price,
9 pre-judgment interest on that, the loss of
10 potential interest on the owner financing which
11 they have entered into as an exhibit -- have
12 entered into evidence as an exhibit, and costs and
13 attorney's fees which they say they're entitled to
14 under the contract. And I think -- is that it?
15 Did I get it all?

16 MR. EVANS: That's correct. I mean, Mr. Query testified
17 that he incurred these additional costs as a result
18 of the sale not going forward.

19 MR. BULLARD: But I got that right. I just want to make
20 sure I'm not messing things up here.

21 THE COURT: Right. I understand. So we don't need this
22 mortgage then?

23 MR. BULLARD: If that's the stipulation, then I would
24 say no, we don't.

25 THE COURT: Okay.

1 MR. BULLARD: Is that -- I mean, are we on the record
2 that that's the stipulation?

3 THE COURT: Yes, we're on the record. I'm understanding
4 that's the stipulation.

5 MR. BULLARD: All right. Then you are correct. Mr.
6 Query, I will not ask you about that.

7 THE COURT: And while you're pondering your next
8 question, if I neglect to mention this at the end
9 of the trial, in South Carolina Damages Volume 2,
10 Chapter 15, Chapter 15 is Land Sale Contracts. And
11 it has a whole schematic on what damages are proper
12 and how you calculate and all that. So that will
13 be -- it will be probably interesting to read and
14 review for your memos.

15 MR. BULLARD: Yes, sir.

16 EXAMINATION BY MR. BULLARD RESUMED:

17 Q. Mr. Query, I'm going to show you what's been marked
18 as Plaintiff's Exhibit 2. (Speaking to The Court):
19 It's the listing agreement I believe, Judge, since
20 you don't have it up there.

21 EXAMINATION BY MR. BULLARD RESUMED:

22 Q. And ask you other than this writing, this agreement
23 here, do you have a -- do you have another written
24 agreement with -- with Mr. Dawson or any other real
25 estate agent to market the property?

1 THE COURT: That's Plaintiff's 2?

2 MR. BULLARD: Yes, sir.

3 THE COURT: That's marked Plaintiff's 2.

4 WITNESS ANSWERS:

5 A. There were -- there is another writing. I don't
6 have the copy of it that I've been able to locate.
7 And I don't believe that Mr. Dawson has. But I
8 know that we agreed to increase the amount of his
9 commission, if -- if I'm not mistaken.

10 EXAMINATION BY MR. MCGOWAN RESUMED:

11 Q. Okay. But you don't have that other writing?

12 A. No. But Tommy was very thorough about sending me
13 stuff whenever we did something. And the --

14 Q. But if this writing exists, you didn't -- you
15 haven't produced it in discovery, and I don't have
16 it. So --

17 A. No, sir. I cannot find it. But I -- I know that
18 he would have gotten me to sign something if I
19 agreed to pay him more.

20 Q. This document indicates it expires in 2008 -- May
21 2008; is that right?

22 A. That's right.

23 Q. And I think when we talked about this at -- at your
24 deposition you said that other than putting a sign
25 on the property, you weren't sure exactly what Mr.

1 Dawson did to actually market the property during
2 the time that he was listing it?

3 A. No. I -- you're -- you're correct. I -- I don't
4 know specifically what he did. And I would agree -
5 - agree that -- I -- I would also add that there
6 was -- that he -- he -- he continued to market the
7 property after this sale didn't work. And so I
8 think we had an extension of that agreement.

9 Q. But as to what he actually did to market the
10 property, you don't know?

11 A. No, I don't.

12 Q. Is this -- I'm going to hand you Plaintiff's
13 Exhibit 6. Is this the writing that you contend
14 that's evidence of an agreement to extend the time
15 to close the contract and to modify the terms of
16 the contract -- modify the financing terms of the
17 contract? I'm sorry.

18 A. Yeah, I think this is a written confirmation of the
19 fact that we had extended the time and that we were
20 now operating under owner financing.

21 Q. You can hold onto that. I have a copy of that. I
22 think Mark gave me one. I'm sure he did. Again,
23 this is dated August 12th; is that right, Exhibit
24 6?

25 A. Correct.

1 Q. Okay. Do you have any written documentation of any
2 kind between March 27th, 2008 and August 12th, 2008
3 indicating any discussions or agreements to extend
4 or amend the contract in any way other than this?

5 A. There were some notes that Tommy -- well, I'm not
6 sure who wrote them. I think that either somebody
7 -- Tommy may have written them or someone in Mr.
8 Jeffcoat's office might have written them. But
9 they reflected our change in the -- from -- I
10 originally agreed that I would finance \$252,500 on
11 a down payment of \$50,000. They wanted to increase
12 the down payment to \$75,000, and there are some
13 handwritten notes that reflect that. But that's
14 the only other thing that I am aware of.

15 Q. And do you know when these handwritten notes were -
16 - were created?

17 A. I think again that was probably in August.

18 Q. Okay.

19 A. Or there's a date on there that reflects August.

20 Q. So the document you're talking about is from August
21 also you think?

22 A. I think.

23 Q. Okay. But you don't know who authored it?

24 A. I think Tommy did. But I think I called Tommy and
25 said they want to increase it to \$75,000 and he

1 sent those notes up to Jeffcoat.

2 Q. All right. Is this a document that's signed by any
3 of the parties?

4 A. No.

5 Q. Okay. And it's not in evidence, correct?

6 A. Not -- not -- no.

7 Q. All right. So there's nothing in evidence to
8 indicate there was any written discussions or
9 written -- anything in writing between the parties
10 indicating any agreement to amend the contract
11 between March and August of 2008?

12 A. No, I don't believe so.

13 Q. Okay. On Exhibit 6 again you talked about what it
14 says. And I'll just summarize it and ask if you
15 agree, if that's okay. Would you agree that the
16 first line that's from Ms. Hudnall is that she --
17 she is assisting Mr. Castrejon, right? That's what
18 it says?

19 A. It does.

20 Q. Okay. It doesn't say Mr. Lozano and it doesn't say
21 Mr. Brito, does it?

22 A. It does not. However, she prepared the deed and it
23 had Mr. Brito's name in it as a grantee.

24 Q. But the deed does not have Mr. Lozano's name on it,
25 does it?

1 A. Does not.

2 Q. All right. I think we've talked before, but you
3 would agree that Exhibit -- is Exhibit 4 over here
4 with you, Plaintiff's Exhibit 4? Let me look over
5 here. I'm sorry, it's over here, Mr. Query. You
6 would agree with me again that Mr. Castrejon is the
7 only one listed in paragraph 1 as a purchaser?

8 A. I would agree with that. But I was told from the
9 beginning that both of the gentlemen were buying
10 the property and the other -- Mr. Lozano also
11 signed it as a purchaser.

12 Q. (Speaking to The Court): I would move to strike
13 the testimony about what he was told by an unnamed
14 individual as hearsay.

15 WITNESS: I think Mr. Dawson was acting as their agent
16 at that time.

17 MR. BULLARD: Again, no foundation for why he might
18 think that. I move to strike that testimony.

19 THE COURT: All right. I'm going to allow that because
20 he said Dawson told him. Dawson's here. So I'm
21 going to allow that in.

22 MR. BULLARD: I'm going to mark this -- well, let me see
23 if I can get it in first. How about I do that
24 first.

25 EXAMINATION BY MR. BULLARD RESUMED:

1 Q. Mr. Query, I'm going to hand you a document which
2 is essentially a copy of a check that I think is
3 the escrow check. And we talked about it earlier
4 in your deposition. And I think you agreed that
5 that was the escrow check that Mr. Castrejon
6 deposited at ReMax when the -- when the contract
7 was entered into; is that right?

8 A. Yeah. I would not have ever seen this, but I
9 certainly believe that to be the case.

10 Q. And I think that was -- it was part of an
11 attachment to your complaint, was the -- and that
12 was an allegation in your complaint that that was
13 actually the escrow check, isn't it?

14 A. Okay. If -- if it is, then it certainly is what --
15 our position.

16 Q. Let me put this into evidence.

17 THE COURT: That's Defendant's 1?

18 MR. BULLARD: Isn't it 2?

19 THE COURT: The mortgage -- the mortgage --

20 MR. BULLARD: That's right. We never put it in. That's
21 right.

22 THE COURT: So Exhibit 1.

23 MR. BULLARD: Yes.

24 THE COURT: Right. I was thinking 2 also.

25 (Defendant's Exhibit Number 1

1 Marked)

2 EXAMINATION BY MR. BULLARD RESUMED:

3 Q. Again, I'd just ask you to verify, Mr. Query, that
4 the name on this check in the top left-hand corner
5 and the bottom right-hand corner is Mr. Castrejon's
6 name, right?

7 A. That's correct. It is printed at the upper left-
8 hand corner and -- and signed by him very clearly
9 in the signature line.

10 Q. And Mr. Lozano's name does not appear on there,
11 right?

12 A. Does not.

13 Q. And would it be fair to say that your recollection
14 or memory of the timing of various events and
15 certain factual matters regarding what occurred
16 back in 2008 with regard to this property are not -
17 - are somewhat -- are not as good as they could be?
18 You have some recollection problems?

19 A. I don't think I have any recollection problems.
20 But they are five-year-old recollections and their
21 accuracy would not be as good as it might have been
22 five years ago.

23 Q. I guess -- I'm sorry, again poor question.

24 A. No offense taken.

25 Q. Yes, I understand. But there are some things that

1 you're mistaken about and unsure about as far as
2 timing of events and factual matters that occurred
3 back --

4 A. That's correct. I think in my deposition I told
5 you that I thought we had bank negotiations between
6 the first offer and the -- and that there were two
7 signed contracts. And obviously there was only one
8 signed contract after an offer shortly before that.

9 Q. And I think you told me that you believed Mr.
10 Jeffcoat's office to be in Orangeburg and that you
11 dropped off things with Mr. Dawson to take to
12 Orangeburg for a closing; is that right?

13 A. I don't think so. If I did, I misstated that
14 altogether. Because his office is in Newberry.
15 And I came past Columbia and met Mr. Dawson at a
16 service station so that I could deliver the
17 documents to him and he could take them to the
18 closing in Mr. Jeffcoat's office in Newberry where
19 we were told Mr. Castrejon and the other gentlemen
20 were there.

21 Q. (Speaking to The Court): Your Honor, I'm sorry, I
22 have to preserve the objection. Things that he was
23 told I object to on hearsay grounds.

24 THE COURT: As long as it's not Mr. Dawson telling him.

25 EXAMINATION BY MR. MCGOWAN RESUMED:

1 Q. So before I open this, are you saying that you
2 deny telling me that you thought Mr. Jeffcoat's
3 office was in Orangeburg at your deposition?

4 A. I -- if I said it, I was -- I misspoke. I know
5 that his office is in Newberry.

6 Q. Okay. I think you also told me at your deposition
7 that you thought somebody other than Mr. Jeffcoat
8 prepared the deed, that you had it done or you had
9 it done on your behalf by someone else other than
10 Mr. Jeffcoat; is that right? Isn't that what you
11 told me --

12 A. I still think that's a possibility. We had
13 discussions about who was going to do which. And I
14 cannot -- I think I told you then and I tell you
15 again now I am not certain who prepared which
16 documents.

17 Q. Okay. And as I said, there are certain things
18 about the transaction that you're not completely a
19 hundred percent sure about? You don't have a
20 complete recollection? You don't know who prepared
21 the deeds?

22 A. That's correct.

23 Q. Okay. And whether it was a -- whether you misspoke
24 or you thought that Mr. Jeffcoat's office was in
25 Orangeburg, you aren't clear on that -- or you

1 weren't clear on that in your deposition?

2 A. I am absolutely clear on that. And how I
3 interchanged those two towns in South Carolina is a
4 mystery.

5 Q. Okay. Does -- does Sea Island -- Sea Island
6 Multihulls is a corporation of yours; is that
7 right?

8 A. It is.

9 Q. Does it really do any business?

10 A. No.

11 Q. It's just a holding company for your Catamaran
12 Yacht?

13 A. Yes.

14 Q. All right. And I think in your deposition you were
15 mistaken about this -- I know it's not important
16 anymore, but just for sake of having a cloudy
17 memory, or at least my position that you do on some
18 of these issues, in the deposition you -- you first
19 asserted to me that the 2011 mortgage was simply a
20 refinance, when in fact it was not simply a
21 refinance, it was the addition of other loans to
22 that, to make -- collateralize other loans with it,
23 wasn't it?

24 A. I mean, I still think it was a refinance. In 2011
25 the real estate market was in a tragic state, and

1 my bank was kind enough to do a lot of different
2 maneuvers in order to keep me afloat, and that
3 combined numerous properties as security and
4 combined this loan with other loans.

5 Q. So in 2011 actually other loans -- this property
6 was used to secure additional loans, and that's why
7 the number is higher in the 2011 mortgage, isn't
8 it?

9 A. It wasn't. -- well, you and I would phrase that
10 differently. We combined several loans and
11 combined the securities to please the bank.

12 Q. Okay. But -- okay. Do you still have the
13 exhibits?

14 A. I do.

15 Q. All right. Was it your intention with the owner
16 financing to -- to leave the first mortgage on
17 there and basically be taking a second?

18 A. Yes.

19 Q. Okay. So that was -- that was the -- that was part
20 of the amendment -- sorry to get so close.

21 A. Not at all.

22 Q. That was the amendment -- or the owner financing
23 deal was going to be a second -- the original
24 mortgage was not going to be paid off. It was
25 going to stay on the property and you would collect

1 whatever you would get in the owner financing of
2 the mortgage from Mr. Castrejon or whoever bought
3 the property; is that right?

4 A. That's -- yes, that's generally correct. It would
5 have been a second mortgage, but there were
6 negotiations going on with the bank so that I would
7 have applied what I got out of this property and
8 ultimately have satisfied that mortgage.

9 Q. But I think -- even if there's -- the amended
10 agreement went through, you would get 75 down, and
11 that would not have been sufficient to remove the
12 first mortgage, would it?

13 A. It would not have satisfied the first mortgage that
14 included this property as security. But the bank
15 and I were negotiating so that we would -- so that
16 I could take this property out of it and give them
17 the money.

18 Q. But no question at closing -- the contemplated
19 closing the first would remain and the owner
20 financing would be a second?

21 A. That's correct.

22 Q. I think that's all the questions I have, Your
23 Honor.

24 THE COURT: Anything on re-direct?

25 MR. EVANS: No, Your Honor.

1 THE COURT: All right. You can step down.

2 MR. EVANS: Plaintiff calls Tommy Dawson to the stand.

3 THE COURT: Come forward and be sworn, please.

4 Whereupon,

5 Thomas Theodore Dawson, being duly sworn and
6 cautioned to speak the truth, the whole truth,
7 and nothing but the truth, testified as
8 follows:

9 BAILIFF: Thank you. Give your full name to the court
10 reporter and spell the last.

11 MR. DAWSON: Okay. Thomas Theodore Dawson, D-a-w-s-o-n.

12 BAILIFF: Thank you, sir. You may have a seat.

13 EXAMINATION

14 BY MR. EVANS:

15 Q. Mr. Dawson, what's your occupation?

16 A. I was a agent with ReMax Metro Associates.

17 Q. During what period of time?

18 A. From 2000 to 2011 or '12 maybe.

19 Q. And is your real estate license currently active?

20 A. No, sir.

21 Q. And why is that?

22 A. The market was down and my parents were sick.

23 Q. So you were employed by ReMax; is that correct?

24 A. That's correct.

25 Q. And you heard the earlier testimony from Mr. Query

1 about the listing agreement, Plaintiff's Exhibit 2.

2 Do you recall that there was a listing agreement
3 between your company and Mr. Query regarding the
4 sale of this 11-acre property?

5 A. Yes, sir. Correct.

6 Q. And so in March 2008 was ReMax the listing agent
7 for Mr. Query's 11-acre property on Highway 321?

8 A. That's correct.

9 Q. In March 2008 did you receive an offer to purchase
10 the subject property?

11 A. That's correct.

12 Q. Plaintiff's Exhibit 3 -- is Plaintiff's Exhibit 3
13 the written offer to purchase the property that you
14 just referred to?

15 A. That's correct.

16 Q. Okay. And who made that offer to purchase this
17 property?

18 A. Ladis Castrejon.

19 Q. Okay. And looking at page 3 of Exhibit 3, who are
20 listed as the purchasers of this property?

21 A. Ladis Castrejon and Alberto -- I'm sorry.

22 Q. Lozano?

23 A. Lozano.

24 Q. And what is the date of -- on that offer?

25 A. 3/24/08. 3/24/08.

1 Q. And how much was offered to purchase the property?

2 A. Two hundred and seventy-five thousand.

3 Q. Was that accepted by the seller?

4 A. No, sir.

5 Q. Okay. And then looking at Plaintiff's Exhibit 4,
6 do you recognize that document?

7 A. Yes, sir.

8 Q. And in paragraph -- I believe it's 3, does that
9 reflect some negotiations over the sales price?

10 A. Yes, sir, that's correct.

11 Q. And did the parties arrive at a agreed-upon sales
12 price of \$302,500?

13 A. That's correct.

14 Q. And whose initials are next to that -- that figure?

15 A. LC and AL, the purchasers.

16 Q. And in paragraph 3 it also refers to \$2,000 earnest
17 money amount to be paid by the purchaser. Was that
18 paid?

19 A. Yes, sir, that's correct.

20 Q. And I believe it's Defendant's Exhibit 1 shows a
21 check for \$2,000 from Mr. Castrejon. Is that your
22 recollection?

23 A. Yes, sir. That was turned in to the broker in
24 charge and deposited in the ReMax trust account.

25 Q. And where is that earnest money at this time?

1 A. As far as I know, the broker in charge still has
2 it.

3 Q. Has the defendant purchasers ever requested the
4 return of that earnest money?

5 A. No, sir.

6 Q. Do you recall any discussions with the purchasers
7 about them looking into obtaining bank financing?

8 A. Yes, sir. They told me that they were -- their
9 bank they use is BB&T.

10 Q. Do you know for a fact whether or not they were
11 ever able to obtain this bank financing?

12 A. According to them, the -- the bank wouldn't loan
13 the money to them at that particular time.

14 Q. Did you ever see anything in writing stating that?

15 A. No, sir.

16 Q. And did you send any documents to the bank --

17 A. Yes, sir.

18 Q. -- in connection with the purchasers' attempt to
19 get bank financing?

20 A. That's correct.

21 Q. And in -- do you recall approximately how long it
22 took before you had heard back from the buyers that
23 they were having problems with the bank financing?

24 A. It was -- it was a good while. I had understood
25 that they were still getting documents together for

1 the bank. The bank needed additional documents.

2 Q. After these discussions that you had with the
3 purchasers about them investigating bank financing,
4 did -- to your knowledge did the parties discuss
5 owner financing?

6 A. Yes, sir. The purchaser had, when it was apparent
7 that the bank wasn't going to make them a loan,
8 according to him, had asked me did I think the
9 seller would consider owner financing. And so
10 that's what sent us in that direction.

11 Q. And did you relay that information to Mr. Query?

12 A. Correct.

13 Q. And what was his response about supplying owner
14 financing?

15 A. He would consider it.

16 Q. Did he ever agree that he would do it?

17 A. Yes, sir.

18 Q. Was there any gap in time between when bank
19 financing was being discussed and the conversation
20 switched to owner financing?

21 A. No, sir. I -- the best of my recollection, it
22 happened right there. It was never well, we can't
23 get -- get the -- we can't secure financing from
24 the bank so let's just -- the offer is terminated.
25 No. It -- it was continuous negotiation.

1 throughout.

2 Q. Okay. And after the decision was made to proceed
3 with owner financing, did you have any
4 communications with the closing attorney's office,
5 Mr. Jeffcoat?

6 A. Yes, sir, that's correct. I had sent him the '
7 information.

8 Q. I want to show you this document and ask you if you
9 recognize it.

10 A. Yes, sir. This is a document that I sent outlining
11 the terms of owner financing.

12 Q. And who did you send it to?

13 A. Sam Jeffcoat.

14 Q. And on what date?

15 A. Let's see. This is 8/16.

16 Q. Okay..

17 A. No, I'm sorry. That's the page number. Excuse me.
18 I can't read it in here.

19 Q. Okay. Do you see where it says, "Original message,
20 Tommy Dawson?"

21 A. Excuse me. 3/28/2012.

22 Q. Oh, okay. I'm not asking you about the -- that
23 looks like a fax information on top. I'm talking
24 about the actual email.

25 A. Oh.

1 Q. Do you see the actual email --

2 A. Yeah.

3 Q. -- where it says, "From Tommy Dawson to Jeffcoat?"

4 A. I dated -- I'm sorry. I dated this 8/11/08.

5 Q. Okay. All right. Right now I believe you're
6 looking at the attachment.

7 A. Yeah.

8 Q. The actual email itself, do you see where it says,
9 "Sent?" What day and what time was that -- this
10 email sent to Mr. Jeffcoat's office?

11 A. August 12th, 2008.

12 Q. At what time?

13 A. At 7:40 a.m.

14 Q. (Speaking to The Court): We move this into
15 evidence, Your Honor, as Plaintiff's Exhibit 10.

16 MR. BULLARD: No objection, Your Honor.

17 THE COURT: Without objection. Plaintiff Number 10.

18 (Plaintiff's Exhibit Number 10

19 Marked)

20 EXAMINATION BY MR. EVANS RESUMED:

21 Q. And, Mr. Dawson, the attachment to your August 12,
22 2008 email to Mr. Jeffcoat's office, what -- what
23 information is on that attachment?

24 A. Stated sales price, the earnest money that was held
25 in trust --

1 MR. BULLARD: Your Honor, I object to him reading it.

2 It speaks for itself. It says what it says.

3 MR. EVANS: Did you --

4 THE COURT: Hold on.

5 MR. EVANS: Okay.

6 MR. BULLARD: That's my objection.

7 THE COURT: I mean, is he -- is he saying something

8 that's wrong about the document? I mean, he's just

9 publishing --

10 MR. BULLARD: I don't know all that he's going to say.

11 I'm just --

12 THE COURT: Okay. Well, I think unless he -- I mean, he

13 has a right to publish it. Unless he says

14 something that's not on the document, he's got a

15 right to publish it.

16 MR. BULLARD: Yes, sir.

17 THE COURT: That objection is overruled.

18 EXAMINATION BY MR. EVANS RESUMED:

19 Q. Mr. Dawson, the attachment to your August 12, 2008

20 email to Mr. Jeffcoat's office, did you write up

21 that document?

22 A. Yes, sir, that's correct.

23 Q. Okay. And what is the date of the actual

24 attachment, the handwritten attachment?

25 A. 8/11/08.

1 Q. Okay. And right below that it says closing would
2 be when?

3 A. 8/27/08 at 11 a.m.

4 Q. And under -- where it says, "Owner financing
5 terms," how much does it say is going to be put
6 down on the owner financing?

7 A. Seventy-five thousand.

8 Q. And where did you get that information from?

9 A. That was from the purchaser.

10 Q. Okay. And did you have several conversations with
11 the purchasers about them wanting owner financing
12 on this transaction?

13 A. Yes, sir. It went through a process of -- of, you
14 know -- when it came up, of course, the first order
15 of business was to contact the seller to make sure
16 that he would consider. And then from that process
17 it went through the negotiations.

18 Q. Okay. So did you contact the seller about their
19 request for owner financing?

20 A. Correct.

21 Q. And did he agree to those -- to owner financing?

22 A. He said he would consider it. And then the terms
23 was the next prospect.

24 Q. Okay. And did he agree to the particular terms?

25 A. Yes, sir.

1 Q. And I see on the attachment that's handwritten it
2 says, "\$75,000 down." Was that the original amount
3 that the purchaser was going to put down as far as
4 part of the financing?

5 A. No, sir. It increased due to the fact that it was
6 going to be owner financing.

7 Q. Okay. And what do you recall that the original
8 amount down was going to be?

9 A. I think 50,000. I believe I remember.

10 Q. And I want to show you this document and ask you if
11 you -- this three pages stapled together, and ask
12 you if you recognize those documents.

13 A. Yes, sir, I do.

14 Q. Are these your documents?

15 A. Yes, sir.

16 MR. BULLARD: Your Honor, can I have just a minute. I
17 might want to object to this, but I -- I want to
18 look at these.

19 THE COURT: Yes, sir.

20 MR. BULLARD: At least one of them looks to be new to
21 me, which was not produced in discovery. I think.
22 I just want to look at it.

23 THE COURT: All right. You can discuss with Mr. Evans.

24 (Mr. Bullard examining documents)

25 MR. BULLARD: May we approach for a second, Your Honor?

1 THE COURT: Yes, sir.

2 (Side conference between Mr.

3 Bullard, Mr. Evans and The Court)

4 MR. EVANS: All right, Your Honor, we -- we offer this
5 document as Plaintiff's Exhibit 10 subject to
6 defense counsel's objection to the third page, the
7 handwritten notes of Mr. Dawson.

8 THE COURT: Mr. Bullard?

9 MR. BULLARD: Yes, we definitely object to the third
10 page. And I'm going to object to the second one.
11 I'm not sure I have that one either.

12 THE COURT: All right. As we discussed at the side bar,
13 I'm going to allow it in conditionally because
14 you've indicated that there's a lot of discovery
15 materials that may have it in. I will allow both
16 attorneys to address it in the post-trial memo.

17 MR. BULLARD: Yes, sir. Thank you.

18 THE COURT: It has not been -- I'll let you all argue A,
19 if it was disclosed, two if it was not disclosed,
20 if it's kept out. So you reserve the rights to do
21 that.

22 MR. BULLARD: Thank you, Your Honor.

23 MR. EVANS: Okay. The second page looks like it's on
24 page 181 of your production.

25 MR. BULLARD: Okay. I would not object to the second

1 page of the exhibit. But the third page, I've
2 looked through documents as best I can, and I can't
3 find that I've ever received it.

4 THE COURT: Okay. All right.

5 MR. EVANS: Did I give you this yet to mark as an
6 exhibit?

7 THE COURT: Madam Court Reporter, Number 10?

8 COURT REPORTER: Eleven.

9 THE COURT: Eleven.

10 MR. EVANS: It's 11?

11 THE COURT: It's 11 because the document he sent to Sam
12 Jeffcoat about financing, that was 10.

13 MR. EVANS: Right. Right. Right. I agree.

14 (Plaintiff's Exhibit Number 11
15 Marked)

16 EXAMINATION BY MR. EVANS RESUMED:

17 Q. Mr. Dawson, looking at Plaintiff's Exhibit 10 here
18 -- have you still got a copy?

19 A. Yes.

20 Q. Briefly explain what is going on with those
21 documents. Or Plaintiff's Exhibit 11. Excuse me.

22 A. Okay. The first page would have been sent to
23 Grady.

24 Q. And what were you -- what were you -- what were you
25 sending to Grady?

1 A. "Please initial and sign." And this was dated on
2 3/27.

3 Q. And -- and what were you asking him to initial and
4 sign?

5 A. The final sales price I believe, which would have
6 been a counter -- counter offer.

7 Q. So were you asking him to sign the contract?

8 A. Correct.

9 Q. And what were you going to do with the -- the
10 contract signed by Mr. Query once you received it?

11 A. Once that was executed, then we had a contract.

12 Q. And what were you going to do with the contract at
13 that point?

14 A. Well, I would -- since it was already -- I already
15 knew that it was BB&T, David Fisher, so as soon as
16 you do that, and the bank always wants a copy of
17 the contract containing all the information.

18 Q. And is page 2 that exhibit where you were sending
19 the signed contract to the banker, BB&T?

20 A. Correct. Uh-huh.

21 Q. Yes?

22 A. Yes.

23 Q. Okay. And then looking at page 3, are those your
24 handwritten notes on page 3?

25 A. Yes, sir, that's correct.

1 Q. And -- and what do those notes say?

2 A. "Send signed contract --" this would have been to
3 one of the secretaries. I'd left. "Send signed
4 contract to David Fisher, BB&T." I have the
5 numbers in there. "Send to both fax."

6 Q. And was that done?

7 A. As far as I know, yes.

8 Q. What else is on -- what else is on your notes?

9 A. Let's see. I -- I made a note of David's mobile
10 number. And then down at the bottom I have closing
11 attorney, Mr. Jeffcoat and his phone number.

12 Q. Okay. And where did that information come from
13 that the closing attorney was going to be Mr.
14 Jeffcoat?

15 A. That would have been from Ladis.

16 Q. Mr. Castrejon?

17 A. Yes, sir, that's correct.

18 Q. He told you that Mr. Jeffcoat was going to be the
19 closing --

20 A. Correct.

21 Q. -- attorney? And after you were told by Mr.
22 Castrejon that Mr. Jeffcoat was going to be the
23 closing attorney on this transaction, let me ask
24 you again when -- when would that have been that he
25 would have told you that Mr. Jeffcoat was the

1 closing attorney?

2 A. Well, it was probably prior to this -- this fax.

3 Q. And the fax is dated when?

4 A. To David Fisher 3/27.

5 Q. March 27, 2008?

6 A. That's correct.

7 Q. And at any point during the negotiations of this
8 contract did your understanding or knowledge of Mr.
9 Jeffcoat being the closing attorney, did that ever
10 change?

11 A. No, sir.

12 Q. And at any point, Mr. Dawson, did Mr. Castrejon or
13 any of the other defendants or anyone on their
14 behalf ever indicate to you that this transaction
15 was not going forward?

16 A. No, sir.

17 Q. Okay. One more matter. I'm sorry, Mr. Dawson. Do
18 you recall meeting Mr. Query to pick up documents
19 that he had signed for the September 2008 closing?

20 A. Yes, sir, that's correct. We met at one of the
21 Newberry exits. I forget which exit it was. And
22 then I took them to Mr. Jeffcoat's office.

23 Q. And do you remember where Mr. Query was headed at
24 that time?

25 A. To the mountains.

1 Q. Okay. And once you got those signed documents that
2 had been signed by Mr. Query, what did you do with
3 those documents?

4 A. I took them to Mr. Jeffcoat's office.

5 Q. Okay. And that -- was that for the September 24th,
6 2008 closing?

7 A. I'm not -- I'm not certain. I think it was for the
8 first. It could have been the second.

9 Q. But you -- you took those signed documents from Mr.
10 Query to Mr. Jeffcoat's office --

11 A. Right.

12 Q. -- for the closing?

13 A. Correct.

14 Q. No further questions.

15 THE COURT: Cross, Mr. Bullard?

16 MR. BULLARD: Yes, sir, Your Honor.

17 EXAMINATION BY MR. BULLARD:

18 Q. Mr. Dawson, if you'll look at Exhibit 11, is it
19 stapled together?

20 A. Yes, sir. Correct.

21 Q. I took the staple off of mine. But at the top it
22 says, "Counseling Consulting." I assume that's
23 consultants. Do you know what Counseling
24 Consultants is?

25 A. No, sir, I don't.

1 Q. Do you know why it's printed on the top of this?

2 A. No, sir.

3 Q. Okay. And also, each of these three documents in
4 the top left-hand corner have the date March 28th,
5 2012. Do you know why those -- that -- those are
6 on there?

7 A. No, sir.

8 Q. And do you -- these documents came out of your
9 personal file you say?

10 A. I'm not sure.

11 Q. So you don't know where they came from?

12 A. No, sir. They should have been in my personal
13 file, but I'm not -- can't be positive at this
14 point.

15 Q. All right. And did you send these to Mr. Query or
16 Mr. Evans?

17 A. I did or my secretary did.

18 Q. All right. Do you know when that happened?

19 A. Well, I dated the first one 3/27/08. And according
20 to this up at the top, it's 3/28. Now, 772, I
21 don't know whether that was -- it should have been
22 one of our office numbers.

23 Q. What's that, 772?

24 A. Uh-huh, 6540.

25 Q. Is one of your office fax numbers?

1 A. Should have been, yes.

2 Q. Did you receive a request from Mr. Query or Mr.
3 Evans after this litigation was filed to send them
4 some documents?

5 A. Yes, sir, I did.

6 Q. Is this part of what you sent them?

7 A. I'm not sure. I just sent them what I had in the
8 file.

9 Q. Okay. You don't recall what you had in the file?

10 A. No, sir, not everything.

11 Q. So it's possible that these documents did not come
12 from your file?

13 A. I suppose.

14 Q. And it's possible that they did?

15 A. Yes, sir. I happened to sign them.

16 Q. How long has it been since you worked at ReMax?

17 A. I was still licensed in 2011, 2010. The last
18 transaction was in 2009.

19 Q. The last transaction you performed as an agent for
20 ReMax --

21 A. Right.

22 Q. -- as 2009?

23 A. Correct.

24 Q. Okay.

25 A. Closing that is. I think we still had that one in

1 2010 where we had the offer.

2 Q.. Did the 2010 closing have anything to do with the
3 property we're talking about today?

4 A. It didn't happen.

5 Q. The 2010 one?

6 A. Yeah.

7 Q. Okay.. So --- but was it this property?

8 A. I think so. I think there was a offer sometime.

9 Q. So the 2010 transaction you believe was this
10 property, but it didn't happen?

11 A. Right.

12 Q. Is that -- and that was the last transaction you
13 were involved in for ReMax?

14 A. Right.

15 Q. Okay. Let's look at Plaintiff's Exhibit Number 2.

16 A. Okay.

17 Q. If you had had -- that's a listing agreement
18 between you and Mr. Query; is it not?

19 A. Correct.

20 Q. And it expires sometime in 2008?

21 A. Correct.

22 Q. If there had been another listing agreement in your
23 file, that would have been something you would have
24 sent to Mr. Query or Mr. Evans when they asked you
25 for it, wouldn't it?

1 A. Correct.

2 Q. Do you have another copy of the listing agreement
3 other than that one?

4 A. I'm not sure.

5 Q. If you -- if you did, you would have sent it to
6 them?

7 A. I was always pretty good about making sure that --
8 that these things were up to date.

9 Q. So can I assume then since there's not another one
10 in evidence here, that there's not another one in
11 existence?

12 A. I'm not sure.

13 Q. Okay. But if you'd had it in your file, you
14 certainly would have passed it on to Mr. Query or
15 Mr. Evans?

16 A. I think so.

17 Q. Okay. Exhibit 3 -- Plaintiff's Exhibit 3, I think
18 you testified that you filled that -- you filled
19 out Exhibit 3, right?

20 A. Correct.

21 Q. Okay. And that the information you got as far as
22 purchase price came from Ladis; is that correct?

23 A. Correct.

24 Q. Okay. Not Alberto?

25 A. Correct. Ladis.

1 Q. All right. And at the top here, in section -- gosh,
2 I'm sorry. It looks like section one. You filled
3 that out and listed Ladis as the purchaser, right?

4 A. Correct.

5 Q. Not Alberto?

6 A. Correct.

7 Q. If he had been the purchaser, shouldn't you have
8 put his name right there?

9 A. Correct.

10 Q. And you said you try to be careful with the
11 documentation when you perform -- that you create,
12 right?

13 A. Yes, sir.

14 Q. All right. So if Alberto was going to purchase
15 that property, you should have put his name right
16 there, shouldn't you?

17 A. In the beginning, yes.

18 Q. Okay. Let me show you Exhibit Number 4 which is --
19 I think you've testified to is a contract -- the
20 final written contract that Mr. Query signed; is
21 that right?

22 A. Correct.

23 Q. Okay. And again Alberto's name does not appear as
24 purchaser there?

25 A. Correct.

1 Q. And when you were talking about -- you said you
2 talked to Mr. Query and the purchaser about the
3 terms of purchase, the amount that would be paid.
4 Did you talk to Ladis about that?

5 A. Yes, sir. The only person I'd ever spoken to was
6 Ladis. He was the -- I would consider the person
7 who was communicating all the information.

8 Q. All right. When -- in Exhibit Number 3, this one,
9 where were Ladis and Alberto when -- when this was
10 created? Were they in your office?

11 A. No, sir. It was Ladis and I.

12 Q. All right. And you were in your office?

13 A. I don't recall whether we -- we were in my office
14 or we met somewhere.

15 Q. Okay. So that was Ladis and you?

16 A. Uh-huh.

17 Q. All right. And how do -- how does -- do you know
18 how these initials that purport to be Mr. Lozano's
19 initials and his signature got on the document if
20 he wasn't there?

21 A. Somewhere between when this was done and everything
22 being signed off, they wanted to add another party.

23 Q. And when did that occur?

24 A. Sometime between that and the final negotiation of
25 the three -- 302,500.

1 Q. This Exhibit Number 3 has AL on it, and then has
2 Mr. Lozano's name on it. And you said he was not
3 with you when you -- when you created that?

4 A. First created, no.

5 Q. Okay. What I'm asking is how did you get his
6 signature on there if he wasn't with you?

7 A. Ladis did.

8 Q. Okay. So the contract was taken somewhere else --

9 A. Uh-huh.

10 Q. -- and brought back to you?

11 A. Uh-huh.

12 Q. So you never talked to Alberto at all?

13 A. No.

14 Q. Do you know -- did you ask Ladis to go get
15 Alberto's signature on it?

16 A. No. He took it to him. He called me. He wanted
17 to add him to the contract.

18 Q. So that didn't occur within your presence?

19 A. No.

20 Q. Okay. All right. So you're telling me that you
21 got this back. Did you send Exhibit Number 3 to
22 Mr. Query?

23 A. Yes, sir. Far as I know.

24 Q. Okay. And then what happened after you sent it to
25 Mr. Query?

1 A. In what regards?

2 Q. Did -- did -- did it return to you from Mr. Query?

3 A. As far as I know it did.

4 Q. Okay. And was it marked up in any way?

5 A. It didn't come back in this state, no.

6 Q. Well, what did Mr. Query do, if anything, to the --

7 to Exhibit 3 when it returned to you?

8 A. Well, this is what ended up, this exhibit.

9 Q. Which is Number 4?

10 A. Uh-huh.

11 Q. Okay. So it came back to you like this?

12 A. Yeah, it should have. Uh-huh.

13 Q. With no alterations other than the scratches --

14 A. Yeah, that's where negotiation is -- the initial

15 offer was 275. The counter was 330. And then they

16 finalized at 302,500.

17 Q. How did -- how did those offers go back and forth

18 between the parties?

19 A. In what manner? Through fax.

20 Q. That's -- that's what I was asking. So did you fax

21 them?

22 A. Yes.

23 Q. You were the one faxing back and forth?

24 A. Yes. Myself or a secretary.

25 Q. All right. Now, is it your contention that the

1 first page of each of these Exhibits 3 and 4 are --
2 other than the fact that they are faxed copies and
3 there's a problem with the fax on 3, I think we all
4 recognize that, but they're the same? There's no
5 alterations to these? Let me ask it a different
6 way. Did you rewrite the contract?

7 A. No, sir.

8 Q. Okay. So it's -- it's just the same contract with
9 the alterations to the purchase price?

10 A. Correct. Uh-huh.

11 Q. So you didn't rewrite it at all?

12 A. No.

13 Q. It has the same date here at the top of --

14 A. Correct.

15 Q. Okay. Why is -- why is conventional and BB&T on
16 the first page here and not on the first page of
17 Exhibit 4 then?

18 A. I'm not sure.

19 Q. So somebody's changed it, haven't they?

20 A. Yes, sir, it appears that way.

21 Q. Okay. If you didn't change the contract, how come
22 there are different witnesses to these two
23 signatures on the third page?

24 A. I'm not sure.

25 Q. And there are different dates for the signatures of

1 Mr. Castrejon and Mr. Lozano, aren't there?

2 A. Yes, sir.

3 Q. All right. And you told me you didn't change this
4 contract at all, it's the same one both times,
5 isn't it?

6 A. As far as I know. That's correct.

7 Q. So somebody's altered it, haven't they? Did you do
8 it?

9 A. No, sir. The only thing I would have done is if
10 there would have been a new contract, would have
11 rewritten what was on it to reflect the new terms.

12 Q. But you didn't do that. You've already told me
13 that, right?

14 A. Well, I'm looking -- now I'm not sure.

15 Q. Okay. When you said earlier that they told you
16 that they banked at BB&T, did Ladis tell you that?
17 Did Alberto tell you that?

18 A. Ladis did.

19 Q. Ladis told you that. So your communication was
20 with Ladis?

21 A. Right.

22 Q. And no question you sent those contracts -- or the
23 final one that was signed by Mr. Query that had the
24 actual deed, that signed contract, Exhibit 4, you
25 faxed that to BB&T -- David Fisher at BB&T, right?

1 A. Correct.

2 Q. All right. So there's no question that BB&T had it
3 and could act upon it?

4 A. Right.

5 Q. Do you know how long BB&T keeps their records?

6 A. No, sir.

7 Q. So you wouldn't know whether they still have
8 records of a transaction in 2008?

9 A. No, sir.

10 Q. I think you said, in response to a question about
11 when the owner financing came up -- well, no,
12 that's not what it was. You said -- again, I wrote
13 this down, so it may not be accurate. You said it
14 was a good while before you heard back from the
15 purchasers regarding problems with the bank, BB&T.
16 What's a good while? What would that mean?

17 A. It would have been several -- you know, best of my
18 recollection, it would have been several weeks. I
19 think this thing was originally due to close on
20 April 28th. So it would have been from some point
21 probably nearer to April 28th.

22 Q. I think -- I think you're right about closing date,
23 the 28th.

24 A. Yes, sir.

25 Q. So it would have been near to April 28th when you

1 heard that --

2 A. Best of my recollection, yes, sir.

3 Q. Okay. And you said at some point the purchaser
4 asked you if the owner would be interested in owner
5 financing?

6 A. Correct.

7 Q. All right. So it would have been close to April
8 28th when he asked you about that?

9 A. Best of my recollection. Somewhere there. It --
10 it seems that it was after the time that -- that
11 they had indicated that -- that their bank wouldn't
12 be able to make them a loan.

13 Q. Okay. And who -- who communicated that to you,
14 Ladis?

15 A. Ladis.

16 Q. Okay. Not Alberto?

17 A. No.

18 Q. And I think you said that in relation to
19 negotiations about owner financing they said they
20 were -- there were some continuing negotiations
21 between the parties. Who -- was Alberto involved
22 in those negotiations? Did you talk to him about
23 it?

24 A. No, I had not spoken to him.

25 Q. Okay. Was it just Ladis?

1 A. Just Ladis.

2 Q. I'll hand you Exhibit 10 and ask you, it looks like
3 originally you sent an email to someone at Mr.
4 Jeffcoat's office on August -- August 12th, 2008.
5 Does that sound right?

6 A. Yes, sir.

7 Q. Then at the top -- the top part here says that --
8 it says, "From Tommy Dawson to Tracey O'Brien,
9 Friday, December 19th, 2008," it looks like.

10 A. Uh-huh.

11 Q. Why did you send that to Tracey O'Brien on December
12 2008?

13 A. That was a forwarded email.

14 Q. What were you forwarding to her?

15 A. I suppose this document.

16 Q. Do you know what that document is?

17 A. About the email message. The original message says
18 that it was sent on August 12th, 2008.

19 Q. I understand. Why were you sending it again in
20 December? Do you remember?

21 A. I don't recall.

22 Q. Okay. Was it something that you personally felt
23 you needed to do, or was it a request somebody made
24 for you to forward --

25 A. It was most likely a request.

1 Q. Okay. Do you know where Tracey O'Brien works?

2 A. I think in Mr. Query's office.

3 Q. And you said that there was a \$75,000 down figure
4 that came from purchaser?

5 A. That's correct.

6 Q. Is that Ladis again?

7 A. Correct.

8 Q. And not Alberto?

9 A. No. I never spoke to Alberto.

10 Q. Okay. And you said you thought it increased due to
11 the fact that it was now owner financing?

12 A. Correct

13 Q. Was that something Mr. Query told you he wanted, an
14 additional --

15 A. Not that I recall. Not that I recall. It's not
16 unusual for somebody to increase their down payment
17 when it goes to owner financing.

18 Q. So I just want to understand you. When you were
19 saying that, it wasn't something that Mr. Query
20 requested, it was something that --

21 A. Not that I recall.

22 Q. -- that Ladis just offered?

23 A. I think so.

24 Q. That's the way you remember it?

25 A. Yeah.

1 Q. Okay. I'm just curious. Don't take this the wrong
2 way. But just were you aware when you were a real
3 estate agent that South Carolina Law required that
4 contracts for the purchase of real estate need to
5 be in writing and signed by the parties?

6 A. Correct.

7 Q. Are you aware that there is no writing evidencing
8 that other -- the owner financing deal other than -

9 -

10 MR. EVANS: Object.

11 MR. BULLARD: What's the objection?

12 THE COURT: Hold on.

13 MR. EVANS: Your Honor, we object to defense counsel
14 characterizing the handwritten owner financing
15 terms as some separate contract. The question is
16 misleading and assumes facts not in evidence, and
17 makes legal conclusions.

18 THE COURT: Mr. Bullard, --

19 MR. BULLARD: Yes, sir.

20 THE COURT: -- will you rephrase the question because
21 that's the key issue in the case.

22 MR. BULLARD: I will be happy to. I'm just trying to
23 find the exhibit. I can't find it.

24 THE COURT: Which exhibit is it? What number?

25 MR. BULLARD: I think it's in an exhibit. Here it is.

1 I believe it's right here on top. Yes, I found it.

2 THE COURT: What number?

3 MR. BULLARD: It's the second page of Exhibit 10.

4 THE COURT: Okay.

5 MR. BULLARD: Plaintiff's Exhibit 10.

6 EXAMINATION BY MR. BULLARD RESUMED:

7 Q. I'm going to show you the second page of.

8 Plaintiff's Exhibit 10. Okay? That's something

9 that you drafted, correct?

10 A. Correct.

11 Q. All right. Did -- did Ladis tell you to draft

12 this?

13 A. They'd already negotiated, and I drafted this to

14 send to Mr. Jeffcoat. And at this point during the

15 owner financing Mr. Query and Mr. Jeffcoat were

16 communicating back and forth. And in all honesty,

17 it's not unusual for something like this to happen

18 and at the closing then everything gets put down in

19 writing.

20 Q. Are you aware of any writing other than this that

21 reflects the owner -- owner financing agreement?

22 A. No, sir.

23 Q. Is that document signed by any of the parties to

24 the transaction?

25 A. No, sir.

1 Q. It's something you wrote, right?

2 A. Yes, sir.

3 Q. And you didn't even sign it, did you?

4 A. Right.

5 Q. (Speaking to the Court): I beg The Court's
6 indulgence for just a minute.

7 THE COURT: Yes, sir.

8 EXAMINATION BY MR. BULLARD RESUMED:

9 Q. When you were working for ReMax there's been some
10 discussion from you today about you had your own
11 file -- personal file?

12 A. Yes, sir, that's correct.

13 Q. And was there also a ReMax file?

14 A. That's correct.

15 Q. Were those two files supposed to contain the same
16 information?

17 A. Pretty good system.

18 Q. All right. If you had a listing agreement, would
19 you put that in the ReMax file or keep it in your
20 own personal file?

21 A. Both.

22 Q. You would put it in both?

23 A. Uh-huh.

24 Q. If you had a dual agency agreement, would that be
25 in both files, or would you just keep that in your

1 own file?

2 A. That would be in both files.

3 Q. All right. Do you recall whether or not you had a
4 dual agency agreement in place in the file in this
5 matter?

6 A. No, sir, I don't.

7 Q. But are you taking the position that you were a
8 dual agent?

9 A. No, sir.

10 Q. Were you Mr. Query's agent?

11 A. Yes, sir.

12 Q. And just to clear up, you were not Ladis's agent or
13 Alberto's agent?

14 A. No, sir.

15 Q. (Speaking to The Court): Your Honor, if I may, I
16 want to ask him some questions about this third
17 page of Exhibit 11 which I objected to on discovery
18 grounds, to basically make it proper in case you
19 determine that it's -- or we determine that it was
20 disclosed in discovery, because I won't have an
21 opportunity to come back and ask him --

22 THE COURT: Certainly.

23 MR. BULLARD: Is that okay?

24 THE COURT: Absolutely.

25 MR. BULLARD: All right.

1 EXAMINATION BY MR. BULLARD RESUMED:

2 Q. And it's Exhibit Number 11. I know I've mixed them
3 up. I'll try and help you find it. I don't see it
4 here.

5 A. It actually might be in here.

6 Q. It is. I'm sorry. The third page I want to ask
7 you about.

8 A. Uh-huh.

9 Q. Well, let's ask the first two pages first. I'm
10 sorry. First page of the exhibit has a date on it,
11 March 27th, '08?

12 A. That's correct.

13 Q. Okay. Do you feel pretty confident you sent it
14 that day?

15 A. I dated it that day. It should have been sent that
16 day or the next day. Not long afterwards anyway.

17 Q. So it could have been a day or two after that it
18 was actually sent?

19 A. Could have been. Up here it says it was sent on
20 3/28.

21 Q. Of 2012?

22 A. Right.

23 Q. Which would have been four years later?

24 A. Let me -- let me -- I did send this. Consulting
25 Counsel was the agency that I used. They were

1 friends of mine. And I had faxed things from
2 there. So that's where that's coming from.

3 Q. Okay. And who did you fax it to?

4 A. Well, then it would have been faxed to Grady from
5 there.

6 Q. In 2012?

7 A. Yes.

8 Q. Sometime in March. Okay. All right. The first
9 two pages indicate the fax cover sheet has a date
10 3/27/2008.

11 A. Uh-huh.

12 Q. And you're not exactly sure when they were sent.
13 Is that what you're saying?

14 A. Yeah. I dated it this day. And anyway, the
15 secretaries could have sent it that day or --
16 usually they were real good about sending them the
17 same day.

18 Q. Okay. But you do know that you faxed it to some --
19 Mr. -- Mr. Query on March 28th, 2012 based on the
20 things at the top?

21 A. Yeah. I think this may have been in their
22 discovery where they was asking what was in my
23 file.

24 Q. Okay. And the third page, no date's on the third
25 page, right?

1 A. Correct.

2 Q. The only date on it -- I'm sorry. There is a date.

3 It's at the top, and it says 3/28.

4 A. 3/28, yeah.

5 Q. And that's when you faxed it --

6 A. Yeah.

7 Q. -- to Mr. Query?

8 A. Right.

9 Q. So you sent him 17 pages --

10 A. Okay.

11 Q. -- it looks like. Is that your recollection?

12 A. Yes, sir. I see it on the right. Uh-huh.

13 Q. Okay. I think that's all the questions I have,

14 Your Honor.

15 THE COURT: Redirect, Mr. Evans?

16 MR. EVANS: Briefly, Your Honor.

17 REEXAMINATION BY MR. EVANS:

18 Q. Mr. Dawson, I really want to ask you about

19 Plaintiff's Exhibit 3 and 4 on the issue of whether

20 these are identical copies of the same document or

21 whether they were drawn up separately. And I just

22 want you to take a close look at -- this is

23 Plaintiff's 4 which shows the price negotiations.

24 And this is Exhibit 3 which the testimony is that

25 it's the initial offer. And just starting on the

1 first line where it says, "20 March 2008," do you
2 see -- do you see where the 8 is below the line --

3 A. Yes, sir.

4 Q. -- on the one on the left, and it's above the line
5 on the right?

6 A. That's correct.

7 MR. BULLARD: I'm going to object to them trying to
8 characterize the documents. They -- they show what
9 they show. I mean, it's not -- it's not a
10 publishing of the document any longer. It's just a
11 nuance discussion of where the things are located.
12 I mean, you can look at them and tell.

13 MR. EVANS: I agree, Your Honor, that you can look at
14 these documents for yourself and compare it line by
15 line. But since we have the witness here --

16 THE COURT: I'm going to allow that. I think he can --
17 he can point that out. That's relevant to both
18 sides' argument.

19 REEXAMINATION BY MR. EVANS RESUMED:

20 Q. Okay. And if these had been the same documents,
21 Mr. Dawson, Plaintiff's 3 is initialed by the
22 defendants on March 24th, '08, and then separately
23 March 27th, '08. Would that have been possible if
24 -- if -- if -- to put -- to change the date? And I
25 want you to just look -- Counsel pointed out only

1 the fact that on Plaintiff's 3 it doesn't say BB&T
2 conventional financing on -- it says it on 3, but
3 it doesn't say it on 4. But will you look -- look
4 at -- look at the purchase price in paragraph 3.

5 It says \$225,000 --

6 MR. BULLARD: I'm going to object that I haven't heard a
7 question yet. I think we're getting far afield.

8 REEXAMINATION BY MR. EVANS RESUMED:

9 Q. Doesn't it --

10 THE COURT: All right, hold on a minute. He does have a
11 point.

12 MR. EVANS: I'll correct that, Your Honor.

13 THE COURT: You need to ask a question.

14 REEXAMINATION BY MR. EVANS RESUMED:

15 Q. All right, let's look at page 2. Look at the check
16 marks all down page 2 versus page 3. Is that the
17 same document, or was that drawn up at a separate
18 time?

19 MR. BULLARD: Object to the extent of his knowledge. If
20 he knows, certainly.

21 THE COURT: Right. If he knows, he can testify. If he
22 doesn't know, he needs to say so, and you all can
23 make a argument.

24 REEXAMINATION BY MR. EVANS RESUMED:

25 Q. Can you say for a fact one way or another, Mr.

1 Dawson, whether these documents are just copies of
2 each other that have additional writing, or whether
3 they were drawn up at separate times? Do you know
4 that for a fact?

5 A. I can't say for a fact, no.

6 Q. We'll leave it to Your Honor to compare the
7 entirety of the two documents. The last question I
8 have, Mr. Dawson, is is it your testimony here
9 today that you knew for a fact from day one that
10 Mr. Jeffcoat was the closing attorney for Mr.
11 Castrejon in this matter?

12 MR. BULLARD: Your Honor, I object. That's not proper
13 redirect. I didn't go into that with him.

14 MR. EVANS: Yes, he did, Your Honor.

15 THE COURT: Wait a minute. Wait a minute. Wait a
16 minute. Didn't we ask him about who the closing
17 attorney was and who he -- you didn't ask him about
18 the closing attorney?

19 MR. BULLARD: I don't recall asking him specifically who
20 the closing attorney was. I thought Mr. Evans did
21 that.

22 MR. EVANS: I believe he did, Your Honor. Plus, he's
23 attacking Plaintiff's Exhibit 11 which is on this
24 exact point. So he is -- he is going into the
25 evidence on -- because the third page of

1 Plaintiff's Exhibit 11 is where Mr. Dawson says he
2 wrote down on March 27th, 2008 that Mr. Jeffcoat
3 was the closing attorney. So I'm asking him
4 independent of what is on the written document --

5 THE COURT: All right. Didn't you ask him about that
6 when you were going through the exhibit?

7 MR. BULLARD: I asked him if there was a date on it.

8 THE COURT: You didn't ask him --

9 MR. BULLARD: The third page of Exhibit 11. That may be
10 the wrong exhibit. Can I look at it?

11 THE COURT: Yeah. You didn't say when you were going
12 down the list who the closing attorney was?

13 MR. BULLARD: Oh, we're talking about different
14 exhibits. I'm talking about -- Exhibit 11 is --
15 the third page of Exhibit 11 is this, the document
16 I've objected to. And I just asked him about when
17 it was sent, the dates on it. Exhibit 10 I did go
18 down with him. This is the one you're thinking
19 about, Exhibit 10. This --

20 THE COURT: All right. Did that have any --

21 MR. BULLARD: This -- this right here I did go down and
22 ask him what was on it.

23 THE COURT: Okay. Does it have the attorney?

24 MR. BULLARD: Yes, it does.

25 THE COURT: Okay.

1 MR. EVANS: But, Your Honor, he was attacking Exhibit
2 11.

3 THE COURT: Well, if he went -- if he went through and
4 said is he the attorney on his cross, then he can -
5 -

6 MR. BULLARD: I asked him what names are on here.
7 That's all I asked him.

8 THE COURT: All right. Well, I'm going to allow that in
9 because I think this is relevant. And you did
10 broach the subject of the attorney. All right.
11 Yes, sir, I will allow that question in.

12 REEXAMINATION BY MR. EVANS RESUMED:

13 Q. All right, Mr. Dawson, on the date, March 27th,
14 2008 that this contract was signed by the
15 purchasers and the buyer, and you've testified you
16 sent it to the bank, do you have independent
17 recollection of who you were told the closing
18 attorney was for Mr. Castrejon on that date?

19 A. Yeah. Mr. Jeffcoat.

20 Q. And did that ever change during the entire six
21 months of this contract?

22 A. No, sir.

23 Q. That's all I have, Your Honor.

24 THE COURT: All right. Any redirect?

25 REEXAMINATION BY MR. BULLARD RESUMED:

1 Q. I just want to understand. You're saying that on
2 March 27th, 2008 you have an independent
3 recollection that Ladis told you Mr. Jeffcoat was
4 the closing attorney?

5 A. I have a recollection that the whole time through
6 this process from the very beginning that he had
7 indicated that his closing attorney was Mr.
8 Jeffcoat.

9 Q. All right. And you don't know when he first told
10 you that?

11 A. I couldn't give you a specific date, no.

12 Q. At some point he told you that?

13 A. It was before I ever got anything in to the bank,
14 yes.

15 Q. Before you sent something to the bank you're
16 saying?

17 A. That's correct. I knew who the closing attorney
18 was.

19 Q. All right. Did you talk to the closing attorney?

20 A. Yes, during the course of it. Not at that
21 particular time. But the course of this I did. I
22 had to send him information.

23 Q. Okay. And was that in August when there was the
24 August, September closing?

25 A. I definitely know I -- I did during that point.

1 because I had to send him information.

2 Q. Did you -- or do you know whether you scheduled any
3 sort of closing for the terms of the Exhibit Number
4 4 or the BB&T --

5 A. No, I --

6 MR. EVANS: Object, Your Honor. That's beyond the
7 scope.

8 THE COURT: I'm going to allow this. Because you -- you
9 opened the door to say, "Did you know he was the
10 closing attorney?" He's asking questions about
11 following up on that. So that's proper.

12 REEXAMINATION BY MR. BULLARD RESUMED:

13 Q. That's not marked. Exhibit 4 where you have the
14 terms \$50,000 down, \$252,500 at closing, do you
15 ever recall talking to Mr. Jeffcoat and setting up
16 a closing for that under those terms? Or was it
17 just for the owner financing deal?

18 A. For the owner financing I sent them the money. The
19 actual closing dates was -- was -- I had -- I had
20 nothing to do with scheduling any sort of closing
21 date.

22 Q. I'm just asking if you communicated to him and
23 tried to send Mr. Jeffcoat information to close
24 this deal right here that's reflected in Exhibit 4?

25 A. Yes, sir, I sent him the information about the

1 terms.

2 Q. Okay. And did you have any other discussions about
3 the terms of that deal, or did it just fall apart
4 and you had to go on to further negotiations about
5 the owner financing?

6 A. I think possibly my first communication with him
7 was probably getting closer to the closing of this,
8 of the owner financing.

9 Q. Of the owner financing deal?

10 A. Right. I knew who the attorney was before I'd ever
11 spoken to him.

12 Q. Okay. All right, that's all.

13 MR. EVANS: No questions.

14 THE COURT: All right, you can step down. Sir, you can
15 step down.

16 MR. EVANS: Hold on. I'm sorry, Your Honor.

17 REEXAMINATION BY MR. EVANS RESUMED:

18 Q. Mr. Dawson, --

19 THE COURT: Hang on. I mean, this would be --

20 MR. EVANS: It's a follow-up to that question, Your
21 Honor.

22 THE COURT: All right. I understand. But we can't do
23 this forever. Tell me -- tell me what the question
24 is about specifically.

25 MR. EVANS: The question would be whether at some point

1 the communications were directly between Mr.
2 Jeffcoat and Mr. Query and that Mr. Dawson was then
3 out of the loop. I think I can state the question
4 a little clearer. But the point is, is he aware of
5 -- of communications that were ongoing between the
6 closing attorney's office and the seller that he
7 was not --

8 THE COURT: All right, hold on. I'm going to allow you
9 one question and you one question. So think your
10 one question good because we're not going to
11 continue to do -- I don't even know what you call
12 it after the third time. So one question and one
13 question.

14 REEXAMINATION BY MR. EVANS RESUMED:

15 Q. At some point during the negotiations on this
16 contract, Mr. Dawson, were you aware that the
17 communications about the term of the contract were
18 -- were ongoing directly between the closing
19 attorney and the seller, Mr. Query?

20 A. That's correct.

21 THE COURT: That's it. All right. Your question if you
22 have one.

23 MR. BULLARD: No, sir.

24 THE COURT: That's the question. You can step down.

25 MR. EVANS: Your Honor, Plaintiff is going to rest with

1 the exception that since there is an order of
2 default in the file against defendant, Mr. Brito,
3 that we are going to request that any judgment
4 against the named -- against the other defendants
5 likewise be imposed on Mr. Brito since he's in
6 default.

7 THE COURT: All right. Mr. Brito's not here. He is not
8 represented. He's in default. Anything?

9 MR. BULLARD: I -- I cannot speak for Mr. Brito. I'm
10 not -- I don't represent him.

11 THE COURT: All right. Yes, sir. All right.

12 MR. BULLARD: Can we break for lunch?

13 THE COURT: I was about to say we -- we can continue to
14 move forward or go and take a break for lunch and
15 come back maybe -- we probably need to say 2:30 if
16 you're hustling. How many witnesses do you have?

17 MR. BULLARD: I need to call another one. But at least
18 three.

19 THE COURT: Okay. Well, let's -- let's say 2:30. Can
20 you make it back? That's an hour and 15 minutes.

21 MR. BULLARD: Yes, sir.

22 MR. EVANS: Yes, sir.

23 (Off the record from 1:16 p.m. until
24 2:29 p.m.)

25 THE COURT: We're back on the record. I believe

1 plaintiff has rested.

2 MR. EVANS: That's correct, Your Honor. I've just got
3 one motion I'd like to put on the record whenever
4 you -- a brief motion whenever you're ready to hear
5 it.

6 THE COURT: All right. Yes, sir. We'll let plaintiff
7 go first and defendant go second.

8 MR. EVANS: Your Honor, plaintiff moves to amend the
9 complaint in the alternative should Your Honor
10 conclude that the evidence shows there was a parol
11 contract in this case based on the owner financing
12 and part performance. And in that event in the
13 alternative we would request leave to amend if that
14 finding is made by The Court.

15 THE COURT: All right. Yes, sir. Mr. Bullard?

16 MR. BULLARD: If -- in response to plaintiff's motion,
17 defendant's would submit that if they are asking to
18 amend to allege the same grounds that they have
19 already dismissed with prejudice, that would be our
20 position. They've been dismissed with prejudice.
21 They can no longer seek specific performance. They
22 can no longer seek relief on the grounds of
23 novation or a substituted contract. My motion --
24 is that something to worry about?

25 THE COURT: Hold on a minute. If there's no running of

1 feet, we're good.

2 MR. BULLARD: Okay. I would like to renew my motion for
3 summary judgement, or in the alternative, make a
4 directed verdict/involuntary non-suit motion at
5 this time based on the -- based on the same grounds
6 that I've already articulated for The Court. I'd
7 like to incorporate them into this motion. And one
8 additional which would be I'd like to move for
9 summary judgment or directed verdict/involuntary
10 non-suit on the ground that -- that the testimony
11 that's been presented to this -- to this point
12 indicates that there was an impossibility of
13 performance. Testimony from the plaintiffs was
14 that the agreement that was ultimately reached that
15 had the owner financing component, there would be a
16 first lien existing mortgage remaining on the
17 property. And Section 11 of the contract, Exhibit
18 4 -- Plaintiff's Exhibit 4, requires that seller
19 transfer convey title pursuant to a proper
20 statutory warranty deed free of encumbrances, and
21 that the intention of the sellers was to transfer
22 the property or convey the property with an
23 encumbrance on it, namely the first mortgage. So
24 that would be our additional ground.

25 THE COURT: All right. Thank you. Anything to --

1 MR. BULLARD: Oh, I'm sorry. This is a separate matter.

2 So if he has a response.

3 MR. EVANS: Your Honor, on that last argument the
4 defendants' attorney asked if we wanted a second
5 mortgage, but we would have done it either way.
6 Whatever needed to be done to -- to close the deal.

7 MR. BULLARD: I just -- I'll let him finish. I'm sorry.

8 MR. EVANS: And, Your Honor, as far as the motion to
9 amend, we're not seeking a novation. But based on
10 the case cited to the court earlier and in the
11 interest of equity as was pointed out in that
12 Appellate Court case, if the court were to find
13 that, you know, there is a contract in this case,
14 it's just not the written contract that we're
15 proceeding on right now. But there's a contract
16 based -- a parol contract based on the evidence
17 showing owner financing and part performance --
18 actually full performance by the -- by the seller,
19 that in the interest of equity we should be
20 entitled to amend the complaint.

21 THE COURT: All right. Thank you. Mr. Bullard, any
22 response?

23 MR. BULLARD: Yes, sir. Our position would be that
24 there's no competent evidence that Mr. Jeffcoat
25 requested anything. That's subject to our hearsay

1 objection. And there's no testimony that Mr.
2 Jeffcoat requested that a first mortgage remain on
3 the property. As far as the amendment -- or the
4 request to allow an amendment, as we -- as I tried
5 to discuss earlier, I don't know if I did it
6 competently or not, but to seek -- in a real estate
7 transaction to seek relief in equity you have two
8 equitable remedies, specific performance or
9 rescission of the contract. They can have
10 rescission if that's what they want. We'll give it
11 to them right now. If they're seeking specific
12 performance, they allege specific performance in
13 their complaint and have withdrawn it with
14 prejudice. So that would be our position. It's
15 been withdrawn with prejudice. And this contract
16 does not allow them to seek specific performance,
17 the contractual terms.

18 THE COURT: All right. I understand what both sides are
19 arguing. And I'm going to respectfully take the
20 motions under advisement because there's a lot of
21 moving parts in this. So I will take them under
22 advisement.

23 MR. BULLARD: And the second matter unrelated was I just
24 wanted to clarify, I had made an earlier comment I
25 think in the -- when we started at the outset about

1 -- and it sort of relates to this, but it wasn't
2 intentional. That -- that plaintiffs could amend -
3 - or could -- it was between -- a colloquy between
4 us where you said, "Couldn't they according to that
5 case that I'm reading, Mr. Bullard, if I deny them
6 this relief that they could re-file?" And I said
7 they can re-file if they want to. I just want to
8 clarify that I'm not waiving any defenses the
9 defendant may have. I was simply commenting that I
10 can't prevent them from drafting a complaint,
11 taking it to the Clerk's office and it being filed.
12 I didn't want it to be -- I just wanted to clarify
13 that.

14 THE COURT: Right. I -- I understood that was a case
15 that you were bringing to my attention and to
16 plaintiff's attention, that I was asking you what
17 the relief granted, the theoretical relief. And I
18 understand what your argument now is, is I've got
19 all my defenses and they've already dismissed with
20 prejudice, which is different from the facts of
21 that case.

22 MR. BULLARD: Yeah, I just wanted to --

23 THE COURT: So -- and I understand both side's argument.

24 MR. BULLARD: Yeah, I just wanted to clarify my comments
25 because they were kind of flippant. And I didn't

1 mean to -- to make them sound like I was waiving
2 our rights to any defenses if they were to re-file.
3 That it was just they can -- I can't prevent them
4 from filing any kind of complaint.

5 THE COURT: I understand. And -- and that's partially
6 my fault because I relapsed back again to my
7 college English days of writing or asking a
8 question with an unsupported relative pronoun minus
9 15. That just come into my head. Because you
10 can't say they and you, they who. But anyway, when
11 I said, "What can they do," that was generically.
12 It wasn't specifically. So I understood what
13 you're saying.

14 MR. BULLARD: Thank you, Your Honor.

15 THE COURT: Now, that being said, defense case now.

16 MR. BULLARD: Yes, sir.

17 MR. EVANS: Your Honor, one last point. I would just
18 say in response to impossibility of performance
19 that it's our position that they breached this
20 contract prior to the time that any conveyance
21 would have been made by Mr. Query. So that --
22 their argument is speculative. You know, saying
23 you would have breached the contract, you know, we
24 wouldn't have performed, you know, at a point
25 subsequent to them breaching the contract. And

1 it's our position they breached the contract first.

2 So defense counsel arguing that well, subsequent to

3 that we may not have performed, we think that's

4 beyond --

5 THE COURT: Well, I'm going to let you all brief that.

6 But that's not exactly what I understood him to

7 say. What I understood him to say -- I guess

8 you're directing that toward the impossibility

9 argument.

10 MR. EVANS: Correct, Your Honor.

11 THE COURT: What I understood the defendant to say was

12 that -- that we're arguing that it's impossible to

13 have performed under the contract because the

14 agreement was owner financing. And it was owner

15 financing and in a situation where the existing

16 first mortgage is staying on record as opposed to

17 owner financing where you take the -- where you pay

18 off the first mortgage. So what I'm understanding

19 him to say is owner financing, that provision was

20 in direct conflict with paragraph whatever he

21 mentioned about give me free, clear title, you

22 know, that's standard in the contract. And what

23 he's saying is my argument is that creates an

24 impossibility. Is that -- did I in essence

25 paraphrase that correct?

1 MR. BULLARD: Yes, sir.

2 THE COURT: Okay. All right. So you can -- I mean, I'm
3 not -- I'm going to allow you all to -- to research
4 that and to brief that because I know -- I mean,
5 that --- that's not obviously -- that is done in
6 real estate transactions. I mean, there are things
7 where people take seconds behind firsts all the
8 time. I don't know that that -- that might not be
9 smart. It might not be good. But I don't know if
10 it rises to the level of impossibility. So we'll
11 let you all address that in your memo -- post-trial
12 memo. Okay, Mr. Bullard?

13 MR. BULLARD: Defendants call Ladis Castrejon.

14 THE COURT: Mr. Castrejon, if you'll come forward and
15 please be sworn.

16 Whereupon,

17 Ladislao Castrejon, being duly sworn and
18 cautioned to speak the truth, the whole truth,
19 and nothing but the truth, testified as
20 follows:

21 BAILIFF: Thank you. Give the court reporter your full
22 name and spell the last.

23 MR. CASTREJON: Ladislao Castrejon, C-a-s-t-r-e-j-o-n.

24 BAILIFF: Thank you, sir.

25 EXAMINATION

1 BY MR. BULLARD:

2 Q. All right, Mr. Castrejon, what do you do for a
3 living?

4 A. Restaurant -- restaurant business.

5 Q. Okay. And let's just go ahead and talk about --
6 how did you first find -- find out about this
7 property that we're talking about?

8 A. We lease the property across the street from that
9 property that was mentioned, and we have a
10 restaurant in there. That's how we found that it
11 was for sale across the street.

12 Q. All right. And why -- why was it that you were
13 interested in the property?

14 A. We was leasing the restaurant that we had that was
15 -- we don't get paved parking. It was a pretty bad
16 building. So we feel maybe we can buy the property
17 and build a free-standing building.

18 Q. All right. How did you make your interest in the
19 property known to someone?

20 A. We called the leasing agent that was on the sign.

21 Q. Okay. Do you remember who that was?

22 A. Tom.

23 Q. Mr. Dawson that was here earlier?

24 A. Uh-huh.

25 Q. All right. And what did you -- what did you tell

1 Mr. Dawson when you contacted him about the
2 property? What did you tell him?

3 A. I asked him what was the price -- what was the
4 price and how many acres it was. And that was it.

5 Q. All right. Did you -- did you at some point make
6 an offer to buy the property?

7 A. Yes.

8 Q. Okay. And how did you communicate that offer to --

9 A. I think he came -- he came to the property. He
10 came to the property and he bring -- he bring the -

11 -

12 Q. The contract? Is that what you're trying to think
13 of?

14 A. Yeah.

15 Q. All right. And did you -- was the contract filled
16 out when he brought it to you? You're talking
17 about Mr. Dawson?

18 A. I met him down there the first time at the
19 property. I don't remember how -- how -- how the
20 contract -- when he filled it out. I don't
21 remember about that.

22 Q. Well, did you sign it there at the property, or did
23 you -- did you all go someplace else, or how did
24 that work?

25 A. I don't remember.

1 Q. Okay. You don't remember how that worked?

2 A. No.

3 Q. Okay. Did you explain to -- well, how did -- let
4 me ask you this. Did you tell Mr. Dawson how to
5 fill out the contract?

6 A. No.

7 Q. All right. Did you tell him how much you were
8 willing to pay?

9 A. I just told him what was my offer.

10 Q. And what was your offer?

11 A. Two seventy-five.

12 Q. Two hundred and seventy-five thousand?

13 A. Yes, sir. Uh-huh.

14 Q. Okay. Explain if you can for us -- you said you
15 met -- you met Mr. Dawson at the property?

16 A. Uh-huh.

17 Q. Okay. Did you -- was Alberto with you, or were you
18 by yourself?

19 A. I think I was by myself.

20 Q. Okay. How -- let me show you. I'm going to show
21 you what's been marked as Plaintiff's Exhibit 3.
22 We talked about it earlier with other witnesses.

23 Okay. Did you fill this out?

24 A. No.

25 Q. Let's look through all these pages. Did you fill

1 any of this out on page 2 or page 3?

2 A. No.

3 Q. All right. Do you know how it came to be that
4 Alberto's signature is on page 3? Do you know how
5 that happened?

6 A. I don't remember.

7 Q. All right. Did -- did you talk to Alberto about
8 buying the property with you?

9 A. No.

10 Q. Was he -- were you intending for him to buy it with
11 you?

12 A. No.

13 Q. What was your understanding of why he initialed and
14 signed the contract?

15 A. A witness.

16 Q. A what? I'm sorry.

17 A. He was supposed to be a witness.

18 Q. Is that something you asked him to do?

19 A. Yeah.

20 Q. I'll let you hold onto this too. This is
21 Plaintiff's Exhibit Number 4. And you heard us
22 talking about these two contracts here, Exhibit 3
23 and Exhibit 4. Do you understand why there --
24 there's two of them?

25 A. I remember I came with Alberto once to ReMax office

1 to sign it.

2 Q. Which one? The Number 4?

3 A. The Number 4.

4 Q. Okay. You said you made -- you told Mr. Dawson how
5 much you were willing to pay for the property at
6 275,000. Did you -- did -- did you send the
7 contract to Mr. Query yourself?

8 A. No.

9 Q. Okay. Did -- did you later learn whether Mr. Query
10 would accept your \$275,000 offer?

11 A. I don't remember when -- when he -- Tommy Dawson
12 get with me and told me that he don't take the 275.
13 I don't remember what date it was.

14 Q. Okay. But you know that Mr. Query didn't want to
15 sell it to you for 275?

16 A. Uh-huh.

17 Q. Do you remember what he countered you?

18 A. He told me that -- he told me 330.

19 Q. Okay. And then what did you all eventually agree
20 on? What price?

21 A. Tommy -- Tommy told me to come -- to buy at
22 302,500.

23 Q. Okay. And that's -- was that something you were
24 willing to do?

25 A.. Yeah.

1 Q. All right. On Exhibit Number 4 this here in
2 section three, the price that you were just talking
3 about that you agreed to pay, and there's A and B
4 and talk about a down payment. And then C talks
5 about the loan amount. Where were you planning to
6 get the loan from?

7 A. From the bank that we bank with, BB&T.

8 Q. Okay. And why -- why BB&T?

9 A. We -- we were -- at that period of time for the
10 restaurant we had, we had been banking with them.
11 And we had previous loans with them for other
12 properties.

13 Q. Okay. All right. Did you contact BB&T and ask to
14 borrow that -- that money from them?

15 A. I think I -- I called David to let him know --
16 pretty much I called him about financing this
17 property.

18 Q. Okay. And did you -- did you later learn whether
19 BB&T was willing to loan you that money?

20 A. Several weeks later we find that they not going to
21 be able to do it.

22 Q. Okay.

23 A. Because we had four outstanding loans already, they
24 would not provide us any more.

25 Q. All right. And did you -- did you tell Mr. Dawson

1 that?

2 A. I think so.

3 Q. All right. After you let Mr. Dawson know that you
4 couldn't get financing from BB&T, how long was it
5 before any offer was made -- before you heard
6 anything about owner financing?

7 A. I don't know.

8 Q. Okay. Was it the next day or was it several weeks
9 later or several months later?

10 A. I'd say several months later.

11 Q. Okay. When you -- when this owner financing issue
12 came up, did -- was it something that you asked Mr.
13 Dawson about, or was it something Mr. Dawson
14 brought to your attention from Mr. Query?

15 A. I'm not quite sure how that happened.

16 Q. Okay. Well, was that something you thought you
17 might be willing to do, the owner financing deal?

18 A. I feel --

19 Q. I'm sorry?

20 A. I think since to buy the property we wasn't able to
21 get financed, I think I was.

22 Q. Okay. Did you ever sign any kind of contract that
23 had the owner financing terms on it?

24 A. No.

25 Q. Did anybody ever ask you to?

1 A. No. I never see the -- the paper. I never see it
2 until --

3 Q. Okay. I'm going to show you what's been marked as
4 Plaintiff's Exhibit 10. If you'll turn to the
5 second page there. Is this the document you were
6 just referring to?

7 A. Yeah. I never see it until just in this room.

8 Q. All right. You saw that sometime after this
9 litigation started?

10 A. No, I didn't see it before.

11 Q. Okay. Did you ever speak directly with Mr. Query
12 here about purchasing the property?

13 A. No.

14 Q. All right. Have you ever talked to Mr. Query or
15 written him any letters or emails or texts or
16 anything prior to -- prior to today?

17 A. No.

18 Q. Okay. Have you ever talked to him on the phone?

19 A. No.

20 Q. The owner financing deal, how were you planning to
21 get -- where was the \$75,000 supposed to come from?

22 A. Brito at that time was a part owner on some of the
23 restaurants. And he was the guy that had the
24 money. And he was a part owner of the restaurant
25 in Gaston. So I told him about the property across

1 the street, and he told me to call -- he asked me
2 to call him and find out about the property. So he
3 was the -- that was the person we was supposed to
4 get the down payment from.

5 Q. All right. And did you -- did you expect Alberto
6 to give you any of that 75,000?

7 A. No.

8 Q. Other than Brito, did you have any other way to get
9 that 75,000?

10 A. No.

11 Q. How is it that you -- that Mr. Jeffcoat became
12 involved in this? Do you know?

13 A. He -- he was -- for properties we buy, he was the
14 attorney to close the -- the deals. So I feel that
15 I'd call him and tell him that I was trying to buy
16 the property. Besides that, I don't know.

17 Q. You don't remember when?

18 A. No.

19 Q. Okay. But he had closed properties for you before?

20 A. Yes, sir.

21 Q. Did you ask Mr. Jeffcoat to negotiate the contract
22 with Mr. Query or the terms of the contract with
23 Mr. Query so you could buy the property?

24 A. No. He never was involved with negotiation. We
25 just tell him what we're going to buy and that was

1 it. He wasn't involved on the particular issues.

2 Q. He wasn't involved in negotiating prices?

3 A. No.

4 Q. How about negotiating financing?

5 A. No.

6 Q. Okay. Did you ask Mr. Jeffcoat to do a survey on
7 the property?

8 A. I don't remember.

9 Q. Okay. Do you recall ever signing any agreement
10 with Mr. Jeffcoat that said that you allowed him to
11 negotiate terms of a real estate contract for you?

12 A. No.

13 Q. Were you aware that there was a closing scheduled
14 in September?

15 A. Yeah.

16 Q. Okay. What happened? Did you -- did you ever go
17 to Mr. Jeffcoat's office for a closing?

18 A. No.

19 Q. Okay. Tell me what happened.

20 A. Brito came the day -- the day that we were supposed
21 to close and he was supposed to bring the money.
22 But he come early and went to the property. He
23 drive through there and he looked through the
24 property and he saw the power lines that run
25 through the property. And by the time we get to

1 the restaurant that we used to have in Newberry, we
2 met him there before we went to the closing, and he
3 said, "You know what? I'm not going to do it. I
4 didn't realize there was the power lines running
5 through the property." So he was -- he the one
6 that had the down payment and he decided not to --
7 not to buy it.

8 Q. All right. After the owner financing deal was
9 offered to you and you agreed to do that, did you
10 have any further communications with Mr. Dawson?

11 A. I don't remember.

12 Q. Okay. That's all I have, Your Honor.

13 THE COURT: Cross?

14 MR. EVANS: Thank you, Your Honor.

15 EXAMINATION BY MR. EVANS:

16 Q. Mr. Castrejon, Plaintiff's Exhibit 3 was an offer
17 that you signed to purchase this property, correct?

18 A. Yes, sir.

19 Q. And Mr. Lozano's name is also down on that offer as
20 a purchaser, correct?

21 A. Yes, sir.

22 Q. Okay. And both of you all's signatures is
23 witnessed by another individual. Isn't that
24 correct?

25 A. Yes, sir.

1 Q. What's his name?

2 A. Chris.

3 Q. Chris Vanderdrissche?

4 A. Yes, sir.

5 Q. And is he here today?

6 A. No.

7 Q. And Mr. Vanderdrissche was an associate of yours

8 that worked at your restaurant?

9 A. No.

10 Q. He did -- I mean, he did maintenance work at the

11 restaurant?

12 A. Uh-huh.

13 Q. Okay. And he's an -- he's an American?

14 A. Yes, sir.

15 Q. And he's not Hispanic?

16 A. No.

17 Q. Okay. And he signed as a witness on both yours and

18 Mr. Lozano's signatures?

19 A. Uh-huh.

20 Q. Yes or no, sir?

21 A. Yes, sir.

22 Q. And also likewise on Plaintiff's Exhibit 4, the

23 actual contract, if you could take a look at that,

24 you also signed that offer to purchase, correct?

25 A. Uh-huh.

1 Q. And so did Mr. Lozano, correct?

2 A. Uh-huh.

3 Q. And Mr. Query accepted that offer, correct?

4 A. Uh-huh.

5 Q. Yes? I need you to say yes or no, sir.

6 A. Yes. According to this, yes.

7 Q. Well, you don't dispute that, do you?

8 A. No.

9 Q. And on that same date you signed that contract you
10 wrote a check for \$2,000 as earnest money on this
11 contract, correct?

12 A. Yes, sir.

13 Q. And Mr. Brito's name's not on that contract, is it?

14 A. No.

15 Q. Okay. You agreed to pay the earnest money,
16 correct?

17 A. Yes, sir.

18 Q. And you agreed to buy the property, correct?

19 A. Yes, sir.

20 Q. And you agreed to make a down payment yourself,
21 correct?

22 A. I think the contract has a lot of errors because
23 Tommy knows that they wanted -- I was the only
24 person to buy it. Matter of fact, as you know,
25 they -- they put the title -- whatever they do,

1 they put it on Brito-Castrejon Properties. So I
2 think to me that since they the one -- the
3 contract, you know, was for the property.

4 Q. Are you saying the deed was going to be in the name
5 of Brito and Castrejon Corporation?

6 A. Yes, sir. That's the corporation -- the company we
7 have.

8 Q. That's not what the contract says, is it?

9 A. No. But do you have copies of the papers how --
10 how they told me to fill it out?

11 Q. Well, you signed that contract, correct?

12 A. Yes, sir.

13 Q. Okay. And you understand that's a binding legal
14 contract, correct?

15 A. Yes, sir.

16 Q. And that contract says that you are going to make
17 the down payment, correct?

18 A. Uh-huh.

19 Q. Yes?

20 A. Yes, sir.

21 Q. So when you signed that contract, there's nothing
22 in that contract about that you're relying on Mr.
23 Brito to make the down payment, is there?

24 A. No.

25 Q. Now, you told us earlier, didn't you, that Mr.

1 Jeffcoat was the closing attorney that you all
2 always used when you closed on various properties?

3 A. What properties?

4 Q. Didn't you tell me earlier that he had been your
5 closing attorney on -- on at least five different
6 properties?

7 A. I don't remember five or four. I don't know how
8 many.

9 Q. Okay. You might have said five in your deposition?

10 A. I don't know. I don't remember.

11 Q. And you agree that you asked Mr. Jeffcoat to handle
12 the closing on this contract, don't you agree with
13 that?

14 A. Yes, sir.

15 Q. Okay. And isn't it true, Mr. Castrejon, that when
16 you apply for bank financing, you have to tell the
17 bank who your closing attorney is going to be?

18 A. I don't know.

19 Q. Well, Mr. Castrejon, you own four homes, correct?

20 A. Yeah.

21 Q. And you -- and you owned seven restaurants at
22 least?

23 A. Two.

24 Q. Well, I'm not talking about right now. I'm talking
25 about over your career you've owned --

1 A. Yeah.

2 Q. -- at least seven restaurants?

3 A. Yes, sir.

4 Q. Okay. And weren't there closing loans on all of

5 those sales to buy those properties?

6 A. Yes, sir.

7 Q. And didn't you have to tell the bank each time you

8 applied for financing who your closing attorney was

9 going to be?

10 A. Time to time I said something and that won't go

11 through and I'd have to go to different directions.

12 So --

13 Q. Well, you don't dispute that from day one Mr.

14 Jeffcoat was going to be your closing attorney on

15 this deal, do you?

16 A. No.

17 Q. Do you agree with that?

18 A. Yes, sir.

19 Q. And that contract you signed right there,

20 Plaintiff's Exhibit 4, says that you will obtain a

21 loan for \$252,500, correct?

22 A. Yes, sir.

23 Q. But that contract that you signed does not specify

24 where that loan's going to come from, does it?

25 A. No.

1 Q. It doesn't say whether it's going to be from a bank
2 or from the owner, correct?

3 A. It don't say.

4 Q. Okay. And you initialed -- you initialed that
5 paragraph 3 where the price was negotiated,
6 correct?

7 A. Yes, sir.

8 Q. And all the terms there in paragraph 3, correct?

9 A. Yes, sir.

10 Q. And you initialed the bottom of the page and each
11 page and signed the contract, correct?

12 A. Correct.

13 Q. And that contract doesn't say anything about
14 borrowing money to make a down payment, does it?

15 A. No.

16 Q. Now, didn't you testify that you -- you had
17 operated a restaurant across the street from Mr.
18 Query's property for about a year?

19 A. I don't remember how long.

20 Q. Okay.

21 A. I used to have a restaurant across the -- across
22 the street. I don't remember how long.

23 Q. Maybe for about a year?

24 A. Maybe.

25 Q. Okay. And who was your partner in that restaurant

1 that was across the street?

2 A. Jesus Brito.

3 Q. What about -- was Mr. Lozano a manager over there?

4 A. No.

5 Q. But it was your plans to put a restaurant on the
6 property that you were buying from Mr. Query; is
7 that correct?

8 A. Correct.

9 Q. Okay. And, for example, LaFogata Properties, LLC,
10 is that LLC still in existence?

11 A. I don't know.

12 Q. Okay. Weren't the owners -- didn't the owners of
13 LaFogata Properties, LLC include you, Mr. Brito and
14 Mr. Lozano?

15 A. And another member.

16 Q. And another gentleman?

17 A. Yes, sir.

18 Q. Mr. Roman?

19 A. Uh-huh.

20 Q. Now, if you all had -- if you all had ended up
21 closing on this contract, isn't it true that that
22 11-acre property would have ended up in the name of
23 one of your LLCs or corporations?

24 A. What do you mean one of our LLCs?

25 Q. Well, all these other times that you --

1 A. The property -- the property is not going to
2 LaFogata Properties.

3 Q. Okay.

4 A. That was not the issue.

5 Q. Oh, I understand.

6 A. When you say -- what do you have in mind? Because
7 the property should be on Brito-Castrejon
8 Properties. That wasn't correct.

9 Q. Okay. So that's my point. The property was going
10 to end up in the name of one of your corporations,
11 right?

12 A. That's -- that's what I -- that's what I -- I told
13 seller at day one.

14 Q. Okay. So even though the contract says that it's
15 going to be initially deeded to you in your name,
16 that was just going to be temporary. It was going
17 to end up in the name of your corporation, correct?

18 A. Uh-huh.

19 Q. Yes?

20 A. Yes.

21 Q. And that's all -- that's always the way that you
22 all have done it with at least seven restaurants
23 you owned? None of those properties have been in
24 anybody's individual name, have they?

25 A. No.

1 Q. And also in paragraph 23 there on page 3 I believe
2 of the contract -- if you can look at paragraph 23,
3 do you see that where it says expiration date of
4 offer? Do you see that paragraph?

5 A. Twenty-three?

6 Q. Right.

7 A. It's blank.

8 Q. Okay. There's no expiration date on your offer, is
9 there?

10 A. Huh-uh.

11 Q. No?

12 A. No.

13 Q. And you see the box down there at the bottom of
14 page 3 that says, "This is a legal and binding
15 contract?"

16 A. Which one?

17 Q. The box -- the language in the box. See right
18 here, this box?

19 A. Okay.

20 Q. You understand what a legally binding contract is,
21 don't you, Mr. Castrejon?

22 A. No.

23 Q. You don't?

24 A. No.

25 Q. How many years have you been in business -- in the

1 restaurant business?

2 A. I don't remember.

3 Q. And that -- in that box it also tells you to seek
4 legal advice on the contract. Do you see that? Do
5 you see where it says that, Mr. Castrejon?

6 A. No.

7 Q. Okay. Do you see in the box it says, "This is a
8 legally binding contract. Purchaser and seller
9 should seek legal advice --"

10 A. Okay.

11 Q. "-- if the contents are not understood." Do you
12 see that?

13 A. Yeah.

14 Q. And you did seek legal advice, right?

15 A. Not on this contract.

16 Q. From Mr. Jeffcoat?

17 A. No. I don't -- I don't think it was. I never -- I
18 never got advice from him.

19 Q. Wasn't Mr. Jeffcoat going to be your closing
20 attorney on this contract?

21 A. Uh-huh.

22 Q. Yes?

23 A. Yes.

24 Q. And he did a lot of work to get ready for that
25 closing, didn't he?

1 A. I don't know. I don't know.

2 Q. Now, after you checked with your bank about getting
3 bank financing, isn't it true that you asked
4 whether the seller would do owner financing?

5 A. I don't remember that.

6 Q. Okay. Do you remember giving your deposition in
7 this case, Mr. Castrejon?

8 A. No.

9 Q. On September the 18th, about two months ago? Do
10 you remember we sat down and I asked you some
11 questions?

12 A. Yes, sir.

13 Q. Okay. (Speaking to The Court): Your Honor, I'd
14 like to question the witness a little bit about his
15 deposition. I have the original here. How would
16 Your Honor like to handle it? Should I hand up the
17 original to you, Your Honor, or to the witness?

18 THE COURT: I would hand -- as long -- I assume you all
19 both have no question about this being the original
20 deposition.

21 MR. BULLARD: No, sir, there's not.

22 THE COURT: All right. You can open it since it's in
23 the presence of everybody.

24 EXAMINATION BY MR. EVANS RESUMED:

25 Q. So, Mr. Castrejon, you do remember giving a

1 deposition in this case, correct?

2 A. Correct. Yes.

3 Q. Okay. Now, I'd like you to look at page 20.

4 A. Okay.

5 Q. All right.. Do you see line 12 on page 20 where I
6 asked you, "Okay, but you agree, don't you, at some
7 point after the BB&T financing was turned down, you
8 were checking into whether you could do owner
9 financing, correct?" And what did you say?

10 A. I don't remember.

11 Q. Can you read starting on line 16 what your answer
12 was to the question? Let me just read it and ask
13 you if this is right what it says. "I think we
14 asked the seller, and I don't remember signing the
15 contract whenever they decided to do it or not."
16 Was that your response at the time?

17 A. I don't remember. I guess.

18 Q. So you don't remember saying that you asked the
19 seller about owner financing?

20 A. No, I don't remember.

21 Q. And -- and you also asked the seller if it was all
22 right to increase the amount of the down payment
23 from \$50,000 to \$75,000; isn't that correct?

24 A. I don't remember.

25 Q. And a closing was scheduled for the sale of this

1 11-acre property to you in August 2008, correct?

2 A. Yes.

3 Q. Yes?

4 A. Yes, sir.

5 Q. And that August 2008 closing was going to be based
6 on owner financing, correct?

7 A. Yes.

8 Q. And it was going to be for the same price that is
9 in the contract you signed in March 2008, correct?

10 A. Right.

11 Q. Using the same \$2,000 earnest money check?

12 A. Correct.

13 Q. And, Mr. Castrejon, you knew at the time that if
14 this sale went through on owner financing that you
15 were going to be paying interest on that loan to
16 the seller during the term of that loan, correct?

17 A. Yes.

18 Q. But that August 2008 closing did not occur, did it?

19 A. No.

20 Q. Okay. And on September 3rd, 2008, about a week
21 later after that closing was scheduled, a survey
22 was performed on this 11-acre property, correct?

23 A. I don't know.

24 Q. So Plaintiff's Exhibit 8 which is the survey of the
25 property that says it was performed for Mr.

1 Ladislao Castrejon and Mr. Jesus Brito, you don't
2 know anything about that?

3 A. No, sir.

4 Q. Okay. I'll go ahead and show you that survey which
5 is I believe Plaintiff's Exhibit 8. Do you see in
6 the bottom right-hand corner where it says who that
7 survey was prepared for?

8 A. Uh-huh.

9 Q. Okay. And it's got your name on it?

10 A. Yes, sir.

11 Q. Okay. And then after that survey was done, the
12 closing was rescheduled for September 24th, 2008,
13 correct?

14 A. I don't remember.

15 Q. Didn't you just tell your attorney when he was
16 questioning you that you knew there was a closing
17 on September 24th, 2008?

18 A. If I say it, I don't know. I don't remember the
19 date.

20 Q. And isn't it true, Mr. Castrejon, that the only
21 contract in your attorney's closing file is the
22 March 27th, 2008 contract where you agreed to buy
23 this property from Mr. Query? Isn't that correct?

24 A. I don't know.

25 Q. Do you deny that?

1 A. I don't know.

2 Q. That's all we've got, Your Honor.

3 THE COURT: Redirect, Mr. Bullard?

4 MR. BULLARD: No, sir, Your Honor.

5 THE COURT: All right. You can step down, sir.

6 MR. BULLARD: Defense will call Alberto Lozano.

7 THE COURT: All right, Mr. Lozano, if you'll come up and
8 be sworn, please.

9 Whereupon,

10 Alberto Lozano, being duly sworn and cautioned

11 to speak the truth, the whole truth, and

12 nothing but the truth, testified as follows:

13 BAILIFF: Thank you. Give your full name to the court
14 reporter and spell the last.

15 MR. LOZANO: Alberto Lozano, L-o-z-a-n-o.

16 EXAMINATION

17 BY MR. BULLARD:

18 Q. All right, Mr. Lozano. Where are you currently
19 employed, Mr. Lozano?

20 A. At LaFogata Restaurant.

21 Q. LaFogata?

22 A. Yes.

23 Q. Okay. And what would you say you do for a living?

24 A. Business -- restaurant business.

25 Q. Okay. How do you know Mr. Castrejon?

1 A. We work together and we were partners.

2 Q. You were partners?

3 A. Yes.

4 Q. Are you currently partners with him in any
5 businesses?

6 A. No.

7 Q. Okay. How do you know Mr. Query?

8 A. I know him since he sued me.

9 Q. Did you have any knowledge of him before that?

10 A. No, sir.

11 Q. Okay. Have you ever -- so I guess you've never met
12 or spoken with him at all?

13 A. No, sir.

14 Q. Until after this thing was filed?

15 A. That's right.

16 Q. What do you know about the property in Gaston that
17 we've been talking about today?

18 A. The only thing I knew, that Ladis had told me he
19 was thinking about buying it.

20 Q. Okay. Do you remember -- and those contracts and
21 so forth in front of you, was that around March of
22 2008 you found out about that?

23 A. Yeah. Yeah.

24 Q. Okay. Did he ask you to buy the property with him?

25 A. No, sir.

1 Q. If he had asked you, would you have been able to?

2 A. No, sir.

3 Q. All right. There are a couple of contracts, and I
4 think they're up there, Exhibit Number 3 and
5 Exhibit Number 4 in front of you. And they have
6 your signature and initials on them. Why are they
7 on there if you didn't -- if you didn't intend to
8 buy the property? Do you see Exhibit 3 and 4?

9 This is Number 4.

10 A. Okay.

11 Q. That's Number 3.

12 A. Okay.

13 Q. And your initials appear here on the bottom of some
14 of these pages, and then your signature appears on
15 the third page on each of these.

16 A. Yes.

17 Q. Can you explain for us why -- why you initialed
18 those -- those contracts or those documents and why
19 you ended up signing those documents?

20 A. Well, I -- I signed it because I was thinking I was
21 signing it as a witness.

22 Q. Okay. Have you bought property with Ladis before?

23 A. Yes, sir.

24 Q. And when you did that, did you -- did you list your
25 name as purchaser on those contracts -- on the

1 other contracts?

2 A. I don't remember how they both was -- how the
3 contracts was.

4 Q. Did you know what Ladis wanted to use this property
5 for?

6 A. He didn't -- he didn't say at the time, but I'm
7 thinking that he's done restaurants. I would have
8 thought it was something to do with a restaurant.

9 Q. Were you involved in negotiating the price for the
10 purchase of the property?

11 A. No, sir.

12 Q. Did you attempt to secure financing for the
13 purchase of the property?

14 A. No.

15 Q. Have you ever been to the property and walked
16 through it?

17 A. No, sir.

18 Q. Were you aware of the owner financing from Mr.
19 Query that we've been talking about today?

20 A. No, sir. I didn't know nothing about it.

21 Q. Were you asked to contribute to the down payment?

22 A. No.

23 Q. If you had been asked, would you have been able to
24 contribute?

25 A. No, sir, I couldn't.

1 Q. Were you asked to contribute to the \$75,000 down
2 payment that was part of the owner financing deal?

3 A. No, sir.

4 Q. All right. Again, would you have been able to
5 contribute to that?

6 A. No.

7 Q. I'll show you page 2 of Exhibit Number --
8 Plaintiff's Exhibit Number 10, this page right
9 here. Prior to being sued in this lawsuit have you
10 ever seen that?

11 A. Never seen it.

12 Q. Did you ask anybody to draft this for you?

13 A. No.

14 Q. That's all the questions I have, Your Honor.

15 THE COURT: Cross, Mr. Evans?

16 MR. EVANS: Briefly.

17 EXAMINATION BY MR. EVANS:

18 Q. Mr. Lozano, you work at a restaurant in Lexington
19 as the manager?

20 A. I work -- I work some days over there and some days
21 at the LaFogata Restaurant.

22 Q. And those restaurants are owned by Mr. Castrejon?

23 A. No. The LaFogata Restaurant is owned by me.

24 Q. Owned by you?

25 A. Yes.

1 Q. Okay. So you own LaFogata. What about El Paso?

2 A. Yes.

3 Q. You work there?

4 A. Yes.

5 Q. Okay. And that's owned by Mr. Castrejon?

6 A. Yeah.

7 Q. And you're a manager there?

8 A. Yes.

9 Q. And you've been a business partner with Mr.
10 Castrejon in three different restaurants?

11 A. Yes, sir.

12 Q. And you've borrowed money from BB&T before with Mr.
13 Castrejon three times to buy property before?

14 A. Yes, I did.

15 Q. And that was before you signed this contract that
16 we're here about today as a purchaser?

17 A. Yes.

18 Q. You've been in this country since 1986?

19 A. Yes.

20 Q. You know what the word "purchaser" means, right?

21 A. Now I do. Now I do.

22 Q. Well, when you purchased all these other
23 properties, you didn't know what a purchaser was?

24 A. No, sir.

25 Q. And all those times that you were involved in

1 closings to buy property, the closing attorney was
2 Mr. Jeffcoat?

3 A. Yes. Yes.

4 Q. And Plaintiff's Exhibit 3, the offer to purchase
5 where you signed as a purchaser, that was witnessed
6 by Mr. Vanderdrissche, right? Chris
7 Vanderdrissche?

8 A. Yes, sir.

9 Q. Do you know him?

10 A. Yes, I do.

11 Q. And he's an American that's done maintenance work
12 at you all's restaurants?

13 A. Yes. Yes.

14 Q. And he didn't tell you anything about -- and he
15 signed on there as a witness, correct?

16 A. Okay.

17 Q. Yes?

18 A. Yeah, it looks -- yeah.

19 Q. And he came with you and Mr. Castrejon -- excuse
20 me. And the LaFogata Restaurant that you were
21 involved in the purchase of those properties,
22 weren't all those properties put in the name of
23 LaFogata Properties, LLC?

24 A. Some. But, yeah.

25 Q. And several properties --

1 A. Yes.

2 Q. -- were put in the name of LaFogata Properties,
3 LLC?

4 A. Yes. Yes.

5 Q. And you were one of the owners of that LLC?

6 A. Yes.

7 Q. And when you were served with the complaint in this
8 case, you expected that Mr. Castrejon was going to
9 retain a lawyer to represent you?

10 A. Yeah. Yes.

11 Q. And that was because of the history of business
12 relationships that you share with him?

13 A. That's right, sir. Yes.

14 Q. And do you remember giving an affidavit in this
15 case a couple of years ago?

16 A. You talking about the -- are you talking about the
17 mediation or --

18 Q. Well, I'll just show it to you.

19 A. Okay.

20 Q. I just want to ask you one question about it in
21 paragraph 3. Is that your affidavit?

22 A. Yes, sir.

23 Q. That you swore to on December 14th, 2011?

24 A. Yes.

25 Q. And in paragraph 3 you say that, "Mr. Castrejon has

1 historically obtained attorneys and dealt with
2 legal matters arising from our business
3 relationships." Do you see that?

4 A. Yes.

5 Q. And you expected him to get you an attorney in this
6 case, right?

7 A. I -- I felt he was going to show it to the lawyer.
8 Because I didn't -- I never got this kind of
9 things. I didn't know what to do. So I showed it
10 to him.

11 Q. And that's because this contract was a legal matter
12 arising from your business relationship with Mr.
13 Castrejon?

14 A. Yes.

15 Q. No other questions.

16 THE COURT: Anything on redirect?

17 MR. BULLARD: No, sir.

18 THE COURT: All right, you can step down.

19 MR. BULLARD: Defendants would call Joseph Rosen.

20 THE COURT: Please come forward and be sworn.

21 Whereupon,

22 Joseph B. Rosen, being duly sworn and
23 cautioned to speak the truth, the whole truth,
24 and nothing but the truth, testified as
25 follows:

1 BAILIFF: So please give your first -- full name to the
2 court reporter and spell the last.

3 MR. ROSEN: Joseph, J-o-s-e-p-h, B. Rosen. Thank you.

4 EXAMINATION

5 BY MR. BULLARD:

6 Q. Good afternoon, Mr. Rosen.

7 A. Good afternoon.

8 Q. Could you tell us where you're employed?

9 A. I'm employed by Rosen Appraisal Associates which is
10 a real estate appraisal company in downtown
11 Columbia.

12 Q. All right. And how long have you been employed
13 there?

14 A. Since July of 1973. So it's just over 40 years.

15 Q. All right. Could you briefly describe for us what
16 sort of work you've done for Rosen?

17 A. I started in July of 1973 while I was in college.
18 And I was trained by my father, Harvey Rosen, who's
19 now retired. He started the appraisal company in
20 May of 1956. And I started working as an appraisal
21 I guess technician or appraisal trainee, and then
22 eventually started doing appraisals after I got my
23 real estate license. And I've been doing
24 appraisals ever since. I've appraised almost every
25 type of property from vacant land to improved,

1 shopping centers, funeral homes, cemeteries,
2 restaurants, fast food restaurants. Appraised
3 properties in South Carolina, some in Georgia, some
4 in North Carolina and two in Tennessee.

5 Q. What kind of licenses do you hold?

6 A. I hold the Certified General Real Estate License by
7 the State of South Carolina. I also hold -- that's
8 an appraisal license. I hold an appraisal license
9 in the State of North Carolina and in the State of
10 Georgia.

11 Q. All right. And do you have a MAI designation?

12 A. Yes, sir, I do.

13 Q. What's that mean?

14 A. That's a commercial designation. It's just three
15 letters. It used to mean something. It doesn't
16 anymore. But it's just a recognized international
17 commercial designation to -- that's supposedly the
18 highest designation. It means you're qualified to
19 appraise all types of commercial properties that
20 you have some training in.

21 Q. Okay. And what -- what sort of qualifications do
22 you have to have to achieve the MAI?

23 A. You have to have certain courses. You take a
24 course -- they used to be two weeks. Now they're a
25 week with an exam at the end of each week. You

1 have to keep a log and your experience has to be
2 reviewed by your peers.. You have to do a
3 demonstration appraisal report and you have to take
4 a comprehensive exam. And it's been changed, but
5 when I took it, it was one day and it was two
6 parts. Now it's four days and four parts.
7 Something like that. They keep changing stuff on
8 me.

9 Q. All right. Do you have any professional
10 affiliations?

11 A. Yes, sir. I do hold just -- I hold a real estate
12 license because you used to have to have a real
13 estate license to do appraisals in South Carolina.
14 I'm a member of -- I just celebrated 30 years as a
15 realtor. I'm a member of the -- of the Appraisal
16 Institute. That's -- you have to be a member to
17 have the MAI designation. And I'm also a member of
18 the American Society of Appraisers, which is a
19 appraisal organization. And you have specialties.
20 So you might have a gemologist or you might have a
21 gun specialist or a boat specialist. And I was
22 president of the South Carolina chapter several
23 years ago. And --

24 MR. EVANS: Your Honor, we stipulate to Mr. Rosen's
25 qualifications for this case as an expert.

1 THE COURT: Thank you.

2 EXAMINATION BY MR. BULLARD RESUMED:

3 Q. You can continue, Mr. Rosen.

4 A. Okay. And so those are my professional
5 affiliations.

6 Q. All right. Have you ever been qualified as an
7 expert in a court in South Carolina?

8 A. Yes, sir, I have.

9 Q. Okay. Do you recall how many times it's been?

10 A. Probably 30, 40 times. Some have been in Master's
11 Court. Some have been Circuit Court. And some
12 have been Bankruptcy Court. And in various
13 counties in the state.

14 Q. All right. I'm going to hand you what's been
15 marked, at least not -- it's going to be marked as
16 an Exhibit Number 2 -- Defendant's Exhibit 2.

17 A. Yes, sir.

18 Q. If you can identify that document.

19 A. Yes, sir. This is a -- this is one of the copies
20 that we had delivered to your office. And it's a
21 copy of the appraisal I did on the subject
22 property.

23 Q. Okay. And what did you -- if you would, just take
24 us through the process of creating that appraisal
25 if you would.

1 A. Okay. Briefly, we received an appraisal request to
2 do an appraisal. We log it in in a file. Which I
3 have the file with me. And we can start doing some
4 research of the area and try to obtain sales. We
5 then go out to the property and look at the
6 property -- subject property and look at the sales
7 and then come back into our office and write up the
8 -- write up the appraisal.

9 Q. Okay. And you actually went out to this property?

10 A. Yes, sir.

11 Q. Okay. And tell us if you would the process of
12 searching for comparisons or comps?

13 A. Okay.

14 Q. In this particular case.

15 A. Sure. In this particular case the date of value
16 was September 24th of 2008. And we would use some
17 sales in -- past that date if we knew they wanted
18 to contract it for that date. But -- and this is
19 in the Town of Gaston. And I have a map that will
20 kind of show of the area. Because the Town of
21 Gaston is a small town. But there was quite a bit
22 of activity in the Town of Gaston. And felt that -
23 - that a comparable sale -- that if you were
24 appraising a piece of property here, you'd be
25 buying a piece of property in Gaston, you wouldn't

1 go necessarily to Lexington or -- or another town.

2 You'd try to stay within the Gaston -- immediate
3 Gaston area. And I found three sales in Gaston
4 north of the subject property that I used to
5 compare to the subject property.

6 Q. Okay. And what -- what ultimately -- or tell me
7 what you ultimately concluded about the value of
8 this property in September 2008.

9 A. After comparing the sales, subject property is
10 11.29 acres, but it's a -- it's a -- I think it
11 called it -- I can't remember if I called it L-
12 shaped. But it has a small amount of frontage and
13 then it goes back and then gets wider. The piece
14 on the right I guess was part -- could have been at
15 one point in time part of it. So I think it has
16 four hundred and -- it's four hundred and it looks
17 like 17 feet of frontage on 321. And that's --
18 that would be an excellent use for one or two
19 commercial -- commercial retail properties. And
20 then -- then the problem is when you get back
21 behind that area, there's a power line that kind of
22 comes at an angle shown on this plat. And it's a --
23 - I scaled it off as being 100 feet wide. Which is
24 pretty -- it's a pretty wide power line. And
25 calculated where -- the acreage underneath the

1 power line. And then the back land would have very
2 little utility. Probably for something like a
3 warehouse or mini warehouses.

4 Q. All right.

5 A. So basically you have a little over four acres of
6 usable land in the -- on the front. And the three
7 sales that I could determine that occurred --
8 occurred in '06 and two in '07. And they range
9 from just 1.8 acres to 2.04 acres. And I used
10 those sales to compare the subject property. And
11 they required significant adjustments, but I felt
12 like that the -- at the indication they provided,
13 which I came up at \$28,000 per acre on the average
14 of the 11 acres would be indicative of what the
15 subject property's worth. To go to another area to
16 try to get sales close in size to subject would not
17 be -- could be misleading because a person who
18 would buy in Gaston would probably not buy
19 somewhere else. If they're looking in Gaston,
20 that's the most comparable. When you start --
21 location is the important thing. If you -- if you
22 were going to buy a house on Lake Murray and you
23 didn't care if you were on the Chapin side or 378,
24 that's great. But if you wanted to be on 378, the
25 Lexington side, then to use a comparable on the

1 Chapin side would not be relevant. So we --
2 comparable is something to compare it to that's
3 similar.

4 Q. Okay. And what did you ultimately determine the --
5 the appraised value of this property in September
6 2008 to be?

7 A. Three hundred and fifteen thousand dollars for the
8 11.29 acres.

9 Q. All right. That's all I have, Your Honor.

10 THE COURT: Cross, Mr. Evans?

11 MR. EVANS: Briefly, Your Honor.

12 EXAMINATION BY MR. EVANS:

13 Q. Mr. Rosen, the comparables that you used to reach
14 your opinion in this matter, and I believe they're
15 on page 43 of your report, --

16 A. That's the chart of adjustment on page 43. The
17 sales are --

18 Q. All right. Thank you. But there's -- there's
19 information on each of the three comparable sales
20 that you used to reach your opinion, correct?

21 A. Yes, sir.

22 Q. And these three properties that you used, number
23 one, were all roughly two-acre parcels, correct?

24 A. Yes, sir.

25 Q. Not the three to 20-acre range that was used by the

1 other appraiser, correct?

2 A. I don't recall what -- what she -- what the other
3 appraiser utilized.

4 Q. Okay. And the sale price per acre of your three
5 comparables were \$392,000 an acre, \$270,000 an acre
6 and \$50,000 an acre, correct?

7 A. That's correct.

8 Q. And because of that, you had to make adjustments to
9 your three comparables, a downward adjustment of 85
10 percent, 85 percent and 75 percent, correct?

11 A. Yes, sir.

12 Q. And even after those major adjustments, you came up
13 with a range of per acre comparables from \$12,000
14 to \$58,000 an acre, correct?

15 A. That's correct.

16 Q. And isn't it true that a bank would throw out any
17 appraisal that included such a large range of
18 comparable sales such as from \$12,000 to \$58,000 an
19 acre?

20 A. That's a broad statement. I can't tell you what a
21 bank would throw out. But I do appraisals every
22 week for banks. And if they have a question, they
23 contact me. But I've never -- I don't remember in
24 the last years having a problem with banks throwing
25 out any appraisal because there was a range of

1 value. And if I explained it properly, they'll --
2 they understand it.

3 Q. And the -- the property you were appraising for
4 this case was essentially vacant land, correct?

5 A. Yes, sir. There's a -- there's a building on it.
6 I don't know if it had been burned or -- but it's
7 in poor condition. I would not measure the
8 building. I photographed it.

9 Q. Not useable?

10 A. No, not useable. It's a detriment.

11 Q. And -- and two of your comparables were -- was it a
12 First Citizens Bank and a combination gas station
13 and Burger King? Is that right?

14 A. No, sir. The first one was a Palmetto Citizens
15 Bank.

16 Q. Okay.

17 A. And it's not -- that was the proposed location.
18 But it was never built there. There's a drive-
19 through. But there was no police station in
20 Gaston, and they wouldn't build -- they couldn't
21 build -- I think there's maybe a -- I don't know if
22 it's a federal regulation. But they put a drive-
23 through. But once the police station gets
24 established, there's talk that they will build a
25 branch there.

1 Q. And your comparables are also very close to the
2 desirable Food Lion shopping center, much closer to
3 that than the subject property; is that correct?

4 A. Yes, sir. They're up at Wood Trail Drive. And
5 subject's down below. But they're -- that's --
6 they're up at the north end of the -- of the town
7 limits of Gaston. And subject's closer to the
8 middle of Gaston. I have it marked on the map if
9 you'd like to see it.

10 Q. That's all I've got. Thank you.

11 THE COURT: Anything on redirect?

12 REEXAMINATION BY MR. BULLARD:

13 Q. Mr. Rosen, the -- your comparable, were they vacant
14 land at the time in 2008?

15 A. Yes, sir.

16 Q. All right. The pictures you have of them are
17 current pictures, right?

18 A. Oh, yes, sir. I'm sorry.

19 Q. And they've been developed now and things are on
20 them now?

21 A. Well, sale one and two. Sale three is still
22 vacant.

23 Q. Okay. But you didn't appraise these properties
24 with a bank and a -- and a Pit Stop or whatever it
25 is? Those things weren't there at the time in

1 2008?

2 A. That's correct. They were vacant land.

3 Q. So the comparables are not of improved land,
4 they're of commercial vacant?

5 A. Right. That's correct.

6 Q. And again, the adjustments you had to make for
7 purposes of appraisal, is that -- are adjustments
8 something that are unusual and unexpected in
9 appraisals?

10 A. No, sir. You make adjustments because no two
11 parcels are typically the exact same. Occasionally
12 you'll have a piece across the street same size and
13 same everything else, and you won't have to make
14 adjustment. But in good times you usually have to
15 make a time adjustment. So, you know, if the sale
16 occurred a year ago, you'd want to make an
17 adjustment. And during the past recession you
18 might make a negative adjustment instead of
19 positive. But typically you have to make
20 adjustments. If you don't make adjustments, then
21 they would be totally misleading.

22 Q. Okay. Would the fact that an appraisal has
23 adjustments in it somehow make it less trustworthy?

24 A. No, sir. I think you -- if you didn't have
25 adjustments, it would make it -- it would be.

1 obvious that there's something wrong. You have to
2 make adjustments because there are differences.
3 And in this one the best example would be the --
4 the -- the power line. There's a -- I call it
5 utility for the use of the property. And you have
6 to make that utility adjustment. If you paid, you
7 know, for the entire length tract with that utility
8 line, you're not getting a hundred percent use of
9 11.29 acres. And as I mentioned earlier, my little
10 four acres in the front, and that makes -- you
11 know, you could buy this tract and put developments
12 on the front and not have to use the back. It's --
13 and I thought about that when I started the
14 appraisal. But it's not 11.29 acres of useable
15 land.

16 Q. But the value of the land is what you have
17 established?

18 A. Yes, sir, I have. And it's 11.29 acres times
19 \$28,000 an acre. It's \$316,120. And we round that
20 to \$315,000.

21 Q. Nothing further at this time, Your Honor.

22 MR. EVANS: Last question, Your Honor.

23 REEXAMINATION BY MR. EVANS:

24 Q. Mr. Rosen, regardless of what was on these
25 properties, this chart you've got on page 43, those

1 are actual sales prices, correct?

2 A. Yes, sir. The first line is the actual sales
3 price. And then size and then sales price per
4 acre.

5 Q. All right. So the sales price per acre is
6 accurate. And sale one is \$392,000 for an acre,
7 correct?

8 A. Yes, per -- yeah, that's what it sold for.

9 Q. Okay. And \$270,000 an acre for parcel two,
10 correct?

11 A. Yes, sir.

12 Q. And this property that we're here about today was
13 under contract for what, \$25,000 an acre?

14 A. I haven't calculated. I might can calculate. But
15 that may be correct.

16 Q. Okay, that's all I have.

17 MR. BULLARD: Nothing further, Your Honor.

18 THE COURT: All right, you can step down.

19 MR. BULLARD: No further witnesses from the defendants.

20 THE COURT: All right. Resting?

21 MR. BULLARD: Yes.

22 THE COURT: Okay. Thank you.

23 MR. BULLARD: May I reopen my case for just a moment?

24 THE COURT: I understood that to be a pause. Yes, sir.

25 MR. BULLARD: Okay. I'd like to move Mr. Rosen's

1 appraisal into evidence.

2 THE COURT: Mr. Evans?

3 MR. EVANS: No objection.

4 THE COURT: Without objection. That will be Number 2.

5 (Defendant's Exhibit Number 2

6 Marked)

7 MR. BULLARD: I don't have any further witnesses. And I
8 do rest.

9 THE COURT: Anything further from plaintiff or
10 defendant?

11 MR. BULLARD: We'll renew our motion for summary
12 judgment and directed verdict and involuntary non-
13 suit.

14 THE COURT: All right. Thank you. Anything?

15 MR. EVANS: Your Honor, nothing -- yeah, Your Honor,
16 we've got one brief matter in rebuttal. I'd like
17 to call Mr. Query back to the stand.

18 THE COURT: All right. As a rebuttal witness?

19 MR. EVANS: Reply.

20 MR. BULLARD: I don't know if the same witness can be
21 brought in reply that's already testified in a case
22 in chief. So I would object to him being called
23 subject to Your Honor's --

24 MR. EVANS: It's in response, Your Honor, to a brand new
25 matter of -- being argued by defense counsel. It's

1 on the impossibility of performance argument and
2 it's very brief.

3 MR. BULLARD: I examined him on that issue, asked him
4 about whether the -- the lien was going to remain,
5 and he answered questions on it and was subject to
6 redirect at that time.

7 THE COURT: I think he's correct. He questioned him
8 about that.

9 MR. EVANS: Correct, Your Honor.

10 THE COURT: All right. Anything further?

11 MR. BULLARD: No, sir, Your Honor.

12 THE COURT: All right. I'm going to -- I want you all
13 to -- these are the things I want you to address in
14 your memos. If I -- if I leave something out in my
15 questions -- in my memo questions, I'm not offended
16 if, after you get a chance to go back and this all
17 soaks in, for you to say, "You were also going to
18 address issue A, B or C, you forgot about those."
19 Just copy the other side. Because we -- there's a
20 lot of issues. A lot of things to go around.

21 MR. BULLARD: Did you want us to -- copy the other side,
22 do you mean with the memo or prior to addressing it
23 in the memo, let the other side know we're going to
24 address it?

25 THE COURT: Yes. If there's additional issues after I

1 go over what I want you to do, anything you --

2 anything you're going to submit, I would prefer

3 that you copy each side with it.

4 MR. BULLARD: And tell them that we're going to address

5 this issue before we submit the memo?

6 THE COURT: Yeah.

7 MR. BULLARD: I've got you. All right. I just wanted

8 to make sure.

9 THE COURT: So everybody will have a chance to respond

10 to it. All right. The first thing I want you to

11 do is I want you to do a time line. All right?

12 This is specific time line of the negotiations that

13 say these are the parties involved, these were the

14 documents signed. Because there was a lot of

15 questions back and forth about who was present, who

16 wasn't present, which -- which exhibit number it

17 was. But just do like a spreadsheet on that. All

18 right. The second thing is that we are now -- we

19 are -- we are basically at a contract dispute at

20 this point that's been argued. As you all know,

21 there are basic elements in a contract. You have

22 to have offer, acceptance, consideration, and

23 you've got to have a meeting of the minds. So what

24 I want you to address in that first issue is

25 specifically the meeting of the minds issue. We've

1 got a seller. We've got -- as I understood the
2 testimony, we've got a real estate agent who was
3 only the agent of the seller. He was not the agent
4 of any of the defendants. We then have the two
5 defendants and the third person who didn't testify
6 today. We also have an attorney who did not
7 testify today, but there is a closing file. What I
8 want to know specifically is with Mr. -- hold on a
9 second. And if I get these names wrong, I
10 apologize. Someone correct me. As I understand
11 the testimony, Mr. Castrejon was the one who
12 approached the realtor. The realtor said, "All I
13 did was talk with Castrejon." Castrejon said,
14 "Sometime talked back with the banker, got stuff to
15 the banker." Castrejon never spoke I don't think
16 directly to Query, but he did talk to Query's real
17 estate agent. So the meeting of the minds. Now, I
18 want to know how we have a binding contract with
19 meetings of the mind with Mr. Lozano. Because as I
20 understand the -- the summary judgment motion and
21 questions of fact and all that, the basis -- the
22 main basis for that was you have a contract where
23 Mr. Lozano signed as a purchaser. I mean, it's
24 clear his name's under there as purchaser. He's
25 initialed each page. What I understand the

1 testimony to be was -- is Query and Lozano never
2 talked. I'm not entirely sure there was any
3 testimony from the real estate agent, who was his
4 agent, that he ever talked with Mr. Lozano. It
5 seemed that the contract discussion -- that the
6 testimony from the real estate agent was the
7 contract went out -- went out from me with Mr.
8 Castrejon who then took it to Mr. Lozano. And
9 that's where Mr. Lozano testified today and Mr.
10 Castrejon testified, "All we thought we were doing
11 was signing as a witness." He said, "All I thought
12 I was doing was witness." "All he was doing was
13 witness. He's not part of it. He didn't write a
14 check." I don't know if there was any evidence
15 that said during the bank application process he
16 was part of the BB&T Bank application process. I
17 don't know what the HUD statement said, because
18 there was testimony that said the HUD's prepared.
19 I don't know if the HUD was prepared in his name as
20 a purchaser. I don't know if the deed was prepared
21 in his name as a purchaser. I don't know if the
22 survey was. Because as all that was being
23 introduced, I never saw any of it. All right. So
24 just give me a copy of that stuff when you write
25 your briefs. All right. So what I want to know is

1 -- is assuming -- assuming the trier of facts says
2 I believe everything he says because there's nobody
3 to contradict him, is it enough that he signed the
4 contract? Is that enough to bind him to the
5 contract? There's a law that says you're supposed
6 to understand if you sign something. And if you
7 sign something by mistake, you're stuck with what
8 you signed. Does that overcome or does that trump
9 the lot of cases that says you've got to have a
10 meetings of the mind? Because I'm trying to figure
11 out we've got a signed contract, but it doesn't
12 seem like Mr. Lozano was involved in anything to do
13 with it. He may have been involved in stuff
14 before, but I didn't hear any testimony or any
15 proof that he was involved in this one. So I want
16 to know other than the signing of the contract and
17 all of that. So I want to hear specific facts that
18 lead to offer and acceptance, meeting of the mind
19 in the contract for Mr. Query and Mr. Lozano. Did
20 I get the names right? Correct. Okay. All right.
21 The next point -- all right. One of the arguments
22 that defendant has made was that they can't enforce
23 this contract for two reasons; there was a
24 condition precedent and it expired. Now, I
25 understand that that is general contract law. But

1 what I also know is, and I'd like you all's
2 research on this, is generally a condition
3 precedent has to have something to measure in time
4 -- it has to have something you have to hit or
5 shoot for. For example, it's usually 80 percent
6 financing or 90 percent financing, no longer than
7 this, no longer than that. It just -- it just
8 can't say financing. Because you can get some kind
9 of financing. It's the reverse of impossibility.
10 So I want to know why, if it's blank, that's a
11 failed condition precedent. I also thought I
12 understood the argument to be that the contract
13 expired. And I thought that there was -- that if
14 it expired, you can't do an oral modification to
15 keep it going on. And I thought what I heard from
16 plaintiff at the very end of the case was that the
17 blank on the contract that says contract expires,
18 there's nothing written in there. All right. Did
19 I understand that correctly?

20 MR. BULLARD: I don't think so.

21 THE COURT: All right. Wait a minute. I've got one of
22 you shaking your head no, and one of you shaking
23 your head yes. So I would like to have that
24 clarified. Because I understood it was a time of
25 the essence. There was a date that said this

1 expires this date.

2 MR. BULLARD: I think what Mr. Evans was asking him
3 about was when does the offer expire. There was no
4 expiration on the offer. But the contract in
5 section 11 says that it was to be closed on or
6 before April the 25th or 28th. It's hard to read
7 the actual digit, 2008.

8 THE COURT: Okay. So -- so it's the closing date. And
9 then that goes on to say time is of the essence
10 after that?

11 MR. BULLARD: Yes, there is a time of the essence
12 clause.

13 THE COURT: Okay. Just address that issue again so I'm
14 not mistaken on that: All right. The next issue
15 is -- and this is -- this is my third and fourth
16 issue. Defendant produced the case that -- and I
17 may be paraphrasing this wrong. Basically it says
18 if you have a parol -- parol modification of a
19 contract and it's not in writing, you can't get
20 damages. You've got to go back in equity. And the
21 case says okay, go back and dismiss it and they've
22 got leave to re-plea. And again I'm just -- I'm
23 paraphrasing that. I'm probably oversimplifying
24 it. So what I want to know is how the contract was
25 modified. I want a clear argument from both sides

1 about whether it was -- it was modified simply
2 parol, if there were writings that constitute --
3 you know, there's a lot of things that can be
4 writings. Were there writings -- proper writings
5 that constituted a written modification of the
6 contract, or is it a parol plus detrimental
7 reliance or acting on it? So I want you to define
8 clearly your legal theory of why it was or wasn't
9 modified and then list the facts to deal with it.
10 Because if it's modified, we're not under -- you
11 know, we're not under that case. You're not under
12 a parol modification. You're under the contract
13 got modified. You know, contracts get changed all
14 the time. But if you are, then you run into this
15 case. And then you run into the second part that
16 defendant has argued that says even if you get
17 there, they dismiss with prejudice, they can't get
18 there from here. And I want to hear argument on
19 both of those -- on both sides of that. I also --
20 and this is -- we touched on this a little before
21 in the -- in the earlier meetings of the mind.
22 We've had discussions about agents and authority
23 and who could say what and what a real estate agent
24 -- a real estate attorney can do, what a real
25 estate agent can do, who had a right to rely on

1 that. Again, I -- I'd like that issue addressed.
2 Because as I understand the structure in this case
3 was the seller had a real estate agent who he
4 signed a listing agreement with. The real estate
5 agent did not have a dual contract with anybody.
6 He was just representing the seller. The sellers,
7 however had a real estate attorney who was
8 operating on their behalf. And it appears that
9 there was a lot of discussions between seller and
10 real estate attorney and purchasers with real
11 estate agent and then back. So I want to -- I want
12 the authority issue addressed as to who had
13 authority to do what. And you'll kind of bleed
14 through a little bit of that in your meetings of
15 the mind. Because can you have a meeting of the
16 mind through an agent? So I want you to address
17 that issue. Now, the appraisal battle is standard
18 stuff. It's standard appraisal questions. I mean,
19 both of them are qualified. They had comps. The
20 arguments were -- they were fairly standard
21 arguments for appraisal. One of them says, you
22 know, the size of the tract is the thing. One of
23 them says the location to the closer where you're
24 in is something to take into consideration more.
25 One of them says, you know, it's 11 acres versus

1 three acres. Another one says well, it's really
2 not 11 acres versus three acres because it's
3 useable stuff. It's -- you know, you've got to
4 discount the power line, you've got to discount the
5 back and utilities, and you're really doing useable
6 stuff versus big stuff. So I don't think there's
7 any real issues with either of the appraisers.
8 It's just standard appraisal questions. So just
9 when you address our valuation issue on it, just do
10 your normal stuff. I mean -- I mean, my
11 appraiser's better fits because A, B, C, D, E.
12 Both of them did the standard appraisal. Both of
13 them were qualified. It's just why my three comps
14 are better than the other person's three comps or
15 why the adjustments were high or low. It was
16 standard -- it's -- it's just standard appraisal
17 stuff. There was nothing unusual about any of
18 that. Can you all think of any other -- oh, again
19 good discussion of damages again in the -- I don't
20 know if they've updated this. I got it in 2004, so
21 it's almost ten years old. It's South Carolina
22 Damages, Volume 2 by Terry Richardson and Daniel
23 Haltiwanger. This is the South Carolina Bar. In
24 Chapter 15 there is a specific contract section for
25 land sale contracts as opposed to just contracts or

1 different contracts. But real estate contracts.
2 It goes through a pretty good theory from all the
3 theories of recovery. And also it talks about
4 damages and what you can and can't get and how to
5 formulate it. So that is what I'll be reading, and
6 anything else you all would like to submit. Can
7 you think of any other glaring -- glaring things I
8 left out?

9 MR. EVANS: A whole lot, Your Honor. No, I'm just
10 kidding. That sounded pretty comprehensive.

11 THE COURT: I mean, you all have got to understand, like
12 I said earlier, I've got a Marine Corps Colonel for
13 a dad, and I've got several offensive coordinators
14 in my face and questioning me. I am not offended
15 by a film review or a question or permission to
16 speak frankly. Because we all want to get this as
17 right as we can. So if there's something today you
18 think I've left out, stand up and tell me. If you
19 go back and after it sinks in a little bit, just
20 send an email saying, you know, we really didn't --
21 you really didn't talk about this, I want to
22 address this in my memo, I'm putting the other side
23 on notice that I'm addressing this. And we'll
24 address this and the issue. Now, Madam Court
25 Reporter, this is the procedure I normally do. If

1 you will -- when you finish the transcript, if you
2 will mail the original to me. And if you can do it
3 email with -- if you do like the condensed versions
4 and scan them in and send an email like that, if
5 you can send that, that will also be nice. Also,
6 if -- when you send that letter to me, courtesy
7 copy the attorneys and say, Dear World, pursuant to
8 the judge's request, I've delivered the original
9 transcript with all the exhibits to the judge
10 because he says he's going to file it. And then
11 copy them. And that starts their 30 days to order
12 it from you and submit their memos. Now, if you
13 get like super hyper busy in the next three days
14 and get it done, which would make the memos due
15 like on Christmas Eve or something like that, you
16 guys just use some common sense and send me an
17 email saying, you know, that was a pretty nice idea
18 but for the fact it's Thanksgiving, Christmas. Can
19 we -- we've talked. We'd both like the memos due
20 on this date. And I'm fine with that. I just need
21 a time so we don't -- it doesn't get put on the
22 back burner and we keep it moving forward. So if
23 there's any issue with that, you guys talk, resolve
24 it. If you can't, contact me. Anything else you
25 all can think of?

1 MR. BULLARD: Yeah. The issue we raised about
2 impossibility of performance, the encumbrance being
3 left on the property.

4 THE COURT: Yes. Absolutely. I need to put that in.
5 Absolutely. All right. Impossibility -- and
6 again, I haven't thought about that. But when I
7 hear impossibility for contract, all I can remember
8 is the contract case in law school where there was
9 a bunch of rock and the guy came back and said,
10 "It's impossible. I don't have to buy this.. It's
11 impossible." And the court said, "No, it ain't
12 impossible. It's real expensive. But it ain't
13 impossible. Go do it." So I guess what I'm trying
14 to figure out is, is what you're saying is it's not
15 impossible to do a contract with a first on it
16 because that happens in contracts for deeds and
17 things like that all the time. But it conflicts
18 with other provisions that says we get -- we get it
19 clear -- free and clear of encumbrances. Is that
20 what that argument is?

21 MR. BULLARD: Yes, sir. And maybe I shouldn't use
22 impossibility. Maybe that's -- it has a legal
23 definition that does not fit the definition of what
24 I'm arguing. I think you understand it. The
25 contract says I'm going to convey title that is

1 unencumbered. And the deal that was struck in
2 there according to plaintiffs is -- was not going
3 to meet that condition.

4 THE COURT: And that's a valid point. Because if -- if
5 you -- well, anyway, you all make your arguments on
6 that. And I'll -- I'll address it back if I want
7 additional authority on it. But it's -- it's not
8 impossible. But there is a contract provision that
9 says you give me, you know, clean property.
10 Because under this scenario if you take the money
11 and run off, they lose their property. Not for
12 anything they've done. Just because you haven't
13 applied the -- and that happens -- that happens
14 too. So anyway, you all address that. All right.
15 Can you all think of anything else?

16 MR. BULLARD: I can't right now.

17 MR. EVANS: No, Your Honor.

18 MR. BULLARD: I think we've got it. If I think of
19 something, I'll send an email.

20 THE COURT: Okay. All right. Then I think we're
21 concluded. I will just ask the attorneys to hang
22 around and make sure Madam Court Reporter gets the
23 exhibits. I believe we have two defendant exhibits
24 and we have 11 plaintiff. Is that correct?

25 COURT REPORTER: Yes.

1 MR. BULLARD: I think that is.

2 THE COURT: All right. Let's just make sure that's all
3 done. And -- and if -- if you all are going to
4 make an argument, then you're referring to
5 exhibits, stick -- stick copies of that in with it
6 because I generally don't like to open up the
7 sealed transcript unless I have to. But if there's
8 stuff in, for example, the closing attorney's file
9 that you want me to see or there's stuff in the
10 appraisal, the picture or stuff in the contract,
11 you know, make me a copy of it. Because I don't
12 have any exhibits. I've got nothing. I mean, it
13 would probably be helpful when I read your memos to
14 actually have the exhibits you're discussing.

15 MR. BULLARD: And I just thought of something else, and
16 I don't know how you would like us to address it.
17 We made an objection to one page of one of the
18 exhibits. I don't remember what number it was
19 right now. Because I don't recall receiving it in
20 discovery. How do you want us to address that?

21 THE COURT: Well, after -- I mean, it would just seem to
22 me an reasonable way to do that would be for both
23 of you to look at your files and see if, you know,
24 the Bates numbered stuff that was in there being
25 sent and if received, and if you say, "I didn't get

1 it," and they say, "We didn't send it," then it
2 doesn't come in unless there's some argument why it
3 ought to come in when you asked for it. So I'll
4 certainly listen to that. But if it wasn't
5 produced, then generally it doesn't come in unless
6 there is reason why it should.

7 MR. EVANS: Your Honor, just briefly on that point, I
8 believe you're talking about the third page of
9 Exhibit 11 -- Plaintiff's Exhibit 11.

10 THE COURT: Right.

11 MR. EVANS: I cannot represent to The Court that we
12 produced a copy of that page to defense counsel.
13 But at the same time that we were requesting Mr.
14 Dawson to send us the file -- the closing file,
15 defense counsel requested the file from ReMax. And
16 it was my understanding we were requesting the same
17 file.

18 THE COURT: All right. Okay. I'm going to let you all
19 argue that. What I'm understanding is Mr.
20 Bullard's not denying that. What he's saying is,
21 "I sent something that said show me everything
22 you're going to introduce at trial," and it wasn't
23 in there. That's a separate thing from saying, "I
24 had a duty to do this." And you clearly didn't
25 because it was from a third party. I think what

1 his point is when I said show me everything you're
2 showing me at trial, it wasn't in there. And you
3 all can -- you all address that. But then if it's
4 not, then, Mr. Bullard, you need to obviously say,
5 "It wasn't in there. They don't have a right to
6 introduce it." So you can't draw any inference or
7 facts from this that this file was from that piece
8 of evidence and that questioning." Because you did
9 do questioning, you know, of him as if it had come
10 in. So just look at the record. Mr. Evans, you
11 could say it does come in. All right? And this is
12 the reason why it does come in. I mean, there's a
13 law about, you know, whether you exclude a witness
14 and the factors you have to make a finding to say
15 if you exclude a witness whose not going to list
16 it, it would seem to me there's probably a law that
17 says if I didn't do a document, maybe the same
18 standard. So there's a five-factor test on that
19 for exclusion of witness.

20 MR. BULLARD: Does it matter to you one way or the other
21 whether it's in the form of a proposed order or
22 strictly a memo?

23 THE COURT: I would do a memo. Because what I normally
24 do is when I get a memo, then I'm going to send out
25 a decision memorandum that says these are my

1 findings -- do an order of findings of fact,
2 address this legal stuff. So, you know, so that
3 way we all get two bites of the apple to draft it
4 as well as we can. All right. Anything further?

5 MR. EVANS: Nothing from the plaintiff.

6 MR. BULLARD: Nothing from the defense, Your Honor.

7 THE COURT: All right. Thank you all very much. I
8 appreciate your decorum and professionalism. We
9 are off the record.

10 (Whereupon, there being nothing
11 further, the hearing was concluded
12 at 4:12 p.m.)

13 (*This transcript may contain quoted material.
14 Such material is reproduced as read or quoted
15 by the speaker.)

16 (**Certificate accompanies sealed original only.)

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LAND, LOTS AND ACREAGE OFFER TO PURCHASE

(Standard Form of The Greater Columbia Association of REALTORS®, Rev. 01/05.) This form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®, REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics and Standards of Practice.

BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

THE [] BUYER [] SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. DATE A contract to purchase is offered this 20 day of March, 2008
by Ladislav Castrejan, Purchaser(s)
to Grady Walbrady & Query, Jr., Seller(s)

2. PROPERTY DESCRIPTION Subject to terms and conditions herein, Seller agrees to sell and Purchaser agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision None
Address Hwy 321
Tax Map # 010100-02-017 City Gaston Zip 29053
County of Lexington State of South Carolina

3. PRICE The sales price is \$ 275,000 330,000 302,500 L.C. A.L. to be paid as follows:
A. \$ 2,000 Earnest Money paid by [] cash, [] check, [] other
held in trust by Remax Metro Associates
B. \$ 48,000 Balance of down payment at closing is to be in the form of a cashless check or certified funds.
C. \$ 252,500 Loan amount (type marked below) to be obtained by Purchaser.

4. FINANCING CONVENTIONAL _____ SELLER _____ CASH (NO FINANCING REQUIRED) _____ OTHER TERMS _____

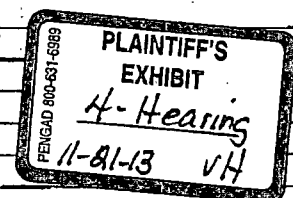
A. If Seller financing is included in the financing of this property, Selling Broker and/or Listing Broker and their Agents in this transaction make no representation as to the credit-worthiness of Purchaser and suggest that Seller determine for himself that Purchaser's credit is satisfactory.

B. In a cash transaction, Purchaser agrees to provide Seller or Seller's agent, within ten (10) business days of acceptance of this Contract, written verification of sufficient and available funds for the specified date of closing.

5. CLOSING COSTS Purchaser's closing costs shall be paid by Purchaser. Purchaser's prepaid items shall be paid by Purchaser.
DISCOUNT POINTS Discount points (if any) shall be paid by Purchaser. If Seller pays closing costs, prepaid items, and or discount points on behalf of Purchaser, Seller will pay costs of Purchaser, not to exceed \$ 0.

6. LOAN PROCESSING APPLICATION FINANCING Purchaser agrees to apply for financing as stated above, from the institution of his choice, and agrees to provide Seller, within five (5) business days from the date of acceptance, confirmation from Lender that application has been made and funds advanced for credit report and appraisal. Purchaser to furnish Lender any documentation required for the processing of this loan in a timely manner. Purchaser's failure to apply as required above shall constitute a default under this Contract. Purchaser further hereby gives permission to Lender to disclose pertinent information concerning the Purchaser's loan to the Listing or Selling Brokers or Agents. If loan is rejected by initial lender, Purchaser or Purchaser's Agent must notify the Listing Agent immediately and Seller shall then have the option to void Contract. Contract is contingent upon above financing. If loan cannot be obtained, earnest money will be refunded to Purchaser.

7. ADDITIONAL CONTINGENCIES, CONDITIONS



8. SURVEY, TITLE EXAMINATION, INSURANCE

The Listing and Selling Brokers and their Agents recommend that Purchaser have a survey of the subject property prepared. A survey indicates that property does not meet the following minimum specifications 11 Acres (dimension square feet, acres). Purchaser may elect to terminate the Contract by notifying Seller or Seller's Agent in writing of Purchase Intent to terminate or Purchaser shall complete this sale according to the terms and conditions of this Contract. The Listing and Selling Brokers and their Agents recommended that Purchaser select an attorney to examine the title to the property, and obtain all appropriate insurance coverage, including that required by the lender.

9. CONDITION OF PROPERTY

The Seller shall not remove any timber, dirt, minerals or otherwise affect the condition of the property after the signing of the Contract. All timber, dirt, minerals, etc., shall remain with the property and be a part of the property and be transferred to Purchaser. The Seller shall not bring any trash, refuse, debris, medical or hazardous waste, or other improper materials up to the property. In the event any condemnation proceeding is brought by any governmental authority, agency, utility, etc., prior to the closing, then Purchaser may elect to rescind this Contract and receive a refund of the earnest money deposit.

- A. The Seller represents that the property is [] or is not [☒] located in a flood zone.
 B. Seller represents that the property is [] or is not [☒] subject to a mandatory association fee (i.e., homeowner's association regime or otherwise). If property is subject to a mandatory fee, the fee is \$ _____ per _____ and shall be current at closing.
 C. Seller represents that the property is [] or is not [☒] subject to a special assessment of any governing body, including but not limited to a homeowner's association/regime, utility or otherwise. If the property is subject to a special assessment the assessment has [] or has not [] been paid. If assessment has not been paid, it shall be paid by [] Seller in the amount of \$ _____ and/or [] Purchaser in the amount of \$ _____.
 D. If the property may be connected to public/community water or sewer systems, the tap fees of \$ Unknown shall be paid by _____.
 E. Seller represents that the property is [] or is not [☒] subject to a current lease or property management agreement. If agreements are in effect, Purchaser shall honor them. Agreements shall be attached to and made a part of this Contract.

10. WELL, SEPTIC SYSTEMS, ENVIRONMENTAL INSPECTIONS

All required reports and certifications concerning environmental matters, wells, septic systems, wetlands, hazardous materials or a special study area shall be done by professional inspectors or government authority qualified in the appropriate field. Such reports or studies shall be done at the expense of Purchaser and shall be completed within twenty (20) business days after acceptance of this Contract by both parties. If Seller or Seller's agent does not receive Purchaser's written response to the inspections or studies and a copy of such reports within the same twenty (20) business day period, this section is null and void in its entirety.

- A. If Purchaser finds the results of said reports unacceptable, Purchaser may elect to terminate this Contract by notifying Seller in writing of Purchaser's Intent. Should Purchaser terminate this Contract, Seller agrees to immediately sign all documents necessary for the release of this Contract and refund of Purchaser's earnest money.
 B. If Purchaser elects to proceed with this sale, Purchaser has the option of accepting the property in current condition referenced by the reports or Purchaser must notify Seller or Seller's agent by signed addendum along with a copy of the reports specifying the defects Purchaser expects Seller to remedy.
 C. Seller may agree by written addendum within five (5) business days of written notification to remedy, repair or treat a defects or conditions at the Seller's expense. In return Purchaser agrees to complete this sale according to the terms of the Contract. Otherwise, Seller may give written notice to terminate this Contract within five (5) business days. Purchaser shall have the right to accept the property with whatever defects exist and complete this sale according to the terms and conditions of this Contract. To exercise this right, Purchaser must provide Seller or Seller's agent with written notice of such intention, within two (2) business days after receipt of Seller's notice to terminate, or this Contract is void.
 Purchaser's failure to notify Seller or Seller's agent in writing of any problem found by said reports within the time limit herein provided, or Purchaser's acceptance of the deed at closing, shall constitute full acceptance of the condition of the property and a waiver of Purchaser's right to object to any defects found by said reports.

11. CONVEYANCE DATE OF CLOSING

Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a proper statutory warranty deed free of encumbrances, except as herein stated. All statutory deed recording fees shall be the responsibility of Seller. The deed shall be prepared in the name of Industria Construtora and delivered to the stipulated place of closing. This transaction shall be closed on or before April 25th 2008.

12. POSSESSION

Absent a written agreement to the contrary, Seller shall give Purchaser possession at closing, subject to tenant's rights property management agreements which must be disclosed at time of Contract. Seller shall give Purchaser access to the herein described property for the purpose of a final inspection within twenty-four (24) hours prior to closing.

13. EXTENSION OF AGREEMENT

Time is of the essence. If Purchaser or Purchaser's agent has provided written loan commitment but not closed within the stipulated time limit of this Contract, both parties agree to extend this Contract for a period not to exceed ten (10) calendar days from the original closing date. In cash transaction, if terms and conditions of Section 4.B. have been met, both parties agree to extend the Contract for a period not to exceed ten (10) calendar days from the original closing date.

14. BROKERAGE FEE

All real estate brokerage fees as specified in the Listing Agreement or in the Buyer's Brokerage Representation Agreement if applicable, are earned upon the acceptance of this offer and are due and payable at the time of closing, subject to a contingencies specified herein.

15. EARNEST MONEY

Broker does not guarantee payment of check or checks accepted as earnest money. Earnest money is to be promptly deposited in Broker's escrow account, upon acceptance by both parties of this Contract. In the event of any action wherein Broker is made a party by virtue of acting as escrow agent, or in any action wherein the funds, held in escrow by Broker, are subject to an action in the nature of interpleader, and Broker is made a party, Broker shall be entitled to recover reasonable attorney's fees and costs, the same to be charged and assessed against Purchaser or Seller or both as the court may decide. Earnest money shall not be refunded for any reason until the check has cleared the financial institution on which it was written.

"The South Carolina Real Estate Practices Act allows the Broker holding the earnest money to deposit it into interest bearing account. Purchaser agrees to and understands that he has been informed of his right to ownership of the interest and relinquishes to the Broker by this written agreement said right of ownership. The earnest money so noted _____ will ☒ will not be deposited into an interest bearing account with the interest accruing to the benefit of the Broker."

16. ADJUSTMENTS

Taxes, water, sewer charges, fuel oil, propane, electricity, natural gas, rents when applicable, and all other assessable including homeowner's association fees, regime fees or the like shall be adjusted as of the date of closing. Tax prorated pursuant to this Contract are to be based on the tax information available on the date of closing, and are to be prorated that basis unless otherwise stipulated in this Contract. Any increase or decrease of taxes shall be subject to an adjustment by Purchaser and/or Seller when the current year's taxes are determined.

17. ROLLBACK TAXES

If applicable, rollback taxes shall be the responsibility of Seller

18. NON-RESIDENT TAXES

Seller agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

19. FIRE OR CASUALTY

In case this property is damaged wholly or partially by fire or other casualty prior to delivery of deed, Purchaser or Seller shall have the right for ten (10) business days after the notice of such damage to terminate this Contract. Upon such termination, earnest money deposit of Purchaser shall be returned to Purchaser and neither party shall have any further rights hereunder. If neither Purchaser nor Seller elects to terminate the Contract, the parties shall proceed according to the terms of this Contract.

20. DEFAULT

If Purchaser shall default under this Contract, Seller shall have the option of suing for damages or rescinding this Contract. In the event the Contract is rescinded, one-half of the earnest money shall then be paid to the Broker(s), not to exceed commission due such Broker, and the remaining balance of earnest money shall be paid to Seller. Upon default by Seller, Purchaser shall have the option of suing for damages or specific performance, or rescinding this Contract. Upon default by Seller, if Purchaser elects to rescind this Contract, he will be refunded all sums paid hereunder and in addition shall be reimbursed by the Seller for actual costs incurred including but not limited to credit report, appraisal fee, survey and cost of title examination. In any action to enforce the provisions of this Contract, the prevailing party and Broker(s) shall be entitled to the award of their costs, including reasonable attorney's fees.

21. MEDIATION

Any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relation to this Contract, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Purchaser, Seller or any real estate Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Contract pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any Contract signed by the parties pursuant to the mediation conference shall be binding. See South Carolina Code Ann. Section 15-48-10, et. seq. shall not apply to this Contract.

22. ENTIRE CONTRACT AND BINDING CONTRACT

The parties agree that this written Contract expresses the entire agreement between the parties, and that there is no oral agreement, oral or otherwise, modifying the terms hereunder and that this Contract shall be binding on both parties, their principals, heirs, personal representatives, successors and assigns as state law permits.

23. EXPIRATION OF OFFER

This offer from Purchaser shall be withdrawn at _____ o'clock _____ .m (ET) on _____ unless accepted or countered by Seller in written form prior to such time.

24. FAX

Both Purchaser and Seller agree that receipt of a signed contract by facsimile (FAX) will be the same as receipt of an original signed contract.

25. SURVIVAL

If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing it shall survive the closing and remain binding upon and for the parties hereto until fully observed, kept or performed.

26. DEFINITIONS

In this Contract, a single business day is defined as a twenty-four (24) hour period, beginning at the time of acceptance of Contract, excluding Saturdays, Sundays and South Carolina legal holidays.

27. HUD/CLOSING STATEMENT RELEASE

Seller and Purchaser authorize their respective attorneys and the settlement agent to furnish to listing Broker and Seller Broker copies of the HUD-1 settlement statement for the transaction.

28. DISCLAIMER

The parties acknowledge that the Listing and Selling Broker(s) and their Agent(s): (A) Give no warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvements, services or systems, thereto, including but not limited to termite damage, roof, basement, appliances, heating and conditioning systems, plumbing, sewage/septic, electrical systems, or to the structure; (B) Give no warranty, express or implied, concerning the condition of the property, any matters which would be reflected by a current survey of property, or the accuracy of the published square footage; (C) Give no warranty, express or implied, as to title; (D) Give no warranty, express or implied, as to the fitness for a particular purpose of the property or improvements thereto; (E) Give no warranty, express or implied, that the property being purchased is in compliance with necessary zoning ordinances and restrictions; (F) Give no warranty, express or implied, as to projected income, value or other possible benefits to the Purchaser.

This is a legally binding contract. Purchaser and Seller should seek legal advice if the contents are not understood. Both Purchaser and Seller acknowledge the receipt of a copy of this Contract. Signatures below signify acceptance of all terms and conditions stated herein.

IN WITNESS THEREOF, this Contract has been duly executed by the parties hereto.

[Signature]
Witness as to Purchaser

LADISLAW CASTRONE
Purchaser

3/27/08
Date

SSN

[Signature]
Witness as to Purchaser

Alberto Torgano
Purchaser

3/27/08
Date

SSN

Witness as to Seller

Seller

3/27/08
Date

SSN

Witness as to Seller

Seller

Date

SSN

Listing Agent

Office

Telephone Number

Selling Agent

Office

Telephone Number

FINAL CONTRACT ACCEPTED BY BOTH PARTIES AT _____ O'CLOCK _____ .M. (ET) ON _____

ROA 273

Mark Evans

From: Mark Evans
Sent: Tuesday, November 19, 2013 11:27 AM
To: 'Allen Bullard'
Subject: RE: Query v Castrejon

Allen,

We agree to this stipulation. Thank you.

Mark

From: Allen Bullard [<mailto:abullard@montgomerywillard.com>]
Sent: Monday, November 18, 2013 4:31 PM
To: Mark Evans
Subject: RE: Query v Castrejon

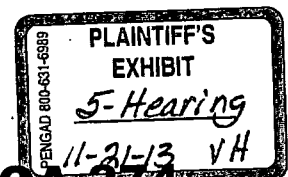
Sorry Mark, I've been working on some other things.

I would be willing to enter into a stipulation such as the following as to the documents designated Castrejon 1 through Castrejon 191:

"The parties agree and stipulate that the testimony of the custodian or other qualified witness is not necessary as a condition precedent to admissibility at trial pursuant to the requirements of the South Carolina Rules of Evidence nor to authenticate such documents pursuant to the requirements of S.C. Evidence Rule 901. The parties reserve the right to object to the introduction of any of these documents on other evidentiary grounds."

As an aside, the documents 1-176 were from Jefcoat's file. The rest were from Re/Max.

Allen Bullard
Montgomery Willard, LLC
1002 Calhoun Street (29201)
Post Office Box 11886
Columbia, South Carolina 29211
(803) 779-3500
(803) 799-2755 (fax)



ROA 274



James Island Office
147 Wappoo Creek Drive
Wappoo Centre, Suite 202
Charleston, SC 29412
(843) 762-6640
(fax) 762-1500 (fax)

WALTER V. EVANS
Attorney and Counsellor at Law

Summerville Office
107 West 5th North Street
Post Office Box 821
Summerville, SC 29404
(843) 881-3000
(fax) (843) 881-2369

FACSIMILE COVER SHEET

TO: Sam Jefcoat
FROM: Mark Evans
DATED: 2-15-11
RE: Quas v. Castrejon
PAGES: 5

cc: Lyn Hensel - 803 254 5187



MARK V. EVANS
Attorney and Counsellor at Law

James Island Office
147 Wappoo Creek Drive
Wappoo Centre, Suite 202
Charleston, SC 29412
(843) 762-6640
(843) 762-1500 (fax)

Summerville Office
107 West 5th North Street
Post Office Box 821
Summerville, SC 29484
(843) 821-9000
(fax) (843) 681-2959

February 15, 2011

VIA FACSIMILE 803-321-3991
Sam Jeffcoat

RE: Oliver Grady Query & The Estate of Grady W. Query, by its Personal
Representative, Oliver Grady Query v. Ladislao Castrejon, Alberto Lozano and
Jesus Brito
Case number: 2010-CP-32-2038

Dear Mr. Jeffcoat:

Enclosed herewith for service upon you please find a Subpoena duces tecum
requesting closing documents regarding the referenced matter.

Please contact Mark V. Evans with any questions, comments or concerns.

I thank you for your kind assistance.

Sincerely,

Tracey O'Brien
Legal Assistant

Enclosure

cc: Lyn Hensel, Esquire (via fax 803-254-5787)

Castrejon 2

ROA 276

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
CASE NUMBER: 2010-CP-32-2038

Oliver Grady Query, and)
The Estate of Grady W. Query,)
By its Personal Representative,)
Oliver Grady Query,)

SUBPOENA DUCES TECUM

Plaintiffs,

vs.

Ladislao Castrejon, Alberto Lozano,)
and Jesus Brito,)

Defendants.

TO: Sam Jeffcoat

YOU ARE COMMANDED to appear in the above named court at the place, date and time specified below to testify in the above case.

Place of Testimony

Courtroom

Date and Time

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

Place of Deposition

Date and Time

X YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below (list documents or objects); *See attachment A*

Place

Office of Mark V. Evans, Esquire
147 Wappoo Creek Drive, Suite 202
Charleston, SC 29412

Date and Time

Monday, February 28, 2011

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

Premises

Date and Time

ANY ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF AND SHALL SET FORTH FOR EACH PERSON DESIGNATED THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

Date

Issuing Officer's Signature and Title (Attorney for Plaintiff)

Mark V. Evans

2-15-11

Issuing Officer's Name, Address and Phone Number

Mark V. Evans, Esquire
147 WAPPOO CREEK DR., SUITE 202, CHARLESTON, SC 29412
(843) 762-6640, ATTORNEY FOR PLAINTIFFS

(SEE RULE 45, SOUTH CAROLINA RULES OF CIVIL PROCEDURE, PARTS C & D ON REVENUE)

ROA 277

PROOF OF SERVICE

SERVED Sam Jeffcoat	DATE 2-15-11	PLACE 803 321 3991
SERVED ON (PRINT NAME) Sam Jeffcoat		MANNER OF SERVICE Facsimile - 803-321-3991
SERVED BY (PRINT NAME) Tracey O'Brien		TITLE Legal Assistant

DECLARATION OF SERVER

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING INFORMATION CONTAINED IN THE PROOF OF SERVICE IS TRUE AND CORRECT.

Executed on 2-15-11
Date

T. O'Brien
Signature of Server
147 Wappoo Creek Drive, Suite 202
Charleston, SC 29412
Address of Server

Rule 45 South Carolina Rules of Civil Procedure Parts (c) and (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include but is not limited to lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition hearing or trial.

(B) Subject to paragraph (d)(2) of this rule a person commanded to produce and permit inspection and copying may within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made the party serving the subpoena shall not be entitled to inspect and copy the materials or of the premises. If objection has been made, the party serving the subpoena may upon notice to the person commanded to produce move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued or regarding a subpoena commanding appearance at a deposition or production or inspection directed to a non-party the court in the county where the non-party resides is employed or regularly transacts business in person shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party or an officer, director or managing agent of a party to travel more than 30 miles from the county where that person resides, is employed or regularly transacts business in person except that subject to the provisions of clause (e)(3)(B)(iii) of this rule such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(5) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development or commercial information, or

(ii) requires disclosure of an unratified expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of

any party, or

(iii) requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expenses to travel from the county where that person resides, is employed or regularly transacts business in person.

The court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize an label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications or things not produced that is sufficient to enable the demanding party to contest the claim.

ATTACHMENT A

Any and all documents in your possession regarding the real estate closing file regarding 2008 closing between Grady Query and Ladislao Castrejon, Alberto Lozano and Jesus Brito.

Lexington County TMS # 010100-02-017