

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

RECEIVED

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SC Court of Appeals

Appellate Case No. 2014-002242

Windswept Villas III
Horizontal Property Regime,

Respondent,

v.

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

Appellant.

SECOND AMENDED RECORD ON APPEAL

Vernee C. Hancock, Esquire
SC bar No.: 15174
Post Office Box 2276
Summerville, SC 29484-2276
(843) 851-1476
(843) 851-0183
Attorney for Appellant

Katie F. Monoc, Esquire
Pratt-Thomas Walker
P.O. Drawer 22247
Charleston SC 29413-2247
(843) 727-2200
Attorney for Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

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

Defendant(s).

(511263 02244 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 09-CP-10-5799

ORDER

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2011 APR 13 PM 2:37

FILED

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

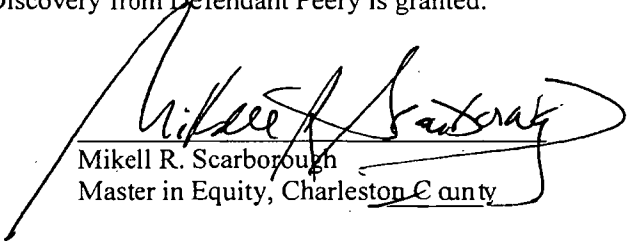
Plaintiff's Motion to Compel Discovery is granted. Defendant Peery is ordered to provide responses to Plaintiff's Interrogatories and Request for Production within ⁶⁰~~30~~ days from the date this Order is filed. If Defendant Peery fails to provide discovery responses in accordance with this Order, Plaintiff's counsel has leave to file a motion for sanctions pursuant to Rule 37, SCRPC against Defendant Peery and ask for appropriate relief, including dismissal of Defendant Peery's responsive pleading.

IT IS HEREBY ORDERED

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

IT IS SO ORDERED.

Charleston, SC
April 8, 2011


Mikell R. Scarborough
Master in Equity, Charleston County

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 09-CP-10-5799

ORDER TO BE RELIEVED AS COUNSEL

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

(511263.02244 CSG)

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

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

IT IS THEREFORE ORDERED that:

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

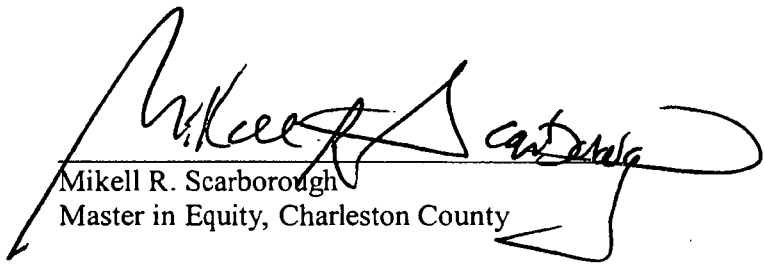
4957301

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5

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

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

IT IS SO ORDERED



Mikell R. Scarborough
Master in Equity, Charleston County

August 3, 2011

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-10-5799

Bank of AmericaElaine Devlin Peery, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Master in Equity

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

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

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge

3062

Judge Code

Date

1/24/12

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. ²⁰⁰⁹~~2008~~ CP-10-5799

Bank of America, N.A.

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

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Lydia P. Davidson

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

DISPOSITION TYPE (CHECK ONE)

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

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

☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 12(d), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other

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

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

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

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

TMS. 209-06-00-352

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

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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

CASE NO.: 2009-CP-10-5799

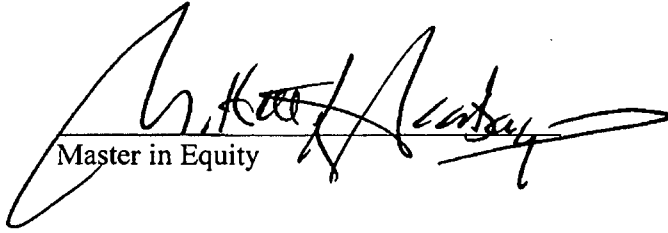
ORDER OF JUDGMENT
In Favor of Windswept Villas III
Horizontal Property Regime, Inc.

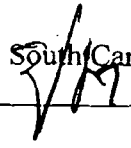
FILED
2012 MAR 29 PM 2:16
JULIE J. ARMSTRONG
CLERK OF COURT

IT APPEARING that the within matter is a foreclosure of mortgage in which Defendant, Windswept Villas III Horizontal Property Regime, Inc. brought a Crossclaim for past due assessments against Defendant Elaine Devlin Peery a/k/a Elaine D. Peery;

IT APPEARING from the Testimony presented and the Affidavit of Lydia Davidson that the damages sought in the Complaint are for a sum certain, it is

ORDERED that a Judgment be, and hereby is, entered against Defendant **Elaine Devlin Peery a/k/a Elaine D. Peery** in favor of Windswept Villas III Horizontal Property Regime, Inc. in the amount of **\$27,034.02** said amount comprised of \$19,726.895 in unpaid assessments and late fees, \$2,616.42 in receivership expenses and \$4,690.71 in attorney's fees and costs.


Master in Equity

Charleston, South Carolina
, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME)

Petitioner/ Judgment Creditor,)

vs.)

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

Respondent/ Judgment Debtor.)

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

09

ORDER OF REFERENCE

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

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

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

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

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

Rmaji

IT IS FURTHER ORDERED:

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

Handwritten signature/initials.

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

hnd/3

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

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

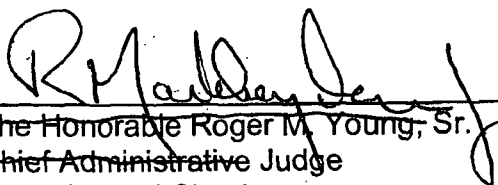


11. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted a list of all entities, groups, associations, partnerships or the like which Elaine Devlin Peery a/k/a Elaine D. Peery owns any interest in and list the percentage of interest owned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

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

IT IS SO ORDERED.




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

This 28th day of Oct, 2013

Charleston, South Carolina

DATE 10-22-2013
AMOUNT \$ 675.00
By: MIKELL R. SCARBOROUGH
MASTER IN EQUITY



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME
Petitioner/ Judgment Creditor,

vs.

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

Respondent/ Judgment Debtor.

ORDER ON SUPPLEMENTAL
PROCEEDINGS

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

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

Petitioner brought these Supplemental Proceedings in order to recover on its judgment in the above-captioned matter in the amount of \$27,034.02, plus reasonable attorneys' fees and costs of collection and interest at the legal rate from the date of judgment, until such time as the total amount is paid. The Respondent moved for a continuance of these Supplemental Proceedings given the fact that counsel for the Respondent appeared in the matter on the day of this hearing.

The base judgment amount, \$27,034.02, was identified as is being held in trust for Elaine Peery at the law firm of Thurmond, Kirchner, Timbes & Yelverton, PA.

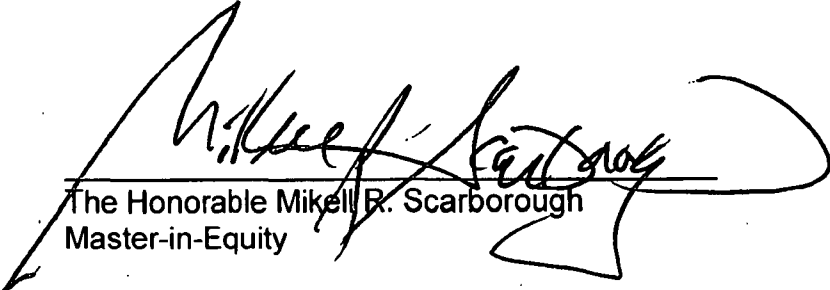
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that

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



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

IT IS SO ORDERED!



The Honorable Mikell R. Scarborough
Master-in-Equity

This 15 day of January, 2014

Charleston, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009CP-10-5799

Bank of America

Elaine P. P. P.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

notice to both parties to hear all motions Friday, June 20, 2014 at 9:30 AM. No continuance.

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Circuit Court Judge

3062

Judge Code

Date

5/22/2014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME
Petitioner/ Judgment Creditor,

vs.

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

Respondent/ Judgment Debtor.

ORDER ON SUPPLEMENTAL
PROCEEDINGS

FILED
JULIE J. ANTONIANG
CLERK OF COURT
JUN 30 PM 3:15

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

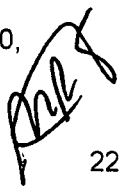
The Petitioner/Judgment Creditor (hereinafter "Windswept") initiated these Supplemental Proceedings by a Motion to the Court on October 22, 2013 wherein Windswept sought to recover on its judgment against the Respondent/Judgment Debtor (hereinafter "Peery") in the amount of \$27,034.02 plus reasonable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

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

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

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

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

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

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

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

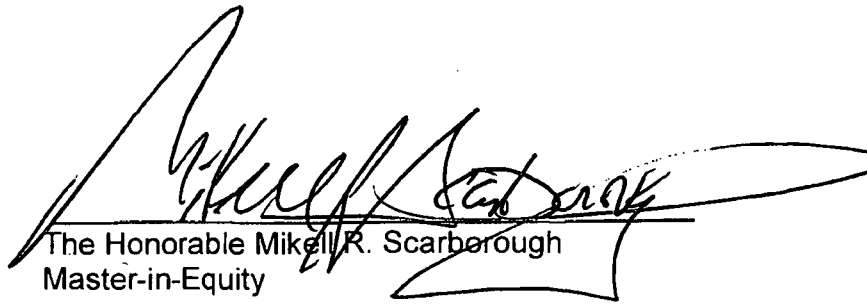
Accordingly, I find that Windswept is entitled to the base judgment amount, \$27,034.02, which is being held in trust at the law firm of Thurmond, Kirchner, Timbes & Yelverton, PA and order that such funds be paid to the Petitioner immediately or as soon as practicable. I further find that Windswept is entitled to all attorneys' fees, costs, and interest owed by Peery in this matter. I have reviewed *in camera* the attorneys' fees claimed by Counsel for Petitioner in this matter and find that such fees are reasonable under the circumstances. As of June 20, 2014, those amounts are: (1) \$15,195.62 in costs and attorneys' fees; and (2) \$ 4,616.01 in post-judgment interest.

NOW, THEREFORE, IT IS ORDERED that

1. In accordance with these Supplemental Proceedings, the amounts held in trust (\$27,034.02) at the law firm of Thurmond, Kirchner, Timbes & Yelverton, PA shall be immediately disbursed to Windswept.
2. These Supplemental Proceedings will be continued until such other amounts owed and outstanding are paid to Petitioner in full, along with additional fees and costs and interest which may be ordered until such payment is made.



IT IS SO ORDERED!



The Honorable Mikell R. Scarborough
Master-in-Equity

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

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME)

Petitioner/ Judgment Creditor,)

vs. ^)

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

Respondent/Judgment Debtor.)

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

ORDER ON CANTRELL'S MOTION
TO WITHDRAW AS COUNSEL

FILED
2014 JUN 30 PM 3:11
JULIE CLEGG, CLERK
BY [Signature]
COURT

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

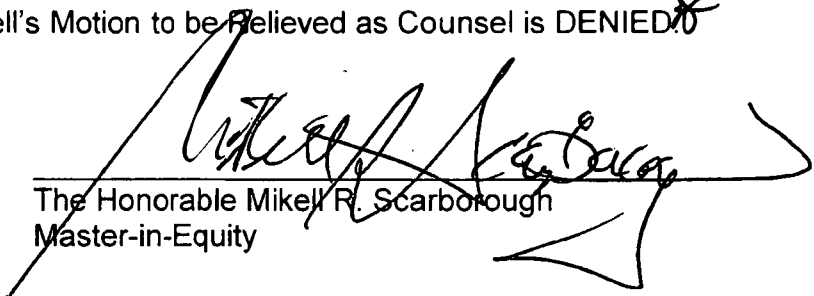
On May 6, 2014, attorney Cantrell moved to be relieved as counsel because "he has been unable to reach the defendant by normal means of communication for the past several weeks and is therefore unable to properly represent the defendant or get input from the defendant regarding the pending matter." Counsel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

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

¹ Because Peery failed to appear at that hearing, the matter has been continued. ^{to}

Aug 29, 2014. ^{MRB}
at 10 AM. 25

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


The Honorable Mikell R. Scarborough
Master-in-Equity

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

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

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

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

FILED
2014 JUN 30 PM 3:14
JULIE A. HARRIS, CLERK OF COURT
BY [Signature]

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

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

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

[Signature]

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

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

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

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

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



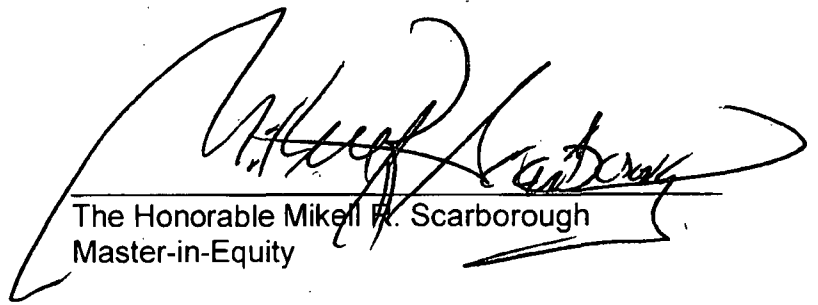
to be done; that is to say, with bad purpose either to disobey or disregard the law.

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

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

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

IT IS SO ORDERED!



The Honorable Mikel R. Scarborough
Master-in-Equity

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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Windswept Villas III
Horizontal Property Regime

Petitioner,

vs.

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

Respondent.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

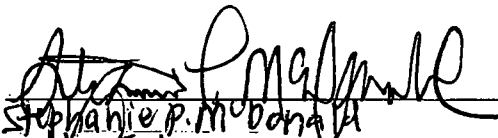
C/A NO: 2009-CP-10-5799

CONSENT ORDER ALLOWING
WITHDRAWAL OF ATTORNEY

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

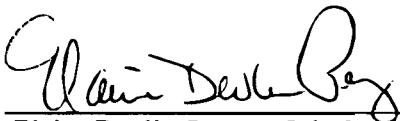
The undersigned Defendant, and John R. Cantrell, Jr, who is currently counsel of record for the Defendant, hereby consent that attorney shall be allowed to withdraw as counsel for the Defendant in this case. The Defendant has another attorney of record in this case, who will remain as counsel of record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

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


Stephanie P. McDonald
Presiding Judge, Charleston County, SC

WE CONSENT:


John R. Cantrell, Jr. (Date) 6-19-14
Attorney for the Defendant Elaine Devlin-Peery
Cantrell Legal, PC
PO Box 1276
Goose Creek, SC 29445-1276
(843) 797-2454 (office)
(309) 213-0922 (fax)
Email: lawyer@cantrellclan.com


Elaine Devlin-Peery – July 8, 2014
Defendant

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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

Windswept

-v-

SUPPLEMENTAL PROCEEDING ORDER

Elaine Perry

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

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

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

Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, SC

Dated: 8/29/2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME

Petitioner/ Judgment Creditor,

vs.

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

Respondent/ Judgment Debtor.

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

**ORDER OF CONTEMPT AND
SANCTIONS**

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

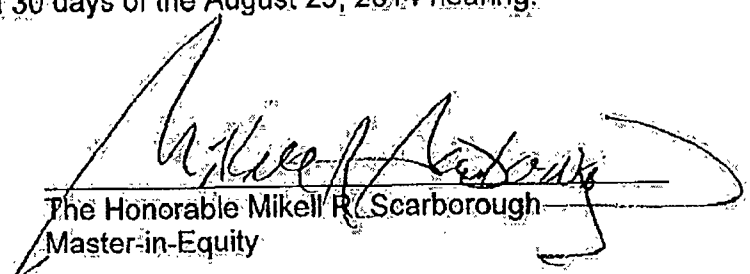
I find that the Respondent/Judgment Debtor is in contempt of court and subject to sanctions. For sanctions, I find that the Respondent/Judgment Debtor must pay \$20,000.00 in attorneys' fees and \$726.39 in costs. In addition, I hereby order that the



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

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

IT IS SO ORDERED!



The Honorable Mikell R. Scarborough
Master-in-Equity

This 29 day of August, 2014
Charleston, South Carolina

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

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009CP-10-5799

Windswept

Elaine Perry

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

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

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge

Judge Code

Date

August 29, 2014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME

Petitioner/ Judgment Creditor,

vs.

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

Respondent/ Judgment Debtor.

ORDER OF CONTEMPT AND
SANCTIONS

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

FILED

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

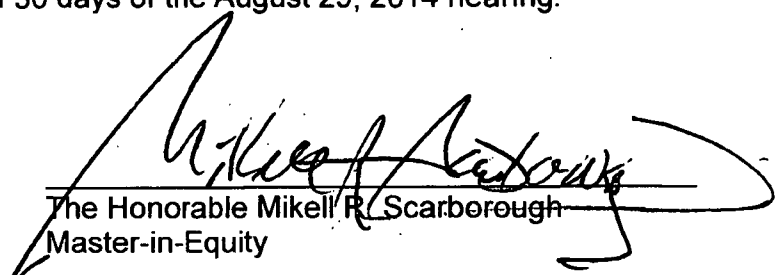
I find that the Respondent/Judgment Debtor is in contempt of court and subject to sanctions. For sanctions, I find that the Respondent/Judgment Debtor must pay \$20,000.00 in attorneys' fees and \$726.39 in costs. In addition, I hereby order that the



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

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

IT IS SO ORDERED!



The Honorable Mikell R. Scarborough
Master-in-Equity

This 29 day of August, 2014
Charleston, South Carolina

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

NB
Juds:
per Master

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

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

WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME)
Petitioner/ Judgment Creditor,)

vs.)

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

Respondent/ Judgment Debtor.)

**ORDER OF CONTEMPT AND
SANCTIONS**

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

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

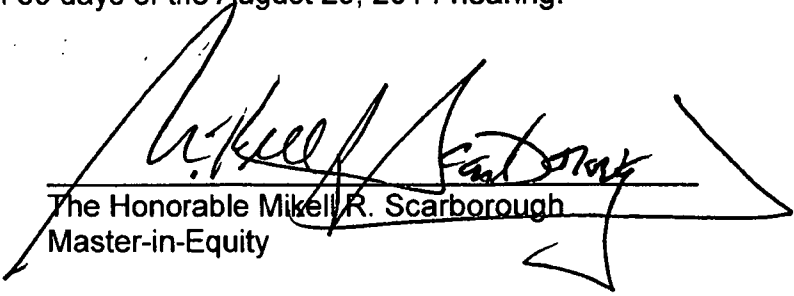
I find that the Respondent/Judgment Debtor is in contempt of court and subject to sanctions. For sanctions, I find that the Respondent/Judgment Debtor must pay \$20,000.00 in attorneys' fees and \$726.39 in costs. In addition, I hereby order that the



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

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

IT IS SO ORDERED!


The Honorable Mikell R. Scarborough
Master-in-Equity

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

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

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Windswept

-v-

Elaine Perry

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

SUPPLEMENTAL PROCEEDING ORDER

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

1. No assets were discovered.

2. The Defendant agreed to pay

3. The hearing was not held because :

a. the Defendant was not served and the hearing has been rescheduled for

b. the Defendant did not appear and a RTSC has been scheduled for

c. the parties requested the hearing be rescheduled for

d. the Plaintiff elected not to proceed.

✓ e. At hearing on Contempt, A find in contempt of
Ordered to pay \$20,000 for Attorney's Fees plus
costs plus post-judgment interest to be determined by a
Amount
Formal Order.
Disput due in
30 days.

4. The supplemental proceedings is held open until

5. The supplemental proceedings is dismissed and canceled without prejudice. All

Restraining Orders and Injunctions are hereby lifted, canceled, voided and dismissed.

Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, SC

Dated: 8/29/2014



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 07, 2014

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: Windswept Villas v. Elaine Peery
Lower Court Case No. 2009CP1005799
Appellate Case No. 2014-001635

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Vernee Chnita Hancock, Esquire
Kathleen Fowler Monoc, Esquire

FILED
2014 OCT -9 PM 1:04
JULIE J. ARMSTRONG
CLERK OF COURT
BY

FILED

7 Oct 2014

CC

2009-5799

The South Carolina Court of Appeals

Windswept Villas III Horizontal Property Regime,
Respondent,

v.

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

Appellate Case No. 2014-001635

BY

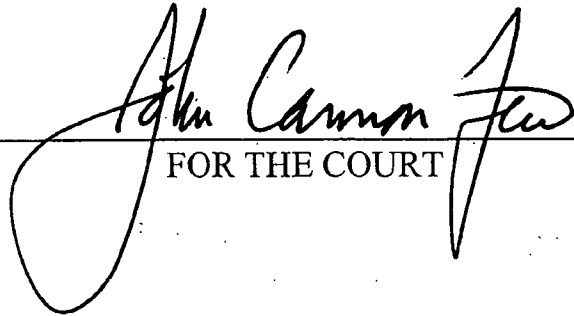
JULIE J. ARMSTRONG
CLERK OF COURT

2014 OCT -9 PM 1:05

FILED

ORDER

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


FOR THE COURT

Columbia, South Carolina

cc:

Vernee Chnita Hancock, Esquire
Kathleen Fowler Monoc, Esquire

FILED

9/18/14

2009-CP-10-5799

The South Carolina Court of Appeals

Windswept Villas III Horizontal Property Regime,
Respondent,

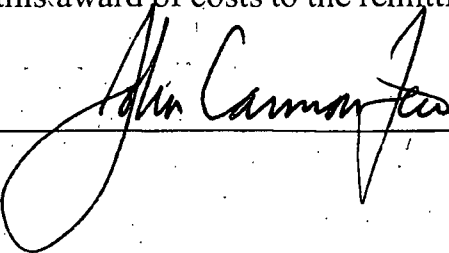
v.

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

Appellate Case No. 2014-001635

ORDER

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

 C.J.

Columbia, South Carolina

cc:

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

FILED
12/3/14

2014 DEC -5 AM 9:36
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

v.

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

Defendants.

(511263-02244 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 09-CP-10-5799

JUDGMENT OF FORECLOSURE AND
SALE

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

Charles S. Gwynne
Attorney for the Plaintiff

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

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

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

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

FINDINGS OF FACT:

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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

*Reference fee, Auto Mileage
Reimbursement, Out-of Town
Travel/Parking for Hearing)*

Title Search

\$300.00

**FINAL TOTAL DEBT SECURED BY
NOTE AND MORTGAGE:**

\$1,059,203.61

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

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

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

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

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

IT IS THEREFORE ORDERED:

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

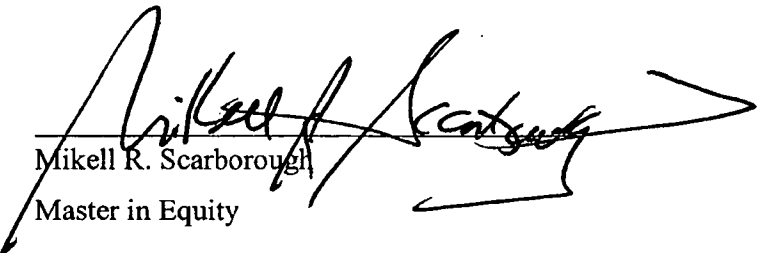
41. The following is a description of the property herein ordered to be sold:
All that certain Apartment known as Villa Number 5108 in Windswept Villas III Horizontal Property Regime as shown on the plans and specifications attached to the certain Master Deed executed by Kiawah Island Company, Limited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

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

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

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

TMS# 209-06-00-352


Mikell R. Scarborough
Master in Equity

Feb 1, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

v.

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

Defendant(s).

(011263-02244)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 09-CP-10-5799

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

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

FILED

TO THE DEFENDANT(S) ABOVE NAMED:

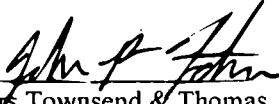
YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina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

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

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

09.15336

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



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

Columbia, South Carolina
September 11, 2009

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

v.

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

Defendant(s).

(011263-02244)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 09-CP-18-5799

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE
MORTGAGE

Deficiency Judgment Demanded

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

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Charleston County, South Carolina.
2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.
3. Plaintiff is the owner and holder of the Note and Mortgage described hereafter and the subject of this action.
4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the property is not the primary residence of the homeowner.
5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
6. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.
7. Heretofore, on or about March 27, 2008, Elaine D. Peery made, executed and delivered a certain Adjustable Rate Note ("Note") in the principal sum of \$840,000.00, payable in

monthly installments.

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

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

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

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

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

TMS# 209-06-00-352

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

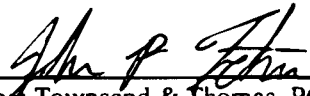
First, to the costs and expenses of the within action and sale;

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

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

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

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



Rogers Townsend & Thomas, PC

ATTORNEYS FOR PLAINTIFF

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

Columbia, South Carolina
September 11, 2009

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

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

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



ROGERS TOWNSEND & THOMAS, PC

ATTORNEYS AND COUNSELORS AT LAW

Default Services Department Attorneys

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

September 11, 2009

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

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

Dear Sir/Madam:

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

Thank you for your kind assistance in this matter.

Sincerely

Rogers Townsend & Thomas, P.C.
Default Servicing Section

/JMS3
Enclosures

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

CASE NO: 09-CP-10-5799

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

**Answer and Crossclaim of Defendant
Windswept Villas III Horizontal
Property Regime, Inc.**

2009 SEP 24 PM 3:57
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

The Defendant, Windswept Villas III Horizontal Property Regime, Inc. ("Association"), answering the Complaint of the Plaintiff, alleges and states as follows:

1. The Association denies each and every allegation of the Complaint not hereinafter expressly admitted, modified, or explained.
2. The Association admits Paragraph 1 of the Complaint.
3. The Association has insufficient information upon which to form a belief as to the allegations of Paragraphs 2, 3, and 4 of the Complaint, and therefore denies same.
4. The Association admits so much of Paragraphs 5 and 6 of the Complaint as they pertain to the Association; however, the Association has insufficient information upon which to form a belief as to the remaining allegations of Paragraphs 5 and 6 of the Complaint and therefore denies same.
5. The Association has insufficient information upon which to form a belief as to the allegations

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

6. The Association admits Paragraph 17B of the Complaint.

AS A FIRST CROSS-CLAIM

7. The Association restates and realleges the allegations of Paragraphs 1 through 6 above as if fully set forth herein.
8. The Association is an organization composed of all the owners of property within the Windswept Villas III Horizontal Property Regime and was created pursuant to the Laws of the State of South Carolina, and is doing business in Charleston County, South Carolina.
9. The Association possesses the rights, powers, and duties set forth in the Master Deed of Windswept Villas III Horizontal Property Regime as recorded in the Charleston County RMC Office in Book A128, Page 186, as may have been amended from time to time (the "Master Deed").
10. Defendant, Elaine Devlin Peery a/k/a Elaine D. Peery ("Peery"), is the owner of the real property which is the subject of this action, and this real property is located in Charleston County, South Carolina. This real property is known as Villa Number 5108 (5108 Sea Forest Drive) Windswept Villas III, Kiawah Island, South Carolina 29455.
11. Defendant Peery is indebted to the Association as of September 15, 2009, in the amount of \$13,000.19 for assessments imposed upon Defendant Peery to meet the expenses of the Association all as authorized by the Master Deed.
12. Defendant Peery is also obligated to pay interest, service fees, and penalties from the date of assessment first becoming due, and is further obligated to pay the Association's attorney's fees and costs of collection, and such other and further charges and assessments as have accrued since September 15, 2009, all as authorized by the Master Deed.
13. Despite Association's repeated demands for payment of the assessments and charges Defendant Peery

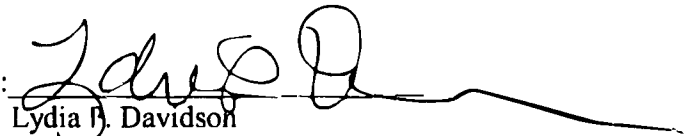
has failed and refused to make payments in the amounts owed to the Association.

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

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

KRAWCHECK & DAVIDSON, L.L.C.

By:



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

Charleston, South Carolina

Sept 23, 2009

09-CP-10-5799

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

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

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

2009 SEP 24 PM 3:57
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Michele Hay
Michele Hay

Charleston, South Carolina

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

LEONARD KRAWCHECK
LYDIA PRUITT DAVIDSON

LYDIA PRUITT COWAN

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

September 21, 2009

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

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

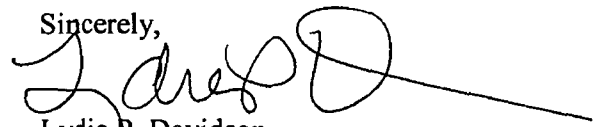
Dear Sir/Madam:

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

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

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

Sincerely,


Lydia P. Davidson

LPD/mh

Enc

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

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

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

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

FOR A SECOND DEFENSE

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

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

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

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

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

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

Respectfully Submitted,

VAUGHAN LAW FIRM PA



W. BARNWELL VAUGHAN

Attorney for the Defendant

SC Bar No. 6449

102 Wappoo Creek Drive, Suite 2-A

Charleston, South Carolina 29412

(843) 762-7825 Telephone

(843) 762-7827 Facsimile

Charleston, South Carolina

November 25, 2009

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BANK OF AMERICA, N.A.

Plaintiff,

vs.

ELAINE DEVLIN PEERY a/k/a

ELAINE D. PEERY;

KIAWAH ISLAND COM ASSOC, INC.; &

WINDSWEPT VILLAS III HPR, INC.

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2009-CP-10-57999

CERTIFICATE OF SERVICE

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2009 NOV 25 PM 4:48

FILED

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

Mr. John P. Fetner, Esquire

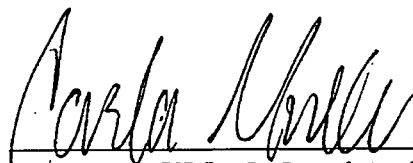
Rogers Townsend & Thomas, PC

PO Box 100200

Columbia, SC 29210

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

VAUGHAN LAW FIRM PA



CARLA MULLER, Legal Assistant

102 Wappoo Creek Drive, Suite 2-A

Charleston, South Carolina 29412

(843) 762-7825 Telephone

(843) 762-7827 Facsimile

Charleston, South Carolina

November 25, 2009

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

Bank of America, N.A.,)

Plaintiff,)

Vs)

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

Defendants.)

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

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

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

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

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

KRAWCHECK & DAVIDSON, LLC



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

December 10, 2009
Charleston, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Bank of America, N.A.,
Plaintiff,
vs.

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

Defendant(s).

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 09-CP-10-5799

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

(511263.02244 CSG)

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

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

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

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

Signature page attached

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

FILED

2011-406



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

Dated: January 5, 2011

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

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 09-CP-10-5799

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

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

FILED

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

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

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

Respectfully Submitted,



W. Barnwell Vaughan
Attorney for the Petitioner

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

June 30, 2011
Charleston, SC

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

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

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

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

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

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

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

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

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

Please be present if so minded.

[Signature to Follow]

KRAWCHECK & DAVIDSON.



Lydia P. Davidson
P.O. Box 1018
Charleston, S.C. 29401
(843) 577-2577
lpd@krawdavlaw.com

July 4, 2011
Charleston, South Carolina

ATTORNEYS FOR THE DEFENDANT
WINDSWEPT VILLAS III HPR, INC.

- b) Elements as qualified by Article VI, Section 6.04 of the Bylaws; insurance premiums paid by the Council in accordance with the provisions of this Master Deed and the Bylaws;
- c) indemnification of Board of Directors, members, and Council officers as provided in Article XI, Section 11.04 of the Bylaws; and
- d) any other expense (including master metered utilities and contributions to reserve funds) lawfully agreed upon by the Council as necessary to the operation, administration, and preservation of the Regime.

The liability of each Co-owner for the Common Expenses shall be limited to the amounts for which he is assessed from time to time in accordance with the Act, this Master Deed, and the Bylaws. No Co-owner may exempt himself from contributing toward the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of his Villa or Utility/Storage Unit.

Section 6.02 Liability of Purchaser. The purchaser of a Villa or the Utility/Storage Unit (other than a purchaser at a foreclosure sale as described in Section 6.04 of this Article) shall be jointly and severally liable with the seller for the latter's pro-rata share of Common Expenses up to the time of the conveyance, without prejudice to the purchaser's right to recover from the seller the amounts paid by the purchaser as such joint debtor. The Council shall issue to any purchaser upon request a statement of any amounts due by the seller of any Villa or the Utility/Storage Unit, and the purchaser's liability under this paragraph shall be limited to the amount as set forth in the statement.

Section 6.03 Lien on Villa or the Utility/Storage Unit for Unpaid Assessments. All sums assessed but unpaid for the share of the Common Expenses chargeable to any Villa or the Utility/Storage Unit shall constitute a lien on the Villa or the Utility/Storage Unit and, upon the sale of a Villa or the Utility/Storage Unit, shall first be paid out of the sales price or by the purchaser in preference over any other assessments or charges of whatever nature except the following:

- a) tax liens in favor of any assessing unit for taxes which are past due and unpaid, and
- b) the lien of any first mortgage duly recorded.

This lien may be foreclosed by suit by the Manager or the Board of Directors, acting on behalf of the Council, in like manner as a mortgage of real property. In any such foreclosure the Co-owner shall be required to pay a reasonable rent for the Villa or the Utility/Storage Unit after the commencement of the foreclosure action, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the rent. The Manager or the Board of Directors, acting on behalf of the Council, shall have power to bid in at any foreclosure sale and to acquire, hold, lease, mortgage, encumber, and convey a Villa or the Utility/Storage Unit.

Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving this lien.

Section 6.04 Foreclosure. Where the mortgagee or other purchaser of a Villa or the Utility/Storage Unit obtains title as a result of the foreclosure of a mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Co-owners chargeable to such Villa or the Utility/Storage Unit accruing after the date of recording such mortgage but prior to the acquisition of title by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Co-owners, including such acquirer and his successors and assigns.

Section 6.05 Records. The Board of Directors shall keep, or cause to be kept, a book with a detailed account, in chronological order, of the receipts and expenditures affecting the Property and its operation, administration, and preservation, and specifying the maintenance and repair expenses of the Common Elements and any other expenses incurred. Both the book and the vouchers accrediting the entries made thereupon shall be available for examination by all the Co-owners at convenient hours on working days.

ARTICLE VII EASEMENTS, COVENANTS, AND RESTRICTIONS

Section 7.01 Use of Property. Each Co-owner shall be entitled to the exclusive ownership and possession of his Villa or the Utility/Storage Unit and may use the Common Elements in accordance with the purposes for which they were intended without hindering or infringing upon the lawful rights of other Co-owners. The Board of Directors shall resolve any question regarding the intended use of the Common Elements.

Section 7.02 Future Easements. The Board of Directors may grant easements for the benefit of the Property, and each Co-owner, by the acceptance of the deed to his Villa or the Utility/Storage Unit, grants to the Board of Directors an irrevocable power of attorney to execute, deliver, and record for and in the name of each Co-owner, such instruments as may be necessary and proper to the granting of such easements.

Section 7.03 Encroachments. If any portion of the Common Elements now encroaches upon any Villa or the Utility/Storage Unit, or if any Villa or the Utility/Storage Unit now encroaches upon any other Villa or the Utility/Storage Unit or upon any portion of the Common Elements, or if any such encroachment shall occur as a result of (a) the settling or shifting of the land or any improvements, (b) the repair, alteration, construction, or reconstruction of the Common Elements made by or with the consent of the Council, (c) the repair or construction of a Villa or the Utility/Storage Unit following damage by fire or other casualty, or (d) condemnation or eminent domain proceedings, a valid easement shall exist for such encroachment and for its maintenance.

Section 7.04 Right of Access. The Council shall have the irrevocable

U23976147

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) CERTIFICATION OF AMENDMENT TO BY-LAWS
OF WINDSWEPT VILLAS III COUNCIL OF
CO-OWNERS

THIS is certification that the By-Laws of Windswept Villas III Council of Co-Owners recorded in the RMC Office for Charleston Count in Book E 166, Page 116 are amended in accordance with and pursuant to the provisions for amending the By-Laws in the following particulars:

1. That Article I shall be amended by the addition of an additional provision which shall be designated as Article I, Section 1.15 and which shall read as follows:

Section 1.15. SUSPENSION OF MEMBERSHIP AND VOTING RIGHTS. The Board of Directors shall have the power and authority to suspend the voting rights and rights to use the common areas and recreational facilities of a co-owner(s) during any period in which such co-owner(s) shall be in default of any payment of any assessment levied by the Council.

IN WITNESS WHEREOF, the undersigned has set his Hand and Seal this 14th day of February, 1994.

WITNESSED:

✓ Mary O'Hernan
✓ Mary O'Hernan

WINDSWEPT VILLAS III COUNCIL OF
CO-OWNERS

BY: ✓ James K. Dickson
Its: PRESIDENT

8X J 655PG157

Return To: LOAN # 6101840426
FL9-700-01-01
JACKSONVILLE POST CLOSING
BANK OF AMERICA
9000 SOUTHSIDE BLVD.
BLDG 700, FILE RECEIPT DEPT.
JACKSONVILLE, FL 32256

Prepared By: CONNIE PORTER
BANK OF AMERICA, N.A.
900 W. TRADE STREET
GATEWAY VILLAGE, 3RD FLOOR
CHARLOTTE, NC 28255-0001

PLEASE RETURN TO:

VAUGHAN LAW FIRM PA
102 WAPPOO CREEK DRIVE
SUITE 2A
CHARLESTON, SC 29412

VLF FILE NO. 08-0019

(Space Above This Line For Recording Data)

MORTGAGE

LOAN # 6101840426

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated MARCH 27, 2008 together with all Riders to this document.

(B) "Borrower" is ELAINE D PEERY A/K/A ELAINE DEVLIN PEERY

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is BANK OF AMERICA, N.A.

Lender is a NATIONAL BANKING ASSOCIATION
organized and existing under the laws of THE UNITED STATES OF AMERICA

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3041 1/01

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VMP Mortgage Solutions, Inc. (800)521-7291



Lender's address is 900 W. TRADE STREET, GATEWAY VILLAGE, 3RD FLOOR,
CHARLOTTE, NC 28255-0001

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated MARCH 27, 2008

The Note states that Borrower owes Lender EIGHT HUNDRED FORTY THOUSAND AND 00/100
Dollars

(U.S. \$ 840,000.00) plus interest. Borrower has promised to pay this debt in regular
Periodic Payments and to pay the debt in full not later than APRIL 01, 2038

(E) "Property" means the property that is described below under the heading "Transfer of Rights
in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late
charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The
following Riders are to be executed by Borrower (check box as applicable):

☒ Adjustable Rate Rider	☒ Condominium Rider	☒ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☐ Other(s) [specify]

(H) "Applicable Law" means all controlling applicable federal, state and local statutes,
regulations, ordinances and administrative rules and orders (that have the effect of law) as well as
all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees,
assessments and other charges that are imposed on Borrower or the Property by a condominium
association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction
originated by check, draft, or similar paper instrument, which is initiated through an electronic
terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize
a financial institution to debit or credit an account. Such term includes, but is not limited to,
point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire
transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or
proceeds paid by any third party (other than insurance proceeds paid under the coverages
described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or
other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv)
misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or
default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and
interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.)
and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended
from time to time, or any additional or successor legislation or regulation that governs the same
subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and
restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan
does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, the following described property located in the COUNTY

of CHARLESTON

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]:

"LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF."

SEE ATTACHED EXHIBIT "A"

Parcel ID Number: 209060052
5108 SEA FOREST DRIVE
JOHNS ISLAND

which currently has the address of

[City], South Carolina 29455

[Street]

[Zip Code]

("Property Address"):

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay

funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item.

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Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in

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a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and

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restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or

with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for

Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair

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market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"); (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the

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charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument.

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If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum

products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

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25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

W. Barnwell Vaughan
W. BARNWELL VAUGHAN
Witness
Carla Muller
CARLA MULLER
Witness

Elaine Devlin Peery (Seal)
ELAINE D PEERY
A/K/A ELAINE DEVLIN PEERY -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

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BK J 655PG171

STATE OF SOUTH CAROLINA,

CHARLESTON

County ss:

I, CARLA MULLER

do hereby certify that

ELAINE D PEERY A/K/A ELAINE DEVLIN PEERY

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 27th day of MARCH, 2008.

Carla Muller

Notary Public for South Carolina

CARLA MULLER

My Commission Expires: 01/13/2015



EXHIBIT "A"

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

BEING THE SAME property conveyed to **ELAINE DEVLIN PEERY** by deed of **CHARLES V. PEERY II**, dated March 16, 1999 and recorded March 17, 1999 in Book N-322, at Page 795 in the RMC Office for Charleston County, South Carolina.

TMS No. 209-06-00-352

gdr

VLF File No. 08-0019

BK J 655PG173

LOAN # 6101840426

ADJUSTABLE RATE RIDER

THIS ADJUSTABLE RATE RIDER is made this 27TH day of MARCH, 2008, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to BANK OF AMERICA, N.A.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at 5108 SEA FOREST DRIVE, JOHNS ISLAND, SC 29455

(Property Address)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. INCREASES IN THE INTEREST RATE WILL RESULT IN HIGHER PAYMENTS. DECREASES IN THE INTEREST RATE WILL RESULT IN LOWER PAYMENTS.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 6.700 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the FIRST day of APRIL, 2013, and on that day every 12TH month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is:

MULTISTATE ADJUSTABLE RATE RIDER - Single Family MGNR 03/27/08 11:40 AM 6101840426

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BS899R (0402)

VMP Mortgage Solutions, Inc. (800)521-7291

asp

THE WEEKLY AVERAGE YIELD ON UNITED STATES TREASURY SECURITIES ADJUSTED TO A CONSTANT MATURITY OF 1 YEAR, AS MADE AVAILABLE BY THE FEDERAL RESERVE BOARD. THE MOST RECENT INDEX FIGURE AVAILABLE AS OF THE DATE 45 DAYS BEFORE EACH CHANGE DATE IS CALLED THE "CURRENT INDEX."

If the Index is no longer available, the Note Holder will choose a new Index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND THREE-QUARTERS percentage points (2.750 %) to the Current Index. The Note Holder will then round the result of this addition to the ☐ Nearest ☒ Next Highest ☐ Next Lowest ONE-EIGHTH OF ONE PERCENTAGE POINT (0.125 %). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal I am expected to owe at the Change Date in full on the maturity date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

☐ **Interest-Only Period**

The "Interest-only Period" is the period from the date of this Note through . For the interest-only period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to pay the interest which accrues on the unpaid principal of my loan. The result of this calculation will be the new amount of my monthly payment.

The "Amortization Period" is the period after the interest-only period. For the amortization period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

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(D) Limits on Interest Rate Changes

(Please check appropriate boxes; If no box is checked, there will be no maximum limit on changes .)

- ☐ (1) There will be no maximum limit on interest rate changes.
- ☐ (2) The interest rate I am required to pay at the first Change Date will not be greater than _____ % or less than _____ %.
- ☐ (3) My interest rate will never be increased or decreased on any single Change Date by more than _____ percentage points (_____ %) from the rate of interest I have been paying for the preceding period.
- ☒ (4) My interest rate will never be greater than 12.700 %, which is called the "Maximum Rate."
- ☐ (5) My interest rate will never be less than _____ %, which is called the "Minimum Rate."
- ☐ (6) My interest rate will never be less than the initial interest rate.
- ☒ (7) The interest rate I am required to pay at the first Change Date will not be greater than 9.700 % or less than 3.700 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than TWO percentage points (2.000 %) from the rate of interest I have been paying for the preceding period.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

(1) WHEN MY INITIAL FIXED INTEREST RATE CHANGES TO AN ADJUSTABLE INTEREST RATE UNDER THE TERMS STATED IN SECTION 4 ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT DESCRIBED IN SECTION 8(2) BELOW SHALL THEN CEASE TO BE IN EFFECT, AND UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL INSTEAD BE DESCRIBED AS FOLLOWS:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of the title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if a Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

(2) UNTIL MY INITIAL FIXED INTEREST RATE CHANGES TO AN ADJUSTABLE INTEREST RATE UNDER THE TERMS STATED IN SECTION 4 ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL READ AS FOLLOWS:

TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER. AS USED IN THIS SECTION 18, "INTEREST IN THE PROPERTY" MEANS ANY LEGAL OR BENEFICIAL INTEREST IN THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THOSE BENEFICIAL INTERESTS TRANSFERRED IN A BOND FOR DEED, CONTRACT FOR DEED, INSTALLMENT SALES CONTRACT OR ESCROW AGREEMENT, THE INTENT OF WHICH IS THE TRANSFER OF TITLE BY BORROWER AT A FUTURE DATE TO A PURCHASER.

IF ALL OR ANY PART OF THE PROPERTY OR ANY INTEREST IN THE PROPERTY IS SOLD OR TRANSFERRED (OR IF BORROWER IS NOT A NATURAL PERSON AND A BENEFICIAL INTEREST IN BORROWER IS SOLD OR TRANSFERRED) WITHOUT LENDER'S PRIOR WRITTEN CONSENT, LENDER MAY REQUIRE IMMEDIATE PAYMENT IN FULL OF ALL SUMS SECURED BY THIS SECURITY INSTRUMENT. HOWEVER, THIS OPTION SHALL NOT BE EXERCISED BY LENDER IF EXERCISE IS PROHIBITED BY APPLICABLE LAW.

IF LENDER EXERCISES THIS OPTION, LENDER SHALL GIVE BORROWER NOTICE OF ACCELERATION. THE NOTICE SHALL PROVIDE A PERIOD OF NOT LESS THAN 30 DAYS FROM THE DATE THE NOTICE IS GIVEN IN ACCORDANCE WITH SECTION 15 WITHIN WHICH BORROWER MUST PAY ALL SUMS SECURED BY THIS SECURITY INSTRUMENT. IF BORROWER FAILS TO PAY THESE SUMS PRIOR TO THE EXPIRATION OF THIS PERIOD, LENDER MAY INVOKE ANY REMEDIES PERMITTED BY THIS SECURITY INSTRUMENT WITHOUT FURTHER NOTICE OR DEMAND ON BORROWER.

End

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

Elaine D. Peery (Seal)
ELAINE D PEERY -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

ESP

LOAN # 6101840426

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this 27TH day of MARCH, 2008 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to BANK OF AMERICA, N.A.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at
5108 SEA FOREST DRIVE
JOHNS ISLAND, SC 29455

(Property Address)

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

KIAWAH ISLAND

(Name of Condominium Project)

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

CONDOMINIUM COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. Condominium Obligations. Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

MULTISTATE CONDOMINIUM RIDER - Single Family

Page 1 of 3

MOBC 03/27/08 11:40 AM 6101840426

BS8R(0411)

VMP Mortgage Solutions, Inc. (800)521-7291

ESB

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, from which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear

JK J 655PG181

interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Condominium Rider.

Elaine D Peery (Seal)
ELAINE D PEERY -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

BS8R (0411)

Page 3 of 3

M08C 03/27/08 11:40 AM 6101840426

QBP

SECOND HOME RIDER

THIS SECOND HOME RIDER is made this 27TH day of MARCH, 2008, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower," whether there are one or more persons undersigned) to secure Borrower's Note to BANK OF AMERICA, N.A.

(the "Lender") of the same date and covering the Property described in the Security Instrument (the "Property"), which is located at 5108 SEA FOREST DRIVE, JOHNS ISLAND, SC 29455

(Property Address)

In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree that Sections 6 and 8 of the Security Instrument are deleted and are replaced by the following:

6. Occupancy. Borrower shall occupy, and shall only use, the Property as Borrower's second home. Borrower shall keep the Property available for Borrower's exclusive use and enjoyment at all times, and shall not subject the Property to any timesharing or other shared ownership arrangement or to any rental pool or agreement that requires Borrower either to rent the Property or give a management firm or any other person any control over the occupancy or use of the Property.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's second home.

MULTISTATE SECOND HOME RIDER - Single Family

M65S 03/27/08 11:40 AM 6101840426

Page 1 of 2

BS365R (0411)

VMP Mortgage Solutions, Inc. (800)521-7291

JP

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Second Home Rider.

Elaine D. Peery (Seal)
ELAINE D PEERY -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

BS365R (0411)

Page 2 of 2

M655 03/27/08 11:40 AM 6101840426

and

BK J 655PG184

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



FILED

March 31, 2008

3:09:56 PM

BK J 655PG157

Charlie Lybrand, Register
Charleston County, SC

Filed By:

Vaughan Law Firm
102 Wappoo Creek Dr.
Suite 2A
Charleston SC 29412

Number of Pages:

28

DESCRIPTION	AMOUNT
	\$ 33.00
Postage	
TOTAL	\$ 33.00

DRAWER:

A - BJA

DO NOT STAMP BELOW THIS LINE

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

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

Defendant(s).

(511263-02244 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 09-CP-10-5799

NOTICE OF MOTION HEARING

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

TO THE DEFENDANTS ABOVE NAMED:

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

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



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

Dated: July 27, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

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

Defendant(s).

(511263-02244 CSG)

TO THE DEFENDANTS ABOVE NAMED:

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

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

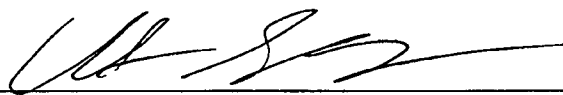
Dated: September 27, 2011

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 09-CP-10-5799

NOTICE OF STATUS CONFERENCE

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


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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

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

Defendant(s).

(511263-02244 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 09-CP-10-5799

**NOTICE OF FINAL FORECLOSURE
HEARING**

FILED
2011 OCT 13 PM 12:11
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED:

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



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

October 12, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

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

Defendants.

(511263 02244 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 09-CP-10-5799

**NOTICE OF
CANCELLATION OF FINAL
FORECLOSURE HEARING**



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

FILED

TO THE DEFENDANTS ABOVE NAMED:

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



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

ATTORNEYS FOR PLAINTIFF

Rogers Townsend & Thomas, PC and its staff are debt collectors

November 22, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

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

Defendant(s).

(511263-02244 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 09-CP-10-5799

**NOTICE OF FINAL FORECLOSURE
HEARING**

(Signature)

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

FILED

TO THE DEFENDANTS ABOVE NAMED:

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

(Signature)

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

December 1, 2011

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

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

Document(s) Served:

Notice of Final Foreclosure Hearing

Counsel/Parties Served:

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

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

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

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

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



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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

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

Defendant(s).

(511263-02244 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 09-CP-10-5799

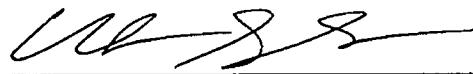
**NOTICE OF HEARING ON
RECEIVERSHIP FUNDS**

FILED
2012 MAR 15 PM 3:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

TO THE DEFENDANTS ABOVE NAMED:

PLEASE TAKE NOTICE that a hearing on Receivership Funds has been set for March
27, 2012, at 2:15 p.m. before the Honorable Judge Scarborough at the following address:

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



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

March 14, 2012

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

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

Document(s) Served:

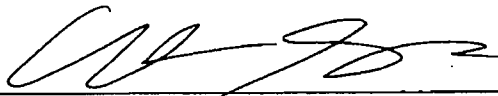
Notice of Hearing on Receivership Funds

Counsel/Parties Served:

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

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

FILED
2012 MAR 15 PM 3:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____



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

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME)

Petitioner/ Judgment Creditor,)

vs.)

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

Respondent/ Judgment Debtor.)

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

09

ORDER OF REFERENCE

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

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

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

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

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

Rmaji

IT IS FURTHER ORDERED:

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

Handwritten signature/initials

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

hnd/3

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

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

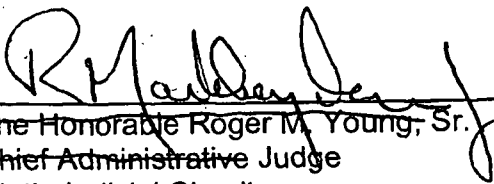
A handwritten signature in black ink, appearing to be 'Amy' followed by a large, stylized '4'.

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

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

IT IS SO ORDERED.

Handwritten signature


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

This 28th day of Oct, 2013

Charleston, South Carolina

DATE 10-22-2013
AMOUNT \$ 05.00
By: MIKELL R. SCARBOROUGH
MASTER IN EQUITY

RO/9

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Windswept Villas III
Horizontal Property Regime

Petitioner,

vs.

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

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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

NOTICE OF APPEARANCE

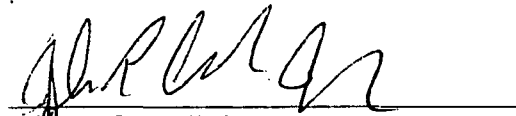
JULIE J. ARMSTRONG
CLERK OF COURT

2014 JAN 13 PM 2:28

FILED

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

Dated this January 13, 2014.



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

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

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

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

-VS-

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

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

FILED
2014 APR 16 PM 4:26
JULIE J. ANGLING
CLERK OF COURT

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

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

The basis of this motion is as follows:

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



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

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

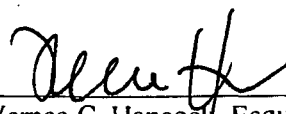
5. That based on all of the above stated, the Defendant is informed and believes that she is entitled to an Order of this Court setting aside the Order of Judgment in favor of Windswept Villas III Horizontal Property Regime, Inc. that was signed by the Honorable Mikell R. Scarborough on March 17, 2012.

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

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

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





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

Summerville, SC
April 14, 2014



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Windswept Villas III
Horizontal Property Regime

Petitioner,

vs.

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

Respondent.

IN THE COURT OF COMMON PLEAS

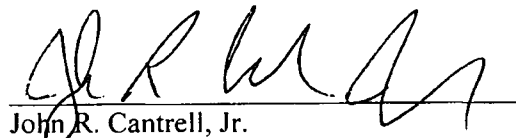
NINTH JUDICIAL CIRCUIT

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

NOTICE OF MERITS HEARING

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

Dated this May 28, 2014.



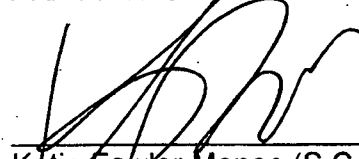
John R. Cantrell, Jr.
Attorney for the Defendant Elaine Devlin-Peery
Cantrell Legal, PC
PO Box 1276
Goose Creek, SC 29445-1276
(843) 797-2454 (office)
(309) 213-0922 (fax)
Email: lawyer@cantrellclan.com

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

3. To date, Elaine Peery has refused to comply with the Order of Reference filed October 31, 2013. Neither Elaine Peery nor her attorneys have provided the undersigned counsel with the materials required by the Court's October 31, 2013 Order. Nor has she agreed to submit to a deposition in compliance with the Order of Reference.
4. This Motion is supported by the Affidavit of Katie Fowler Monoc, attached hereto as Exhibit B.

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

PRATT-THOMAS WALKER, P.A.



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

June 10, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

09

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME
Petitioner/ Judgment Creditor,

vs.

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

Respondent/ Judgment Debtor.

ORDER OF REFERENCE

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

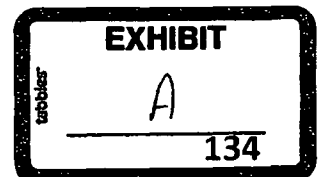
THIS MATTER CAME BEFORE ME upon motion of counsel for the Plaintiff/Petitioner Windswept Villas III Horizontal Property Regime ("Windswept") pursuant to S.C. Ann. § 15-39-310 *et seq.* for an Order for supplemental proceedings against Defendant Elaine Devlin Peery a/k/a Elaine D. Peery. It appears to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

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

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

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

Rmaji



IT IS FURTHER ORDERED:

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

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

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

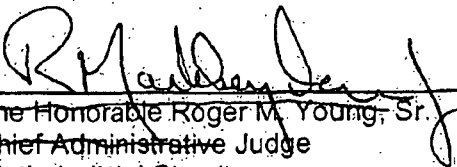
8. That Elaine Devlin Peery a/k/a Elaine D. Peery is directed to produce at the same location and date as above noted all of her tax returns for the past five years, both for the United States and for the State of South Carolina, including all schedules and all documents showing income from any other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

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

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

IT IS SO ORDERED.




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

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

DATE 10-22-2013
AMOUNT \$ 35.00
BY NIKELL R. SCARBOROUGH
MASTER IN EQUITY

RO/7

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

WWW.P-TW.COM

(843) 727-2244 (direct dial)
(843) 727-2238 (direct fax)
kfm@p-tw.com (e-mail)

E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW COWDER, JR.

JOHN L. AUSTEN

LINDSAY K. SMITH-YANCEY (SC, NC)

THOMAS H. NESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

DANIEL S. McQUEENEY, JR.

KATHLEEN FOWLER MONOC

JOHN P. LINTON, JR.

OF COUNSEL

THOMAS P. GRESSETTE, JR. (SC, USVI)

October 22, 2013

VIA HAND DELIVERY

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

RE: Windswept Villas III Horizontal Property Regime v. Elaine Devlin Peery

Case No.: 09-CP-10-5799

Our File No.: 6835-003

Dear Ms. Armstrong:

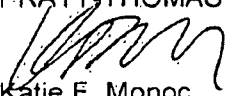
Please find enclosed the original and one copy of Plaintiff's Motion for an Order of Reference to the Master-in-Equity and for Supplemental Proceedings, along with my supporting Affidavit and Proposed Order, in the above-referenced matter. I would appreciate your filing this Motion with the Court and returning a file stamped with our courier.

Should the Motion and Order meet with Judge Young's approval, we would appreciate your forwarding the same to the Master. I have enclosed our firm's check in the amount of \$25.00 to cover the filing fee for the motion, as well as a check in the amount of \$125.00 to the Master in Equity for the Order of Reference.

Thank you for your many courtesies in these regards.

Yours very truly,

PRATT-THOMAS WALKER, P.A.



Katie F. Monoc

KFM/yye

Enclosures (As noted)

cc: Jesse A. Kirchner, Esq.

W. Barnwell Vaughn, Esq.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME

Petitioner/ Judgment Creditor,

vs.

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

Respondent/ Judgment Debtor.

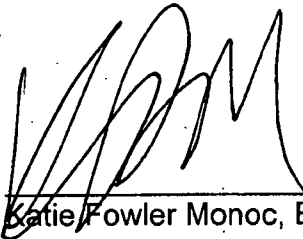
AFFIDAVIT IN SUPPORT OF
PETITIONER'S MOTION FOR RULE
TO SHOW CAUSE

I, Katie Fowler Monoc, having been duly sworn, depose and say that:

1. I am over the age of 18 and make this affidavit on personal knowledge and information.
2. I am counsel for the Petitioner/Judgment Creditor Windswept Villas III Horizontal Property Regime ("Windswept") in the above-matter.
3. I emailed John Cantrell, counsel for the Respondent/Judgment Debtor, on February 14, 2014 to communicate the need to proceed with discovery to determine whether Elaine Peery has assets to pay my client's legal fees, interest on the judgment, and costs owed by the Respondent Judgment Debtor. I asked that Cantrell provide me with dates he and his client would be available for her deposition and reminded him I needed the materials outlined in the Court's October 31, 2013 Order to prepare for that deposition.
4. I emailed John Cantrell again on March 3, 2014 to remind him to speak with his client about her availability for a deposition over the next three weeks and the discovery owed pursuant to the Order of Reference.
5. Having not received deposition dates or discovery, I emailed Jeff McDaniel, copying John Cantrell, on March 14, 2014 to set the continued hearing on Supplemental Proceedings and to request that the Court order the debtor's timely cooperation with discovery for the identification of assets which may be used to satisfy (in full) the amounts owed per the underlying judgment.
6. As of today, I still have not received any documents owed by the Elaine Peery in accordance with the Court's October 31, 2013 Order. Nor has Counsel for the Judgment Debtor provided me with Elaine Peery's availability for a deposition.

Nor has Elaine Peery personally appeared at any of the noticed hearings on these Supplemental Proceedings.

Further Affiant sayeth naught.


Katie Fowler Monoc, Esquire

SWORN to and subscribed before me this

10 day of June, 2014

Theresa Roberts (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: Aug. 21, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Windswept Villas III Horizontal
Property Regime,)

Petitioner/Judgment Creditor,)

v.)

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

Respondent/Judgment Debtor.)

IN THE COURT OF COMMON PLEAS

CASE NO. 2009-CP-10-5789

NOTICE OF HEARING

FILED
JUL 14 JUN 10 AM 11:07
JULIE J. ARMSTRONG
CLERK OF COURT

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

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

Charleston County Courthouse
100 Broad Street
Charleston, SC 29401

The Court has ordered that no continuances will be granted.



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

June 10, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME

Petitioner/ Judgment Creditor,

vs.

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

Respondent/ Judgment Debtor.

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

FILED
2014 JUN 30 PM 3:14
JULIE K. HARRINGTON
CLERK OF COURT
BY 2

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

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

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



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

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

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

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

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



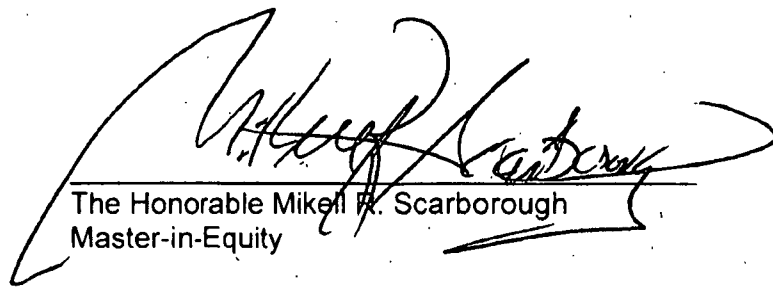
to be done; that is to say, with bad purpose either to disobey or disregard the law.

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

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



IT IS SO ORDERED!



The Honorable Michael R. Scarborough
Master-in-Equity

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2009-CP-10-5799

Windswept Villas III
Horizontal Property Regime,

Respondent,

v.

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

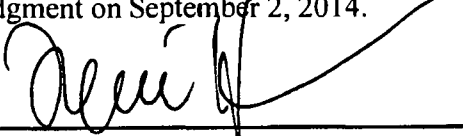
Appellant.

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

NOTICE OF APPEAL

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

September 25, 2014.


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

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

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

— — — — —

VS.

CASE NO. : 2009-CP-10-5799

Defendant.

Hearing before the

Honorable Mikell R. Scarborough, reported by Bernadette A. Cali, CSR and Notary Public, at 2:00 p.m. on August 1, 2011, at 100 Broad Street, Charleston, South Carolina..

A P P E A R A N C E S

For the Plaintiff: Charles S. Gwynne, Esq.
Rogers Townsend & Thomas, PC
PO Box 100200, Columbia, S.C. 29202-3200

For the HOA: Margaret Davidson., Esq.
56 Vanderhorst St.
Charleston, S.C. 29403

For the Defendant: W. Barnwell Vaughan, Esq.
102 Wappoo Creek Drive, Suite 2A
Charleston, S.C. 29412

Bernadette A. Cali, CSR
Notary Public

1 (Hearing commenced.)

2 THE COURT: This is BOA, Plaintiff, versus Elaine
3 Devlin Peery, Kiawah Island Community Association and
4 Windswept; 2009-CP-10-5799.

5 I had this matter set for motions today. I have
6 two motions. I have, in reviewing the file, Mr.
7 Vaughan's motion to be relieved, and I have
8 Ms. Davidson's recent motion for appointment of a
9 receiver.

10 Mr. Vaughan, let me hear from you first.

11 MR. VAUGHAN: Your Honor, this is an unpleasant
12 and unfortunate request that I have of the Court, and
13 that is to be relieved as counsel.

14 I have stated in the brief that I had some health
15 problems last year which have gone forward through to
16 this year, to this state. In fact, I'm still going in
17 for physical therapy regarding my back.

18 There are some other reasons that I would not like
19 to go into at this time, unless the Court requires me,
20 but I would like to -- because I do not want to
21 prejudice my client's case. I understand that the
22 rules allow me to submit a request to be relieved under
23 those rules, but if the Court would permit me to be
24 relieved of counsel we wouldn't have to go into those
25 other reasons.

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

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

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

12 Mr. Gwynne, let me first hear from you. What's
13 the position of the Plaintiff, Bank of America, in this
14 case?

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

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

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

1 if she does proceed pro se we can serve her at her
2 current address. She does not live at the property
3 address.

4 I have an order for the Court. If the Court is
5 willing to consider that. I showed it to both counsel,
6 Mr. Vaughan and Ms. Davidson, and they had no objection
7 to it.

8 THE COURT: All right. Ms. Davidson?

9 MS. DAVIDSON: Let me say one thing about that.
10 Your Honor, we represent Windswept Villas 3. My
11 client does not consent to Mr. Vaughan's being
12 relieved of counsel, for no other reason other than
13 there has been protracted delay and the Association is
14 in dire straits. Almost \$45,000 is owed in back
15 assessments on the Peery unit. There are only 44
16 units at Windswept. They are afraid if a new attorney
17 is appointed that it will put them far down the road --
18 further down the road in finalizing this situation.

19 However, that brings me to the motion for
20 receiver.

21 THE COURT: I don't want to quite get there yet.
22 I would assume that's what prompted the motion. I've
23 had a chance to review these earlier. Let me get to
24 that in just a moment.

25 Ms. Peery, I looked through the file before I came

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

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

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

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

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

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

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

9 MS. PEERY: Yes, sir.

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

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

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

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

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

1 MS. PEERY: Yes, sir. I do have a position on
2 that. I'm not quite sure why she would like to do
3 that, since without consent or authorization from me
4 they have already changed the locks on my property as
5 of June 11th.

6 THE COURT: So you've been locked out of that
7 property since June 11?

8 MS. PEERY: Yes, sir.

9 THE COURT: Was that done by the Homeowners
10 Association or the bank?

11 MS. PEERY: I'm not sure.

12 THE COURT: Could be either one.

13 MS. DAVIDSON: I don't know.

14 THE COURT: Do you all know?

15 MS. DAVIDSON: No, sir.

16 MR. GWYNNE: No, Your Honor.

17 THE COURT: At this point in time you're not
18 having access to it?

19 MR. POLIAKOFF: No, sir.

20 THE COURT: That's been since June?

21 MS. PEERY: June 11 when I went out there to
22 check on it with the air conditioning.

23 THE COURT: Do you know whether or not the power
24 is on to the building?

25 MS. PEERY: Yes, sir. I did call Berkeley

1 Electric and the power is still on. And I have been
2 paying the electric bills.

3 THE COURT: All right. But it's not been rented,
4 because certainly you don't have any access to it. Is
5 it a weekly rental, monthly rental?

6 MS. PEERY: Weekly.

7 THE COURT: A weekly rental.

8 MS. PEERY: Yes, sir.

9 THE COURT: All right.

10 MS. PEERY: When I asked the locksmith about it
11 he said to me I had to get a letter from the regime on
12 getting a locksmith out there, that they will not come
13 and touch it until the regime releases a letter on
14 their being able to go out there and change the locks.

15 THE COURT: All right. Ms. Davidson, let me hear
16 from you.

17 MS. DAVIDSON: Yes, sir.

18 THE COURT: The first place to start would be
19 whether or not -- do you know whether or not your
20 client has gone out there and changed the locks?

21 MS. DAVIDSON: I have no idea. I would be
22 surprised if had they done that, but I don't know for
23 sure yes or no. No one said anything to me about
24 that.

25 THE COURT: Okay. Go ahead and make your motion.

1 We'll go from there.

2 Mr. Vaughan, I'm holding off on ruling on yours.
3 I want to see where we stand with this case.

4 MS. DAVIDSON: Your Honor, this is a unit,
5 Windswept, which is -- it's one of the only high rises
6 at Kiawah and it's on the beach; very desirable. It
7 was recently renovated, about three years ago; good
8 shape. And it's a prime candidate for rental.

9 To my knowledge the property was rented, I guess,
10 maybe even through January or into February of 2011.
11 Rents were being paid to MS. Peery, and we had
12 suggested that some sharing go on. We've never heard
13 anything from that. That was, I guess, in March.

14 At any rate, the Association is responsible for
15 the maintenance and repair and replacement of those
16 common elements. This is a high rise. Everything is
17 common except the interior of the units.

18 The Section 603 of the Master Deed allows or
19 provides a receiver can be appointed to receive -- to
20 rent and receive the rents. The bylaws -- part of the
21 motion was for the use of the common elements to be
22 suspended as to the use by the Peerys as well. That is
23 in the bylaws.

24 Appointing a receiver is proper in this case in
25 accordance with South Carolina Code Section 1565-10.

1 The Association has apparent right to the villa at
2 Windswept; has a right to the rents and profits under
3 the Master Deed. If we do not have a receiver it's
4 probable we will get no money.

5 Your Honor, in the motion we had just stated that
6 the receiver would be Ravenel Associates.
7 Specifically, I think, Marilyn Summers is the person
8 who has been managing Windswept for the last 15, 16
9 years who would be the responsible party. We would not
10 be adverse to her just receiving the rents, holding
11 them in an escrow account until the foreclosure is --
12 at some point in the future when distribution can be
13 decided by you, Judge, between the Association and/or
14 the bank. And as far as the fees go to the receiver --

15 THE COURT: Let me first hear from Mr. Gwynne on
16 the request.

17 MR. GWYNNE: Yes, Your Honor, thank you.

18 I don't have any authority on behalf of my client
19 to approve the appointing of a receiver. The first
20 point I'll make, I don't know if the bylaws or the
21 covenants specifically allow the appointment of a
22 receiver. I think if you read Section 6.03, which is
23 part of the motion says that if they foreclose then
24 they can appoint a receiver, but they are not
25 foreclosing in this case. My client is. I don't know

1 if the bylaws specifically allow that.

2 But I will say, Your Honor, I don't believe my
3 client would be opposed, if the Court does want to
4 appoint a receiver, just to reiterate what MS. Davidson
5 said, if the order would say the money would be
6 collected by the manager and then distributed either at
7 the foreclosure or maybe after certain lengths of time,
8 as long as my client can make a claim to that money and
9 then the Court would decide how it's distributed, I
10 don't think they would oppose that, but I would have to
11 check with them to get full authority to agree to that.
12 But I don't think they would have any problem with
13 that, so that property could generate income and then
14 at the appropriate time we can make a claim for it.

15 THE COURT: That would be the proper period, and
16 as I read what little bit of the Master Deed you put
17 in here, I don't think there is any way you can crawl
18 ahead of the mortgage company, but there seems to be,
19 under Section 602 on the liability, that was
20 highlighted for some reason, there is no way to get
21 ahead of the first mortgage; however, there is no
22 collection method, as I see it, in the event the
23 property does sell, whether to a third party or to --
24 at the foreclosure sale. So you-all are trying to get
25 some way to do that.

1 MS. DAVIDSON: Get something. At least under the
2 statute, would have a right to a receiver; petition
3 for receiver.

4 Let me also say if in the future, Bank of America
5 would make a claim, but I hope it would not be a claim
6 to the exclusion of the Association. Counsel?

7 THE COURT: She's talking to you, Mr. Gwynne.

8 MR. GWYNNE: As I said, Your Honor, I haven't
9 discussed it with my client. They haven't told me to
10 request a receiver be appointed, so I can just say if
11 one is appointed, as long as the Court is the one who
12 decides how that money is distributed.

13 THE COURT: Well, what we've got is a
14 non-performing asset at this point in time.
15 Ms. Peery, it's costing her money just to keep the
16 doors open.

17 MR. VAUGHAN: Even though I have made the motion
18 to be relieved there are still some things that are
19 pertinent to this motion that I need to address.

20 THE COURT: I'll be glad to hear from you.

21 MR. VAUGHAN: I want to point out the fact that
22 she has said she's been locked out of her unit since
23 June 11. In addition to that I believe she had tried
24 to rent it and -- am I correct that the --

25 MS. PEERY: When the management company that was

1 renting it for me had a new rental, heard about the
2 request of the regime, they pulled out of their
3 contract immediately and said to me they don't want
4 any part of that.

5 MR. VAUGHAN: So she's been harmed by --

6 THE COURT: Between a rock and a hard place on
7 that one.

8 MR. VAUGHAN: Yes.

9 MR. GWYNNE: I would be interested in if there
10 was any notes left on the door. Typically when the
11 bank changes locks they'll place a notice on it to see
12 who changed locks.

13 MS. PEERY: No, sir. When they went to check
14 Berkeley Electric on the air conditioning, because the
15 electric bills had been extremely high, there was no
16 notice or anything. My regular lock, my key fit in
17 but the dead bolt had been changed.

18 MR. GWYNNE: For the record, Your Honor, my
19 client has not told me they changed the locks.

20 THE COURT: Ms. Peery, any other expense you're
21 having there other than the Berkeley Coop bill?

22 MS. PEERY: I did get -- once I was locked out
23 and I knew I wasn't going to have any rental, I had
24 canceled the phone and the cable. I had -- was making
25 that.

1 THE COURT: I'm with you.

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

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

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

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

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

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

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

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

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

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

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

1 I used in renting.

2 THE COURT: Has it been rented in the past? Is
3 it ready for rental?

4 MS. PEERY: I have not had it ready for rental,
5 because I had no one expected when the management
6 company in March pulled out.

7 THE COURT: I'm trying to read between the lines.
8 What are you telling me?

9 MS. PEERY: I had some personal things lying
10 around that I have not had a chance to go back in and
11 recover.

12 THE COURT: Let's give her -- is 15 days enough
13 to get the stuff?

14 MS. PEERY: Yes, sir.

15 THE COURT: I don't want furniture missing. I
16 want it rentable, but if you have personal property,
17 let's do that in the next 15 days.

18 MS. DAVIDSON: I believe there are things that
19 the unit would have, to be on the rental program, like
20 glasses, China and linens, that sort of thing, that
21 would be there, I expect.

22 MS. PEERY: Yes, sir.

23 THE COURT: If there is an issue -- you need to
24 get a list. If there is a dispute we'll cross that
25 dispute later, but there needs to be a list at the

1 time of the transfer.

2 MS. DAVIDSON: Inventory.

3 THE COURT: Ms. Peery, set up a date. You can
4 certainly talk with Ms. Davidson and see if you-all
5 can't set a date where she can go over there with the
6 management company. I don't know that you need to be
7 there. Anything you take you need to make sure we get
8 an itemized list so there is not something missing
9 later.

10 MS. PEERY: Yes, sir. It's a concern I have
11 right now as well.

12 THE COURT: Whatever to make it rentable would be
13 what I would be in favor of. Okay.

14 Now -- so I'll grant that. I'll extend it to the
15 15th of August. If there is a problem you need to let
16 me know, but I want a transfer to take place in the
17 management. I want Ms. Peery to be able to have access
18 to come in and out of there, take what she needs to get
19 out of there, but to maintain the property for rental
20 purposes so it can get rented.

21 MS. PEERY: Your Honor, what about damages from
22 renters that they acquire?

23 THE COURT: There will need to be -- I'm not sure
24 what I'm going to do about that. Must be some bond in
25 effect they would have.

1 MS. DAVIDSON: I would think so, Your Honor.
2 Also would think, don't know for a fact, but I think
3 when they rent they get security deposits as part of
4 the rental agreement.

5 MS. PEERY: It's been my experience in the 21
6 years we've had it and rented it that even when they
7 do get a security deposit it never gets justified as
8 to why this was broken or why this needs to be
9 repaired.

10 THE COURT: What, typically, rent have you gotten
11 there? Do you have a figure?

12 MS. PEERY: Back before the economy went down it
13 was an average of 35 to 40,000 gross.

14 THE COURT: Per annum?

15 MS. PEERY: Yes, sir. Since the economy's been
16 down I've barely made eight.

17 THE COURT: So it doesn't rent much.

18 MS. PEERY: Yes, sir.

19 THE COURT: Do you have a weekly figure?

20 MS. PEERY: It's been varying all over the place
21 due to the economy.

22 THE COURT: They'll have some idea.

23 I don't know that but that's why I want the
24 itemization. Clearly there should be something --
25 trying to decide what -- they may have some liability

1 being the receiver. That's my concern.

2 MS. DAVIDSON: They need to have a bond for that,
3 I would think.

4 THE COURT: They should have a bond.

5 MS. DAVIDSON: That bond, if there was bond that
6 needed additional coverage that would be covered by
7 the receiver, then they would be entitled to
8 reimbursement as well.

9 THE COURT: Do you want me to appoint Ms. Summers
10 individually?

11 MS. DAVIDSON: I think Ravenel Associates is what
12 we asked for.

13 THE COURT: Let's do that. You may need one trip
14 to go make inventory, another trip to go get your
15 stuff. I would set that up this week, if you would.

16 MS. DAVIDSON: The other motion was for use of
17 recreational facilities, that the Peerys not be able
18 to use the recreational facilities as long as they
19 were in default. I would assume that just is the
20 Peerys and not the Peerys' tenants.

21 THE COURT: I'll deny that. Either way they
22 still own the property. They've got a right to go out
23 there. They -- frankly, my opinion is she shouldn't
24 be locked out. That issue is open for me and what and
25 whether or not I'm going to provide for income for

1 that time period is up to me, but you'll need to
2 establish when it was that you were locked out and
3 what happened there. I've previously sanctioned the
4 Bank of America for locking someone out, but doesn't
5 sound like it was Bank of America in this case. It's
6 hard to hit Bank of America with a sanction because
7 the market is already doing it.

8 (Discussion off the record.)

9 THE COURT: That's why I'm going to grant you
10 that motion and prepare an order along those lines,
11 and we'll set forth in there some of those parameters.
12 I would encourage you-all to communicate today or any
13 time this week, and then to the extent that she can
14 speak directly with the property manager, that would
15 benefit her. It would be one less person to contact.

16 I'll go ahead and grant Mr. Vaughan's motion to be
17 relieved. Mr. Gwynne, I'm going to give some
18 additional time because she has other issues on there
19 so rather than 30 days, Ms. Peery, I'll give you 60
20 days. That will be from today. So August 1,
21 September 1, that would be October 1 for you to seek
22 and retain new counsel. If you don't have new counsel
23 by October 1 then we will presume that you are going to
24 proceed pro se, meaning that you're representing
25 yourself. Okay.

1 MS. PEERY: Yes, sir.

2 THE COURT: All right. I'll do that with the
3 stipulation also that you provide her with whatever
4 you've got in this file. There were some motions,
5 some answers, I think some crossclaims. But he's been
6 active in the case but the case is not moving along
7 very quickly. We'll need to get somebody that can do
8 that. Mr. Gwynne will be pushing sometime in the
9 October-November timeframe to try and get a hearing.
10 If you would like, Mr. Gwynne, I can set you up either
11 with a status conference today out in the October
12 timeframe so that you'll know when --- you'll have a
13 date and you'll know when your lawyer needs to come in
14 here or you can come in yourself.

15 (Discussion off the record.)

16 THE COURT: How about the 10th of October? I'll
17 go to the 7th of October, Friday the 7th. Does that
18 work for you, Ms. Peery? I'll set this for
19 10:00 o'clock in the morning. Can you be here?

20 MS. PEERY: It's pretty difficult for me.

21 THE COURT: Later in the morning?

22 MS. PEERY: Yes, sir.

23 THE COURT: How about, Mr. Gwynne, you're
24 traveling down from Columbia. What's a good time for
25 you? Eleven, 11:15?

1 MS. PEERY: Can we make it any later than that?

2 THE COURT: How about 11:30?

3 (Discussion off the record..)

4 THE COURT: Let's say 11:30, Friday October 7th.

5 (Discussion off the record..)

6 THE COURT: Mr. Vaughan, I'll grant you your
7 relief. I'll grant the relief that Ms. Davidson has
8 sought, and then I'll get you-all back in here some 67
9 days out. Hopefully we'll have some rental in the
10 meanwhile.

11 MR. GWYNNE: One other brief thing. Ms. Peery is
12 at 3053 Pignatelli Cressent, Mt. Pleasant, South
13 Carolina?

14 MS. PEERY: Yes.

15 THE COURT: Thank you all for coming.

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STATE OF SOUTH CAROLINA)

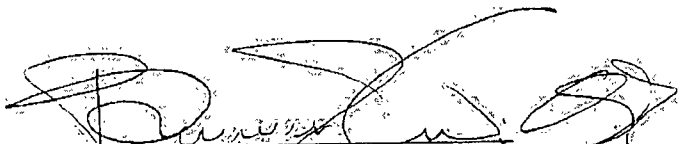
C E R T I F I C A T E

COUNTY OF CHARLESTON)

I, Bernadette A. Cali, Notary Public, do hereby certify that the within hearing was taken and transcribed by me; and that the foregoing pages are a true and accurate transcript of the within proceedings. I further certify that the persons were present as stated.

I further certify that I am not of counsel or kin to any of the parties to this action, nor am I interested in the result of the said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this September 7, 2011.


Bernadette A. Cali, CSR
Notary Public
My Commission Expires
April 5, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

FOR THE NINTH JUDICIAL CIRCUIT

BANK OF AMERICA,

Plaintiffs,

VS.

ELAINE PEERY,

Defendants.

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CASE NO.: 2009-10-CP-5799

Hearing before the

Honorable Mikell R. Scarborough, reported by Bernadette A.

Cali, CSR and Notary Public, at 2:00 p.m. on January 24,

2012 at 100 Broad Street, Charleston, South Carolina.

A P P E A R A N C E S

For the Plaintiff: Charles S. Gwynne, Esq.
Rogers Townsend & Thomas, PC
PO Box 100200
Columbia, S.C. 29202-3200

For the HOA: Lydia Davidson, Esq.
Krawcheck & Davidson
PO Drawer 1018
Charleston, S.C. 29401

Bernadette A. Cali, CSR
Notary Public

1 (Hearing commenced.)

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

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

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

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

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

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

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

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

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

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

5 THE COURT: Negative balance? Great.

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

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

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

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

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

21 MR. GWYNNE: I have, Your Honor.

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

24 MR. GWYNNE: Yes, Your Honor.

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

1 forward?

2 MR. GWYNNE: Yes, Your Honor.

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

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

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

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

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

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

19 THE COURT: All right.

20 (Hands up document.)

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

22 DIRECT EXAMINATION BY MR. GWYNNE:

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

25 A Judith Moore.

1 Q What company do you work for?

2 A Bank of America.

3 Q Where is the physical location of your company?

4 A West Hills.

5 Q California?

6 A Yes.

7 Q What's your job title with Bank of America?

8 A Litigation Specialist.

9 Q What are some of your job duties as Litigation

10 Specialist?

11 A I monitor litigation cases that come through.

12 Q Are you authorized to testify on behalf of your
13 company?

14 A Yes.

15 (Interruption)

16 Q Ms. Moore, are you authorized to testify on behalf
17 of your company at this foreclosure hearing today?

18 A Yes.

19 Q In its ordinary course of business does Bank of
20 America maintain records for the mortgage loan which is the
21 subject of this lawsuit?

22 A Yes.

23 Q As part of your job duties are you familiar with
24 the records maintained by your company in connection with
25 this loan?

1 A Yes.

2 Q Do you have personal knowledge of this mortgage
3 loan based on your review of the business records?

4 A Yes.

5 Q And does Bank of America maintain an electronic
6 payment history for this loan?

7 A Yes.

8 Q And does that electronic payment history record
9 credits and charges to the loan?

10 A Yes.

11 Q Have you reviewed the electronic payment history
12 for this loan?

13 A Yes.

14 Q I'm going to hand you two exhibits which already
15 have been marked as Plaintiff's Exhibit 1 and 2. Please
16 look over these documents and let me know when you're ready
17 to talk about them.

18 A Okay.

19 Q Is Exhibit 1 a copy of the note in this case?

20 A Yes, it is.

21 Q Is Exhibit 2 a copy of the mortgage?

22 A Yes, it is.

23 Q According to the note who is the borrower?

24 A Elaine Peery.

25 Q What date was the note signed?

- 1 A March 27, '08.
- 2 Q Did Ms. Peery sign the note?
- 3 A Yes, she did.
- 4 Q Is the original lender Bank of America NA?
- 5 A Yes, it is.
- 6 Q And does the note cover the property address 5108
- 7 Sea Forest Drive, Johns Island, South Carolina?
- 8 A Yes, it does.
- 9 Q At the time the note was signed what was the
- 10 principle amount borrowed under the note?
- 11 A \$840,000.
- 12 Q The same day the note was signed did borrower also
- 13 give a mortgage?
- 14 A Yes.
- 15 Q That's Exhibit 2; correct?
- 16 A Yes, it is.
- 17 Q The mortgage covers the subject property; correct?
- 18 A Yes, it does.
- 19 Q And does the mortgage constitute a first mortgage
- 20 lien on the subject property?
- 21 A Yes.
- 22 Q The mortgage was signed by Ms. Peery; is that
- 23 correct?
- 24 A Yes, it does; yes.
- 25 Q I'll hand you Exhibit 3, Plaintiff's Exhibit 3.

1 Is that a copy of a payment history on this loan?

2 A Yes, it is.

3 Q Now, at some point did the borrower fall behind in
4 her monthly mortgage payments under the terms of the note
5 and mortgage?

6 A Yes.

7 Q Was a demand letter sent to the borrower?

8 A Yes.

9 Q I'll hand you Plaintiff's Exhibit 4. Is that a
10 copy of the demand letter dated May 14, 2009?

11 A Yes, it is.

12 Q Does that demand letter remind Ms. Peery she's in
13 default under the terms of the note and mortgage?

14 A Yes, it is.

15 Q Does borrower owe a certain sum of money to the
16 Plaintiff?

17 A Yes.

18 Q How do you review records of the Plaintiff to
19 determine what that amount is, and I'll show you what's been
20 marked as Plaintiff's Exhibit 5. Is Plaintiff's Exhibit 5 a
21 copy of the payoff judgment figures for this loan?

22 A Yes, it is.

23 Q I'll hand you Plaintiff's Exhibit 6. Is
24 Plaintiff's Exhibit 6 a summary of those figures excluding
25 attorneys fees and costs?

1 A Yes, it is.

2 Q Can you tell the Court what the amount owing on
3 the loan is? For example, what is the principle amount due?

4 A \$831,652.66.

5 Q What is the interest due?

6 A \$161,376.97.

7 Q What about escrow advances?

8 A \$48,000.89.

9 Q Have there been corporate advances?

10 A Yes.

11 Q What is that amount?

12 A \$358.

13 Q What were those corporate advances for?

14 A Property inspections.

15 Q And have there also been -- what about
16 return-check fees?

17 A \$50.

18 Q In addition to those amounts does the Plaintiff
19 ask for reasonable attorneys fees and costs as part of this
20 action?

21 A Yes.

22 MR. GWYNNE: Your Honor, I move Plaintiff's
23 Exhibits 1 through 6 into evidence.

24 THE COURT: Okay. Any objection?

25 MS. DAVIDSON: No, sir.

1 THE COURT: All right. Without objection.

2 (Plaintiff's Exhibits 1 through 6 received in evidence.)

3 MR. GWYNNE: No further questions, Your Honor.

4 THE COURT: All right.

5 THE COURT: Ms. Davidson, any questions?

6 MS. DAVIDSON: I have no questions, Your Honor.

7 THE COURT: Okay. Do you have a copy of all that?

8 MR. GWYNNE: Yes, Your Honor, except for the
9 summary.

10 THE COURT: Summary was of all the charges?

11 MR. GWYNNE: Yes. I have a copy right here, Your
12 Honor.

13 (Hands up document.)

14 THE COURT: All right, sir.

15 (Pause)

16 THE COURT: Ms. Moore, the loan went delinquent
17 when? When was that? Exhibit 5. Is that May of '09;
18 is that right?

19 A Exhibit 5? Last payment was 3/30/09.

20 THE COURT: So first of April '09. Got it.

21 Now, I'm looking at the record of charges and
22 expenses, escrow advances and whatnot. I'm seeing one,
23 two, three, four, five, six entries for December 2 of
24 '09 for county tax payment. Again in '10 and again in
25 '11. Do you have any idea why there would be six

1 separate entries in '09?

2 A I don't know.

3 THE COURT: No payments for PMI or hazard
4 insurance was made?

5 A I don't have any.

6 THE COURT: Doesn't appear to be, does it?

7 A Doesn't appear to be.

8 THE COURT: Fees, court costs, attorneys fees
9 trustee fee, recording fees, those would be ongoing
10 attorneys fees payable so far, plus whatever litigation
11 expenses were applied?

12 A Yes.

13 THE COURT: Take me to the property inspection
14 fees. Those dates jump around. Looks like they start
15 in August of '09.

16 A Yes.

17 THE COURT: \$5 then go up to, I guess -- August of
18 '11, 14 or \$15. What kind of inspection is being done
19 for five -- the \$15, do you know?

20 A It can range from drive-by to actually going into
21 the property. I don't have the exact information on that
22 for these particular charges.

23 THE COURT: All right. So the calculation is
24 here. All right. Interest, was this a fixed interest
25 rate?

1 A I think it was adjustable.

2 THE COURT: 6.7 percent.

3 A The note is an adjustable-rate note.

4 THE COURT: All right. And is the bank seeking a
5 deficiency at this time?

6 MR. GWYNNE: Deficiency is demanded; has not been
7 waived.

8 THE COURT: Very good. That's all the questions I
9 have. Thank you, Ms. Moore. Anything further,
10 Mr. Gwynne?

11 MR. GWYNNE: Just briefly, Your Honor, I want put
12 on the record -- submit attorneys fees, affidavit of
13 costs, would like to be added to the figures Ms. Moore
14 testified to, so total judgment amount we're seeking is
15 \$1,059,203.61. As I said previously, deficiency is
16 demanded and we're asking that the Court foreclose the
17 property or sign judgment of foreclosure and sale and
18 assign the earliest possible sale date.

19 One other brief issue, Your Honor, is the
20 receiver, I believe, is still appointed. My client is
21 not going to make any claims to any fund that would
22 occur due to the receivership. There is no assignment
23 of rents or anything in the record. But, of course, if
24 Your Honor were to grant the foreclosure judgment my
25 client certainly wants to end their part of the case.

1 I've talked to Ms. Davidson before the hearing and we
2 understand that the receiver would probably stay
3 appointed until the sale date. So if Your Honor could
4 either just either hand write a sentence in the
5 judgment order, Form Four, just stating that that's the
6 case and that Ms. Davidson can come back with a
7 receiver for any accounting after the sale date.

8 THE COURT: That would be the second sale, I would
9 imagine?

10 MS. DAVIDSON: Yes.

11 THE COURT: Let me ask you, I was just looking,
12 there is -- some of these expenses are on both the
13 bank's account information statement and included in
14 your request for attorneys fees. Have those been
15 removed? In other words, the fee due advances?

16 MR. GWYNNE: Yes, Your Honor. Ms. Moore's
17 testimony did not include any attorneys fees and costs.
18 Those are all covered in my affidavit. I have the
19 records if the Court wants to see them, but those are
20 all charges that will be incurred and I did include
21 some anticipated charges for today and post judgment
22 issues. It's up to the Court what amount is being
23 afforded.

24 THE COURT: Your hourly fees for trial and post
25 judgment are shown as ten hours and five hours. That's

1 today and prospective?

2 MR. GWYNNE: That was my work yesterday, actually.
3 I ran our figures through the previous day, then my
4 time preparing the package today and any post
5 judgment -- total 15 hours for attorney-paralegal time.

6 THE COURT: You want to get both the flat fee and
7 hourly fee?

8 MR. GWYNNE: The flat fee covers the initial part
9 of the case. When it goes to contested it goes to the
10 hourly rate.

11 THE COURT: Is that what's been previously paid,
12 do you know?

13 MR. GWYNNE: All attorneys fees have either been
14 paid, been billed or waiting to be billed other than
15 the anticipated charge of the 15 hours. Everything
16 else has actually been incurred.

17 THE COURT: All right, very good.

18 I'm concerned about this \$20,000 of taxes, though.
19 It just doesn't seem to make any sense to me. If you
20 can show me the tax bill. If I put together the
21 4706.79 figure and 4011.50 figure of December 2, '09 I
22 come up with 8718.29. In 2010 the tax bill was
23 8995.80, so about \$270 more. Then last year it was
24 another \$1300 more, which was consistent with what was
25 going on in Charleston County. I don't see where the

1 five, five, five, five come from. Taxes aren't that
2 much.

3 MR. GWYNNE: I don't have that with me. I can
4 research that. I don't know if the property went to
5 tax sale, maybe, and they are paying multiple years.
6 Basically the 2009 charges, Your Honor, I can check and
7 get back to you.

8 THE COURT: There are six entries for 2009 and
9 only one in '10 and '11. I'm inclined to cut the
10 \$20,000 out for request for taxes unless you can show
11 me what was being paid.

12 MR. GWYNNE: Yes, Your Honor.

13 THE COURT: Doesn't jibe. It doesn't look like
14 there was an escrow until that happened, but maybe
15 everything was current until then. I don't know.

16 All right. Very good.

17 So in response to the Plaintiff's claim I will --
18 first, I'm going to deny -- for the record -- deny the
19 continuance request. I will grant the judgment of
20 foreclosure. I'm looking at those \$20,000 in charges.
21 If you can establish that, that would be fine, but I'm
22 assuming insurance is being paid through the homeowners
23 association regime. That's why that doesn't make
24 sense. Unless you can justify that \$20,000 it doesn't
25 make sense to me.

1 MR. GWYNNE: If I can just have ten days to
2 supplement it.

3 THE COURT: I'll give you that. I'll sit on your
4 decree until then. You can revise it and send it to
5 me. How about that? If I pick any other fees off I'll
6 let you know.

7 MR. GWYNNE: Yes, Your Honor.

8 THE COURT: Very good. I'll issue a decree of
9 foreclosure when we get that answered and resolved. If
10 you want to add that language to your order, that the
11 receiver would remain in place until such time as the
12 property is made its final sale, we'll keep that in
13 effect. All right.

14 Ms. Davidson, from your perspective?

15 MS. DAVIDSON: Your Honor, I believe we're going
16 to schedule a hearing later, closer to the time of the
17 sale; let the receiver stay in place. And then we'll
18 reschedule it, schedule a hearing on judgment.

19 THE COURT: As long as she's here why don't we get
20 a report? Are you prepared to give an oral report,
21 tell me what's going on?

22 MS. MARTIN: Certainly.

23 THE COURT: Come on up.

24 (Karen Martin, duly sworn, testifies as follows:)

25 DIRECT EXAMINATION BY MS. DAVIDSON:

1 Q Ms. Martin, would you state your full name for the
2 record?

3 A Karen Martin.

4 Q Who do you work for?

5 A Ravenel Associates, Inc.

6 Q Are you familiar with the receivership that is
7 involved with this case?

8 A I am.

9 Q Do you have an accounting with you now of the
10 funds that have been received and the expenses incurred?

11 A I do.

12 MS. DAVIDSON: Your Honor --

13 THE COURT: Want to just recite it for me? I'll
14 let you put it in the record if you like.

15 A Yes.

16 THE COURT: I heard you were running a negative
17 balance.

18 A We are. There are expenses associated with
19 appearances and setting up the receivership and allowing
20 Mrs. Peery to remove her personal items and things of that
21 nature.

22 THE COURT: To the best of your knowledge is all
23 that gone today? Has she removed her stuff?

24 A She has. The unit is now being rented. So those
25 expenses totaled 4566.17.

1 There have been two rentals and the net
2 result of those two rentals is \$902.93. So we're running a
3 negative balance as of today.

4 THE COURT: What is it renting for; a week, a
5 month or what?

6 A These are weekly rentals thus far.

7 THE COURT: What's the expense of a weekly rental?

8 A About \$1100.

9 THE COURT: Nets about nine hundred? Only twice
10 it's been able to be rented?

11 A Only twice. \$824 and one for 1125. And then, of
12 course, the rental company takes their large portion thereof
13 and the result of those two rentals is \$902.

14 THE COURT: Any other ongoing obligations monthly
15 on that?

16 A There are monthly expenses having to do with the
17 electricity and the cable and things of that nature;
18 utilities primarily.

19 Q What's the current balance then? Is that the 4000
20 figure or --

21 A The current balance is -- let me do the math.
22 It's about \$3400 would be the net. That would be in the
23 red.

24 THE COURT: Do you want Mr. Gwynne to see that and
25 ask her any questions about that?

1 MR. GWYNNE: I'll take a look at it, Your Honor,
2 but I don't believe I have any questions.

3 THE COURT: That might be an expense we can put on
4 the Bank of America; justify five thousand.

5 A You'll see descriptions of expenses and the last
6 page shows the final balances for different -- for each
7 column.

8 MR. GWYNNE: I have no questions, Your Honor.

9 THE COURT: All right. Anything else from
10 Ms. Martin?

11 Ms. Martin, are you actually the receiver or the
12 accounting person for the receiver?

13 A Ravenel Associates is the receiver. I'm a manager
14 with Ravenel Associates, so I'm representing them today.

15 THE COURT: Very good.

16 MS. DAVIDSON: She's been appointed to that.

17 THE COURT: Let's mark that as an exhibit. I
18 think the receiver was appointed in the
19 August-September timeframe.

20 MS. DAVIDSON: Yes, sir.

21 THE COURT: August 16, and then I amended the
22 receiver's order pursuant to request by the bank. So
23 the initial start of expenses was the largest single
24 expense?

25 A Yes.

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

4 A Yes.

5 THE COURT: Fully furnished, I assume?

6 A Yes.

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

9 A Thank you.

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

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

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

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

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

22 Mr. Gwynne, what I'll do, I'll set this for sale.

23 (Discussion off the record.)

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

1 MR. GWYNNE: To be clear, Your Honor, within ten
2 days I'll e-mail you a proposed new judgment either
3 with explanation of the 20,000 and that extra sentence
4 added about the receiver.

5 THE COURT: That would be great. All right. I'll
6 look for that. I think your office -- just coordinate
7 that with Ms. Dawkins in my office for advertising.

8 MR. GWYNNE: For the notice of sale?

9 THE COURT: Yes. We'll go from there. All right?

10 MS. DAVIDSON: Thank you, Your Honor.

11 THE COURT: Ms. Davidson, sometime in the late
12 March period you want to come in and update your
13 figures?

14 MS. DAVIDSON: Yes.

15 THE COURT: Do you want a date for that now?

16 MS. DAVIDSON: That would be great.

17 THE COURT: What if we said March 26? Let's say
18 2:15.

19 MS. DAVIDSON: That's fine.

20 THE COURT: It's a Monday, March 26.

21 MR. GWYNNE: I assume if we're not -- Bank of
22 America is not making claim to that money and not
23 charging for expenses, we wouldn't appear.

24 THE COURT: I doubt that's going to happen. I'm
25 just letting you know.

1 (Discussion off the record.)

2 THE COURT: Very good.

3 (Discussion off the record.)

4 (Hearing concluded.)

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1 STATE OF SOUTH CAROLINA)
2) C E R T I F I C A T E
3 COUNTY OF CHARLESTON)
4

5 I, Bernadette A. Cali, Notary Public, do
6 hereby certify that the within hearing was taken and
7 transcribed by me; and that the foregoing pages are
8 a true and accurate transcript of the within proceedings. I
9 further certify that the persons were present as stated.

10 I further certify that I am not of counsel
11 or kin to any of the parties to this action, nor am I
12 interested in the result of the said action.

13 IN WITNESS WHEREOF, I have hereunto
14 subscribed my name, this April 10, 2012.
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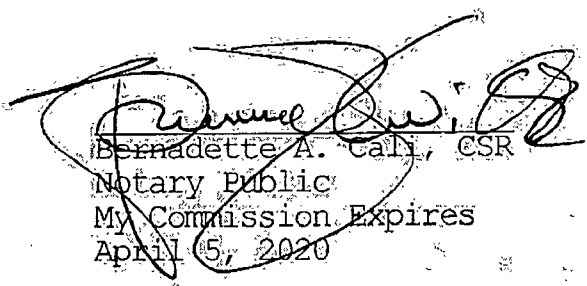
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Bernadette A. Cali, CSR
Notary Public
My Commission Expires
April 5, 2020

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Bank of America, N.A.,) CASE NO. 09-CP-10-5799
Plaintiff,)
vs.) TRANSCRIPT OF TESTIMONY
Elaine Devlin Peery a/k/a Elaine D. Peery;)
Kiawah Island Community Association, Inc.;)
Windswept Villas III Horizontal Property)
Regime, Inc.,)
Defendants.)

A Hearing was held before the Honorable Mikell Scarborough, as Master-In-Equity, on the 24th day of January, 2012, attended by Lydia P. Davidson, Esquire, Attorney for Defendant, Windswept Villas III Horizontal Property Regime, Inc. ("Windswept III").

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

Also calls attention to the Notice of Lien for past due regular and special assessments filed by Windswept III on or about March 16, 2009 in Book 0041, Page 347 of the RMC Office for Charleston County;

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

Also calls attention to the appearance of Defendant Elaine Devlin Peery a/k/a Elaine D. Peery (hereinafter "Peery") by and through the filing of a Counterclaim against Windswept III on November 25, 2009 evidencing Peery's receipt of Windswept III's Summons and Answer and Counterclaim;

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

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

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

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

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

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

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

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

TMS No.: 209-06-00-352

There is due and owing Windswept III for regular and special assessments, together with late fees and prejudgment interest the sum of Nineteen Thousand Seven Hundred Twenty-six and 89/100ths (\$19,726.89) Dollars, as of March 26, 2012.

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

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

From information received from Chad Hammond of Ravenel Associates, Inc., duly appointed Receiver in this matter, expenses for the receivership totaled \$4,566.17, of which \$1,046.82 in fees incident to renting the unit has already been paid from rental income, leaving an expense balance of \$3,519.35. An amount of \$1,950.00 is due and payable to the Receiver and, in addition to past due assessments, late fees and attorneys' fees, an amount of \$1,569.35 is due to Windswept III for costs and maintenance of the unit.

Income from the receivership totaled \$1,949.75 of which \$1,046.82 was used to pay expenses incident to rental of the unit leaving \$902.93 in income.

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

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

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

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

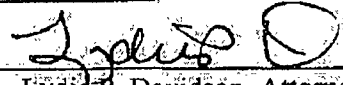
Krawcheck & Davidson Attorney's Fees	\$4,645.00
Krawcheck & Davidson Costs	\$ 45.71
Total Costs and Attorneys Fees	\$4,690.71

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

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

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

REFERENCE ADJOURNED

By: 

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

Charleston, South Carolina
3/27, 2012

1 STATE OF SOUTH CAROLINA)
 2 : IN THE COURT OF COMMON PLEAS
 2 COUNTY OF CHARLESTON) CASE NO. 2009-CP-10-5799
 3 WINDSWEPT VILLAS, et al)
 4)
 4 Plaintiff(s),)
 5) HEARING
 5 -vs)
 6)
 6 ELAINE PEERY, et al)
 7)
 7 Defendant(s),)
 8 -----)
 8
 9

10 Given before The Honorable Judge Mikell Scarborough in
 11 the Charleston County Courthouse, 100 Broad Street, Suite
 12 266, Charleston, South Carolina on Monday, January the 13,
 13 2014, commencing at 2:35 o'clock p.m.
 14
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 16
 17
 18
 19

20 -----
 21 RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA
 22 Professional Court Reporters
 23 Beaufort Charleston Columbia Florence Myrtle Beach
 23 521-9994 556-2923 252-6620 662-6711 626-2961
 24 1-800-822-8711
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1 A-P-P-E-A-R-A-N-C-E-S

2 For the Plaintiff : Pratt-Thomas Walker
3 By: Katie Monoc, Esq.,
16 Charlotte Street
Charleston, SC 29403
4
5 For the Defendant : Cantrell Legal
6 By: John Cantrell, Esq.,
PO Box 1276
Goose Creek, SC 29445

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1 THE COURT: I've got Windswept versus Peery. This
2 is a supplemental proceeding, Ms. Monoc?

3 MS. MONOC: Yes, Your Honor.

4 THE COURT: And on behalf of Ms. Peery?

5 MR. CANTRELL: John Cantrell, Your Honor.

6 THE COURT: We got any motions we need to take up?

7 MR. CANTRELL: Yes, Your Honor. I'd be making a
8 motion for a continuance. I have filed a Notice of
9 Appearance in this case today. I was just retained last
10 month by Ms. Peery. It's my understanding that opposing
11 counsel hasn't yet obtained proper service on my client.
12 I'm willing to accept service as long as it doesn't
13 prejudice my client's rights today in this hearing. I'd be
14 happy to accept that going forward, but we feel like we'd
15 like to try to resolve these issues. And we need a little
16 time to do those.

17 THE COURT: Okay. Ms. Monoc?

18 MS. MONOC: Your Honor, he's correct that we have
19 not obtained personal service on her. We have an Affidavit
20 of Non-service attempted 12 times. Our process server
21 attempted 12 times. We also sent certified mail return
22 receipt requested restricted addressee to no avail. And Mr.
23 Cantrell e-mailed me on New Years Eve and let me know that
24 he was apprised of the situation. And we've spoken several
25 times since then. And Your Honor, this is just, you know,

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1 because we don't have personal service on her I'm not
2 seeking contempt in any way for today's hearing. And none
3 of the discovery was done, and I'm not seeking contempt for
4 that.

5 But Your Honor, they have made it clear that the amount
6 owed pursuant to the judgment is held in trust right now at
7 Jessie Kirchner's law office based on a construction defect
8 suit. And our position is that since the funds are there
9 that we're entitled to an order directing those funds to my
10 client.

11 THE COURT: All right. Well, you've got your
12 judgment. We're here on supplemental proceedings is where
13 we stand there. But the supplemental proceedings has yet to
14 be perfected through service. Mr. Cantrell says he's
15 willing to accept service.

16 MR. CANTRELL: Tomorrow basically, Your Honor.

17 THE COURT: But you've already located these
18 assets is what you're telling me?

19 MS. MONOC: Yes. Mr. Cantrell actually provided
20 me with an e-mail today from Jessie Kirchner's law office.

21 THE COURT: And this is an HOA judgment; is that
22 what this is?

23 MS. MONOC: Yes, sir.

24 THE COURT: Is that the same property that was
25 being the subject to where those funds came from?

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1 MS. MONOC: Different matter.

2 THE COURT: That's a different matter all
3 together. Okay.

4 MR. CANTRELL: Mr. Kirchner represented her in a
5 construction defect litigation, and that was resolved. At
6 the time he was getting ready to disburse those funds he
7 noted her judgment. My client wasn't even aware of this
8 claim until like November of this -- and this was supposed
9 to have been a judgment back in 2011. So we've got some
10 series issues. We want to make sure the service was proper.
11 And we've also got some possible counter claims that might
12 be a setoff against this judgment amount. So the last thing
13 we want is this money to go flying out the window until the
14 Court can decide whether or not it's properly owed to the
15 HOA. So we need time to look into that.

16 THE COURT: I'll grant you that point. But the
17 judgment was rendered when?

18 MR. CANTRELL: 2011.

19 MS. MONOC: Your Honor issued the order. It was
20 filed March 29th, 2012.

21 THE COURT: So you'll be limited in how much you
22 can put on that judgment, but I understand what you're
23 saying. So what I'll do is I'll continue the case today
24 subject to Mr. Cantrell accepting service. And then you've
25 identified those assets. What I'll do is, why don't you put

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1 that in an order, Ms. Monoc, on the continuance. And we'll
2 just cover that issue then. That'll give y'all a chance to
3 do some talking. If y'all need a subsequent court date I'm
4 happy to give you one.

5 (Hearing concluded at 2:50 o'clock p.m.)

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1 STATE OF SOUTH CAROLINA)

2 : C-E-R-T-I-F-I-C-A-T-E

3 COUNTY OF DORCHESTER)

4 I, Stacey L. Scoggan, Court Reporter and Notary Public,
5 certify that I did have The Honorable Judge Mikell
6 Scarborough to appear before me at 2:30 o'clock p.m. on
7 Monday, January 13, 2014, at the Charleston County
8 Courthouse, 100 Broad Street, Suite 266, Charleston, South
9 Carolina; that the witness was sworn and cautioned to tell
10 the truth, the pages constitute a true and accurate
11 transcript of the testimony given at that time and place.

12 I further certify that I am not of counsel or kin to
13 any of the parties to this cause of action, nor am I
14 interested in any manner in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal this the 5th day of January, 2015.

17

18

19

20

Stacey L. Scoggan

21

Notary Public for South Carolina

22

My Commission Expires: February 23, 2021

23

24

25

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) IN THE COURT OF COMMON PLEAS
3 WINDSWEPT VILLAS)
4 HORIZONTAL PROPERTY)
5 REGIME,)
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Plaintiff(s),
-vs
ELAINE DEVLIN PEERY,
Defendant(s),
-----)

HEARING

11 Given before The Honorable Judge Mikkell Scarborough in
12 the Charleston County Courthouse, 100 Broad Street, Suite
13 266, Charleston, South Carolina on Monday, April the 21,
14 2014, commencing at 2:00 o'clock p.m.

21 RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA
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A-P-P-E-A-R-A-N-C-E-S

1
2 For the Plaintiff : Pratt-Thomas Walker
3 By: Katie Monoc, Esq.,
16 Charlotte Street
Charleston, SC 29403

4 For the Defendant : Cantrell Law
5 By: John Cantrell, Esq.,
6 PO Box 1276
Goose Creek, SC 29445

7 Hancock Law Firm
8 By: Vernee Hancock, Esq.,
9 PO Box 2276
Summerville, SC 29484

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15 INDEX TO EXHIBITS

16 (None were marked.)
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1 THE COURT: This is Windswept Villas Horizontal
2 Property Regime as plaintiff versus Elaine Devlin Peery.
3 The case is 2009-CP-10-5799. Here today on supplemental
4 proceedings Ms. Katie Monoc present for the plaintiff
5 Windswept Villas. Other appearances are --

6 MR. CANTRELL: Your Honor, John Cantrell for the
7 defendant Elaine Peery.

8 MS. HANCOCK: And Vernee Hancock, Your Honor, for
9 the defendant Elaine Peery.

10 THE COURT: All right. Where's Ms. Peery?

11 MR. CANTRELL: Your Honor, she's not here today..

12 THE COURT: And why is she not here?

13 MR. CANTRELL: Your Honor, I wasn't aware that she
14 needed to be here. We're here on a motion by opposing
15 counsel to try to continue some of her previous motions.
16 And I wasn't aware she needed to be here..

17 THE COURT: Y'all are just here for motions then?

18 MS. MONOC: Yes.

19 THE COURT: We're not here for testimony; is that
20 your understanding, Ms. Monoc?

21 MS. MONOC: My understanding is that they were
22 going to give testimony because this was in accordance with
23 the Court's October 28th, 2013 order and your order
24 continuing matters dated January 15th. So we tried to
25 arrange her deposition. I sent several emails to Mr.

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

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

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

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

18 THE COURT: To vacate what?

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

23 THE COURT: When was that?

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

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1 THE COURT: In this case?

2 MS. HANGOCK: In this case, Your Honor.

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

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

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

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

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

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

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1 and the post judgment at the rate since the date of the
2 judgment.

3 THE COURT: Judgment was rendered in 2013; is that
4 right?

5 MS. MONOC: The judgment is dated March 29th. It
6 was filed March 29th, 2012. And actually it was signed by
7 Your Honor that day.

8 THE COURT: Were there surplus funds in this?
9 Where's the 27,000 coming from?

10 MS. MONOC: Those are just known amounts that she
11 received as proceeds from a separate matter.

12 THE COURT: All right. So 27,034.32, did you
13 calculate interest on that amount?

14 MS. MONOC: I did. And it is in correspondence I
15 sent. I did as of a previous date, but I don't have as of
16 today's date. I do not have that amount, Your Honor.

17 THE COURT: What's the last amount you have?

18 MS. MONOC: As of February the 5th with back
19 dating the payoff date the post judgment interest at 7.25
20 percent was 3,640.70. And the costs, 207.12. And the
21 attorney's fees as of that date were \$4,718.

22 MR. CANTRELL: Objection, Your Honor. We would
23 object to --

24 THE COURT: There's no objection. There's no
25 testimony being entered. I'm just asking her questions

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1 trying to get information.

2 Okay. How much was the judgment? What was the
3 judgment amount?

4 MS. MONOC: 27,034.02.

5 THE COURT: Okay. You got the per diem figure on
6 the judgment amount? Do you have a per diem figured out on
7 just an amount?

8 MS. MONOC: Just an amount.

9 THE COURT: So the amount of attorney's fees is
10 5,000 giving credit for interest from February which is the
11 most recent figure we've got. I come up with the figure
12 35,881.24. And I'm assuming you'll get me an affidavit of
13 attorney's fees to substantiate that.

14 MS. MONOC: Yes, sir.

15 THE COURT: All right. Now, Mr. Cantrell, let me
16 hear from you.

17 MR. CANTRELL: Your Honor, as far as proof of any
18 supplemental fees or costs we would object to that since
19 that hasn't been submitted to us. We haven't had an
20 opportunity to review it. We haven't had due process notice
21 or an opportunity to be heard. So we would object to the
22 Court considering supplemental amounts at this time. As
23 Your Honor is aware as opposing counsel's admitted the
24 amount is escrowed for the biggest judgment. However, as
25 Your Honor has also been told we have filed a motion to

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1 vacate the judgment on which these supplemental proceedings
2 are being held. So we would respectfully request that the
3 Court continue your ruling on this matter until such time as
4 that can be heard. At the same time there's no reason to
5 pay over the defendant's funds if this judgment, for example
6 Your Honor, is void.

7 THE COURT: I'm going to deny that motion. I'll
8 hear from you on it. Your question as to the \$27,000
9 judgment, is that what you're asking me about?

10 MR. CANTRELL: Yes, Your Honor.

11 THE COURT: Who entered that judgment?

12 MR. CANTRELL: That was entered by Your Honor, I
13 believe.

14 THE COURT: Is that in 2012? Is that this
15 judgment?

16 MR. CANTRELL: March 29th, 2012.

17 THE COURT: And you're now asking me after two
18 years to vacate that judgment?

19 MR. CANTRELL: Your Honor, my client never
20 received notice of either the motion, the cross claim itself
21 or the judgment hearing. So we believe due process requires
22 Your Honor to recognize that as a void judgment.

23 THE COURT: Never got what?

24 MR. CANTRELL: Never got squat, Your Honor. At
25 the time originally --

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

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

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

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

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

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

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

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

24 MS. MONOC: Okay.

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

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

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

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

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

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

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1 indulgence one moment please.

2 THE COURT: Okay. Go ahead.

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

6 THE COURT: Filed?

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

9 THE COURT: He accepted service?

10 MS. MONOC: I believe so.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 Your Honor.

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

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

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

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

9 THE COURT: Is that your understanding?

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

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

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

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

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1 represent Ms. Peery. So at some point Ms. Davidson, and I
2 believe this portion is hearsay, that she somehow spoke with
3 Ms. Peery -- I'm sorry. Spoke with Mr. Holden and she
4 believed that he certainly anticipated the hearings to go
5 forward. But that's certainly hearsay. Mr. Holden is also
6 an officer of the court. He has filed no notice of
7 appearance in these actions. And it was very clear from the
8 record.

9 THE COURT: He's an attorney or he's an
10 accountant?

11 MR. CANTRELL: Both, Your Honor.

12 MS. HANCOCK: He's both. I apologize. And so it
13 was very clear that based upon the last statement from Ms.
14 Davidson that she was ready to go forward. But again, the
15 Court was very concerned that Ms. Peery did not have notice.
16 And once again, that's another problem that's been a
17 catalyst in all these proceedings for this long period of
18 time as the Court has alluded to, the four to five year
19 period. There is even a point to where ==

20 MS. MONOC: Can you tell me what you're looking
21 at, those pages of concern? Because I haven't seen that.

22 MS. HANCOCK: I believe that's in the transcript
23 that you just indicated that you had.

24 MS. MONOC: I have a transcript of judgment, a
25 transcript of testimony that goes with the judgment.

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1 MR. CANTRELL: We're talking about the transcript.

2 MS. HANCOCK: In any event, Your Honor, at one
3 point Bank of America vacated their own judgment, which I
4 believe the client should have had a notice of that as well.
5 So there's been just a vast amount of problems. And again,
6 the biggest catalyst of all is the notice piece.

7 MS. MONOC: Your Honor, if I may direct you to
8 page two of this transcript they just said. Your Honor said
9 yesterday I received a letter from Ms. Peery asking for a
10 continuance citing her difficulty with adult care, I think
11 on her husband. As I had it set for a while I did not want
12 to continue the case. I don't see Ms. Peery this morning.

13 THE COURT: The date of that hearing was --

14 MS. HANCOCK: That was January the 24th, Your
15 Honor.

16 THE COURT: So she clearly had notice of the
17 hearing if she's asking for a continuance.

18 MR. CANTRELL: On the foreclosure, Your Honor.

19 THE COURT: I understand that.

20 MS. HANCOCK: Just let me clarify, Your Honor.

21 Mr. Holden -- there was another attorney, I believe it was a
22 construction loan -- I'm sorry. The construction attorney
23 that Ms. Peery had, Your Honor, that was trying to notify
24 Mr. Holden of the hearing. Mr. Holden, okay, who doesn't
25 represent her, that's the way he found out about the

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1 hearing. And that's how Ms. Peery found out about the
2 hearing the day before. And that's why she sent in that
3 continuance. But they can provide nothing that indicates
4 that she was served by any party, particularly the plaintiff
5 that would give her adequate notice of the proceedings. And
6 they continue to do it.

7 THE COURT: You also got a bunch of written
8 documents. I'll review them and give you an answer. Okay.

9 MS. HANCOCK: Your Honor, may I just, one last
10 thing. This motion to vacate has been filed. May I hand it
11 up to Your Honor so we get a date and time? Thank you.

12 THE COURT: You may. I'm going to take that under
13 advisement. You got any documents you want me to look at?

14 MS. MONOC: Your Honor, what's in the record. I
15 don't have anything else necessarily, but I'll prepare the
16 attorney's fees affidavit and submit that.

17 THE COURT: I think one thing you need to be able
18 to find is an answer to service of process of Windswept
19 Villas on Ms. Peery. Looks to me like that may or may not
20 have been done. Looks to me like Ms. Peery filed a claim
21 against your client, so there's some question about how that
22 would resolve the other one.

23 MS. MONOC: Any underlying action, the cross claim
24 served on Ms. Peery, that's what you need?

25 THE COURT: Yeah. That's what I'm looking for.

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1 It appears to the Court she clearly knew what was going on.
2 She was asking for a continuance. Attached to my order of
3 foreclosure is a denial of a request for continuance.

4 MR. CANTRELL: That's on the foreclosure action,
5 Your Honor. We would suggest --

6 THE COURT: That's all happening in the same
7 action. The question is whether or not they got service of
8 process on your client or whether or not your client's cross
9 claim against them vitiates a need for that. That's the
10 question for the Court.

11 MS. HANCOCK: We'll provide affidavits.

12 MR. CANTRELL: Regarding your requested attorney's
13 fees, Your Honor, could we request time records on that?

14 THE COURT: No, but you can get me an affidavit.
15 Any time records you want submitted will come to me and I'll
16 look at those in camera. That's what you're asking for?

17 MR. CANTRELL: No. I'm asking for her time
18 records supporting her affidavit.

19 THE COURT: And I'm not requiring her to give them
20 to you.

21 MR. CANTRELL: And how do I check those time
22 entries, Your Honor?

23 THE COURT: You'll have to look at her affidavit.

24 MR. CANTRELL: And if it doesn't provide
25 sufficient detail regarding each alleged --

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1 THE COURT: Then you request the Court to look at
2 an in camera review of her attorney's fees or y'all work it
3 out, one or the other.

4 MS. MONOC: Your Honor, I'd be happy to provide
5 the Court with an in camera review of the attorney's fees so
6 as to save time.

7 THE COURT: Sure.

8 (Hearing concluded at 2:35 o'clock p.m.)
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1 STATE OF SOUTH CAROLINA)

2 : C-E-R-T-I-F-I-C-A-T-E

3 COUNTY OF DORCHESTER)

4 I, Stacey L. Scoggan, Court Reporter and Notary Public,
5 certify that I did have The Honorable Judge Mikell
6 Scarborough to appear before me at 2:00 o'clock p.m. on
7 Monday, April 21, 2014, at the Charleston County Courthouse,
8 100 Broad Street, Suite 266, Charleston, South Carolina;
9 that the witness was sworn and cautioned to tell the truth,
10 the pages constitute a true and accurate transcript of the
11 testimony given at that time and place.

12 I further certify that I am not of counsel or kin to
13 any of the parties to this cause of action, nor am I
14 interested in any manner in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal this the 17th day of July, 2014.

17
18 
19 _____
20 Stacey L. Scoggan

21 Notary Public for South Carolina

22 My Commission Expires: February 23, 2021

23
24
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1 STATE OF SOUTH CAROLINA)
 2 : IN THE COURT OF COMMON PLEAS
 3 COUNTY OF CHARLESTON) CASE NO. 2009-CP-10-5799
 4 WINDSWEPT VILLAS)
 5 HORIZONTAL PROPERTY)
 6 REGIME,)
 7 Plaintiff(s),)
 8 -vs) HEARING
 9 ELAINE DEVLIN PEERY,)
 10 Defendant(s),)
 11 -----)

12 Given before The Honorable Judge Mikell Scarborough in
 13 the Charleston County Courthouse, 100 Broad Street, Suite
 14 266, Charleston, South Carolina on Friday, June the 20,
 15 2014, commencing at 10:00 o'clock a.m.

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 20 -----
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A-P-P-E-A-R-A-N-C-E-S

For the Plaintiff

Pratt-Thomas Walker
By: Katie Monoc, Esq.,
16 Charlotte Street
Charleston, SC 29403

For the Defendant

Cantrell Law
By: John Cantrell, Esq.,
PO Box 1276
Goose Creek, SC 29445

Hancock Law Firm
By: Vernee Hancock, Esq.,
PO Box 2276
Summerville, SC 29484

INDEX TO EXHIBITS

(None were marked.)

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1 THE COURT: This case is the Bank of America
2 versus Elaine Peery. It is case number 2009-CP-10-5799. I
3 got Ms. Katie Monoc here for the plaintiffs.

4 MS. MONOC: And just to clarify it's not Bank of
5 America. I represent Windswept, the petitioner.

6 MS. HANCOCK: And Your Honor, for further
7 clarification it's 2010 I believe.

8 THE COURT: Well, that's going to be one of our
9 issues. We've got to figure out which case this is, because
10 I got correspondence on a 2009 case. I got a 2014 case in
11 which Ms. Peery as the plaintiff. And what's the case
12 number that y'all are showing?

13 MS. MONOC: This is 2009-CP-10-5799. This is the
14 underlying action, Bank of America versus Peery. That's the
15 case the judgment was awarded in and these are the
16 supplemental proceedings.

17 THE COURT: Right. This is out of the judgment,
18 cross claim judgment from the HOA Windswept Villas is what
19 this one is. Then I got Mr. Cantrell here.

20 MR. CANTRELL: Yes, Your Honor, John Cantrell
21 here as well on behalf of the defendant Elaine Devlin Peery.

22 THE COURT: And Ms. Vernee Hancock, and also for
23 Ms. Peery, right?

24 MS. HANCOCK: Yes, Your Honor.

25 THE COURT: Let's make sure we're all in the right

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1 case. Ms. Hancock you made reference to a 2010 case. I
2 want to make sure we got the right case number.

3 MS. HANCOCK: May it please the Court, Your Honor.
4 I do apologize. I even have a document here and order of
5 reference where it had 2010. It was marked out 2009. And
6 on correspondence from opposing counsel it had 2010 even
7 though there are other motions that indicate 2010. So maybe
8 that was a scribner's errors.

9 MS. MONOC: It is, Your Honor. In some cases I
10 think my paralegal had typed '10 and the clerk's office
11 scratched it out and put '09. And I think that it just
12 translated when captions were copied. It was a clerical
13 error. The end number that I believe Ms. Hancock is
14 referring to is 10-5799, which is the end number of the 2009
15 case.

16 THE COURT: In any event it should be 2009. 5799
17 has been consistent on this case?

18 MS. MONOC: Yes, Your Honor.

19 THE COURT: We'll verify that and make sure
20 nothing has been misfiled as well. And this is motions.
21 We're now in supplemental proceedings and we've got motions
22 to entertain; is that correct?

23 MS. MONOC: Yes, Your Honor.

24 THE COURT: Ms. Monoc?

25 MS. MONOC: Well, we brought these supplemental

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1 proceedings. These have been going on for some time. The
2 order of reference was dated October 28th. There was a
3 hearing in January. Mr. Cantrell appeared. MS. Peery did
4 not appear. You asked us to try and work things out and do
5 some discovery, try to do some discovery. Discovery was not
6 responded to. There was no consent to a deposition time and
7 place.

8 And so I called for another hearing on supplemental
9 proceedings. And again, Ms. Peery didn't show up. We had
10 initially identified the underlying judgment amount, which
11 is being held in trust at Thurmons Kirschner Tims Law Firm.
12 But we still have to identify the assets regarding the
13 attorney's fees, costs, and interest that's associated with
14 the underlying judgment. Ms. Peery has failed to appear at
15 every single hearing. She is apparently not here today.
16 And Your Honor, if you'll recall Mr. Cantrell moved to be
17 removed as counsel. She was in the courthouse. And the
18 reason that we continued the hearings again was so that
19 Ms. Peery could be --

20 MR. CANTRELL: Objection. I don't know what she's
21 talking about.

22 THE COURT: There's no objection to an argument.
23 All right. I think that's the last thing we had.

24 MS. MONOC: So we're in supplemental proceedings.
25 And I filed a motion for rule to show cause and an order of

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1 contempt for failure to respond to discovery and appear in
2 supplemental proceedings. I've also filed opposition to
3 their motion to vacate the underlying judgment. And I also
4 oppose Mr. Cantrell's request to be removed as counsel at
5 this late stage in the game after months and months and
6 months of delay.

7 THE COURT: Mr. Cantrell?

8 MR. CANTRELL: Your Honor, I had spoken to
9 opposing counsel before asked her if she would kindly allow
10 my motion to withdraw to be heard first. She objected and
11 obviously has failed to even raise that issue. So I'm a
12 little miffed about that. But I would prefer that Your
13 Honor allow me to be heard on that motion, because obviously
14 it would save my client some unnecessary attorney's fees if
15 that were to be granted.

16 Regarding their objection to my motion to withdraw,
17 she's got no dog in that fight. I would point the court to
18 the governing rule which is Rule 11(b). It says that an
19 attorney may be changed by consent or by court order. Now,
20 if I had consented with my client she wouldn't have even
21 been involved. So I say she has no standing. I have a
22 co-counsel who has not been asked to be relieved. There's
23 no prejudice to the other side. She's simply running up my
24 time and my cost unnecessarily for something she's got no
25 standing in regards to. So first of all, if it please the

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1 Court I'd prefer that the Court hear my motion to withdraw
2 first.

3 THE COURT: Let me hear from you on that,
4 Ms. Monoc.

5 MS. MONOC: Your Honor, I just think that the
6 interest of justice are not served by Mr. Cantrell leaving
7 the room. At the last hearing you said that this would be
8 our final hearing. All motions would be resolved at one
9 time. And I'm concerned that if he leaves the room then
10 that leaves another opportunity for a got you moment, where
11 there's confusion about what happened in the underlying
12 record and --

13 THE COURT: I'm not going to hear it first. I'll
14 hear it at the end.

15 MS. HANCOCK: Your Honor, I would ask that the
16 rule to show cause issue be dealt with first. Number one,
17 for purposes of a rule to show cause in a contempt
18 proceedings those proceedings must, the actual rule itself
19 must be served by a sheriff on the defendant. My
20 understanding that she has not been served. Opposing
21 counsel certainly has not served me or asked whether or not
22 I would even accept service for Ms. Peery. And I can't
23 speak for Mr. Cantrell, but I don't believe that he was
24 asked by opposing counsel to accept service of a rule to
25 show cause.

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1 Secondly, the filing for a rule to show cause, there
2 must be ten days notice to a defendant. You cannot count
3 the day, of course that, if there was attempt to serve the
4 day of filing or the day it was served. And neither one of
5 those things have taken place.

6 THE COURT: On a rule?

7 MS. HANCOCK: On a rule, Your Honor. She has not
8 given ten days notice to anybody.

9 THE COURT: I don't think that's required on a
10 rule. I think notice of a hearing I think it is, but I
11 don't think on a rule.

12 MS. HANCOCK: On a rule to show cause, Your Honor,
13 she has to give us --

14 THE COURT: When was the rule served and on whom
15 was it served?

16 MS. HANCOCK: It was not served, Your Honor.
17 That's the first issue. It was not served, not in
18 accordance with the rule.

19 THE COURT: Ms. Monoc, take me back to that.

20 MS. MONOC: Sure. The rule to show cause motion
21 was served with the notice of hearing. And they were served
22 by mail to both Ms. Hancock and Mr. Cantrell. And the
23 certificate of service is on file with the Court that it was
24 served on counsel by fax and US Mail on June 10th, 2014.

25 THE COURT: Y'all acknowledge receipt of the

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1 motion and the rule. I understand it wasn't served on your
2 client; is that right?

3 MR. CANTRELL: I did receive it by mail, Your
4 Honor, and by e-mail and by mail if I'm not mistaken. I
5 believe I received it by both, but I know it was served
6 upon me by mail.

7 THE COURT: And your position was it wasn't served
8 on your client therefore it's ineffective; is that right,
9 Ms. Hancock?

10 MS. HANCOCK: That is correct. It's required to
11 be served by a sheriff if it's going to be served upon the
12 client.

13 THE COURT: It's not required to be served by a
14 sheriff, but it may need to be served to be effective as to
15 the individual. Is her liberty at stake or is this just the
16 first rule to show cause for failure to comply?

17 MS. MONOC: Your Honor, the underlying order that
18 was executed by Judge Dennis in October mentions rule to
19 show cause. And in addition to that, you know, the whole
20 point of doing the rule to show cause was just to put forth
21 the issue of contempt, which is obvious. And Your Honor has
22 the discretion to issue an order of contempt with or without
23 our rule to show cause.

24 THE COURT: Okay. So let's get into the
25 substantive matters. Let me hear from you on the

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1 substantiative matters. I'm going to, based on that
2 finding, Mr. Cantrell, I'm going to deny your motion to be
3 relieved as counsel. I will address that first. You're in
4 the case.

5 MR. CANTRELL: I'm sorry, Your Honor. You're --

6 THE COURT: I'm denying your motion to be
7 relieved.

8 MR. CANTRELL: Without argument on my part?

9 THE COURT: Without argument on your part.

10 MR. CANTRELL: Without notice or opportunity to be
11 heard. Okay. Your Honor, I just want to make sure the
12 record says that clearly.

13 THE COURT: You got it. And then the second thing
14 is I want to find out what discovery has been done, because
15 that's going to be a contempt citation. And then we'll get
16 into the merits.

17 MS. MONOC: Your Honor, we've received none of the
18 documents that were ordered in the October order. And you
19 know, as set forth in the affidavit that I filed I e-mailed
20 with Mr. Cantrell several times to schedule a deposition.
21 And he said he would get with his client and get back to me.
22 And at the point that it was clear a deposition wasn't going
23 to be scheduled that's when I scheduled the second hearing
24 on supplemental proceedings, which was on April 16th. And
25 to this date I still haven't received a single document.

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1 And no deposition has taken place.

2 THE COURT: You want to be heard on that? I'll be
3 glad to hear from you why no documents have been produced.

4 MR. CANTRELL: Your Honor, as I would have argued
5 in my motion to withdraw I have lost contact with my client
6 for quite some time. I haven't received any but -- I
7 haven't received any communication since April the 2nd other
8 than two e-mails. One of those e-mails was the notice of
9 jury duty that I presented into evidence at the last
10 hearing, the first hearing on my motion to withdraw. The
11 other e-mail response regarding a billing statement, but
12 neither of those address the merits of any of these motions,
13 which is why I'm unable to properly represent her since I
14 haven't had her communication or cooperation. So I have
15 attempted to ask her about what opposing counsel has
16 asked me to check on regarding those matters, but I have not
17 received a response from her. So I can't say what her
18 position is in regards to that, Your Honor.

19 THE COURT: She's not provided you with any
20 documents; is that what you're saying?

21 MR. CANTRELL: No, Your Honor. And our original
22 understanding with opposing counsel was --

23 THE COURT: Let me stop you.

24 MR. CANTRELL: No, she has not, Your Honor.

25 THE COURT: And you have forwarded to her at her

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1 last known address the request for the documents; is that
2 correct?

3 MR. CANTRELL: I can't state that, you know, with
4 my duty of candour. I don't remember, Your Honor. It's
5 been a while back. I believe that I asked her to contact me
6 regarding that. And whether I specifically asked for the
7 documents or whether I asked her to call me or talk to me
8 about it, I do remember asking her to talk to me about it.
9 And that probably would have been in e-mail communication.
10 I don't have that with me, Your Honor.

11 THE COURT: And at any point in time has she told
12 you that you're no longer to represent her?

13 MR. CANTRELL: No. As a matter of fact, I sent
14 her a consent order so that I maybe wouldn't have to be here
15 today and save her some attorney's fees, consent order for
16 allowing me to withdraw which she has failed to sign. I
17 also copied that to co-counsel in the hope that maybe she'd
18 have some contact with her. I also forwarded that to her
19 accountant, Barry Holden in hopes that maybe he had some
20 contact with her. But I have not received a signed consent
21 order to withdraw. And so I had to come here today to argue
22 that.

23 And frankly, that's the only thing I'm really prepared
24 to argue today. I haven't received authorization from her
25 to continue to represent her. And you may note on the

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1 record in this case since the last hearing or two there have
2 been some affidavits filed. I never saw those affidavits.
3 They weren't served on me. It's obvious from my client's
4 actions that she doesn't intend to keep me in the loop. So
5 I would defer to my co-counsel on anything regarding contact
6 with the client, because I don't have anything of
7 significance at this point to allow me to be able to
8 represent her properly in this court, Your Honor.

9 THE COURT: Ms. Hancock, can you add anything to
10 that?

11 MS. HANCOCK: May it please the Court, Your Honor.
12 My understanding certainly is that the last time we were in
13 court there was some question as to the notice provisions.
14 And Your Honor even attested to the fact that there had been
15 a lot of confusion in these proceedings way back to the
16 foreclosure. And that was part of what was going to be
17 argued today.

18 THE COURT: I understand y'all want to get into
19 the merits and the jurisdictional question. But I'm talking
20 about whether or not she's been noticed to be here, because
21 when you get to the supplemental proceeding stage this court
22 takes the judgment as valid, as entered as filed. I just
23 want you to understand that. We can go back and we can
24 rehash the other question. But my question was a follow up
25 to what I asked Mr. Cantrell. Have you been in

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1 communication with Ms. Peery? Has she produced any
2 documents to you that y'all can produce to Ms. Monoc on
3 behalf of her client to review? That's my question.

4 MS. HANCOCK: And I apologize, Your Honor. I was
5 getting to that in a round about way.

6 THE COURT: Let's get right to it.

7 MS. HANCOCK: The bottom line is, Your Honor, I
8 haven't had a lot of communication with Ms. Peery. Simply
9 she has not produced certain documents. I have not
10 specifically asked her for certain documents regarding the
11 supplemental proceedings in light of these motions that were
12 to be argued on today. So I have not specifically asked her
13 for these documents. So I would submit that there's no
14 willfulness on her part in terms of, let's say not producing
15 them. And of course, Mr. Cantrell, I guess initially was a
16 part of this in January. But again, I have not specifically
17 asked her.

18 THE COURT: Do you have an address for her?

19 MS. HANCOCK: Yes, sir.

20 THE COURT: How do you communicate with Ms. Peery?

21 MS. HANCOCK: Generally via telephone, Your Honor,
22 and via e-mail.

23 THE COURT: US Mail?

24 MS. HANCOCK: Generally, Your Honor. But
25 primarily it would be via telephone or e-mail.

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1 THE COURT: And you say you've not requested
2 specific documents and therefore don't have any?

3 MS. HANCOCK: That's correct.

4 MS. MONOC: Your Honor, may I respond?

5 THE COURT: Sure.

6 MS. MONOC: The order of reference that was filed
7 in October included the notice of hearing for January. And
8 it included the outline of discovery requested. And
9 Ms. Peery received actual notice of that because John
10 Cantrell called me over the holidays because she had engaged
11 him to represent her in this matter, although he hadn't
12 formally appeared until the day of our first supplemental
13 proceedings. I don't know how she would have known about
14 the hearing but for the order of reference which included
15 the discovery request.

16 THE COURT: I understand that. That goes back to
17 December. What was the service upon her at that time? How
18 was she notified?

19 MS. MONOC: I don't know how she received it. I
20 know that Mr. Cantrell had the order because he called me
21 and asked for an extension on the discovery. And he asked
22 for a continuance of the hearing because he had just been
23 retained. And I didn't, I wouldn't consent to continue the
24 hearing, but we did establish that discovery would be done
25 after the hearing. And as Your Honor instructed at that

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1 first hearing I followed up with him several times to
2 achieve that discovery.

3 THE COURT: Do you have an address for Ms. Peery?

4 MS. MONOC: It's the one on file with the Court
5 which is the Pignatelli (ph) --

6 THE COURT: Pignatelli Crescent?

7 MS. MONOC: Yes, sir.

8 MR. CANTRELL: It's close to that, Your Honor. I
9 discovered another recent discrepancy in the record that
10 didn't appear to me at first. There is an issue regarding
11 the proper last four digits of her zip code. When I sent
12 out a notice --

13 THE COURT: When you say last four digits, are we
14 talking about past the 29464?

15 MR. CANTRELL: Correct, the extended --

16 THE COURT: Don't worry about that. I'm not
17 worried about that.

18 MR. CANTRELL: But other than that it's correct in
19 the record to the best of my knowledge.

20 THE COURT: I'm not going to worry about that.
21 That just determines which carrier walks it into the house.
22 So what do you seek? What's the status of the funds in the
23 Thurmon Kirschner Tims account? Where is that?

24 MS. MONOC: It's my understanding that Your Honor
25 ordered that they remain in trust. So I would imagine that

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

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

11 MS. MONOC: In whole.

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

14 MS. MONOC: Attorneys fees are \$20,231. Costs are
15 \$553.12. Post judgment interest is \$4,818.05. The total
16 for interest, attorney's fees, and costs is \$25,602.17. And
17 the grand total money owed by Ms. Peery with a payoff date
18 of 30 days from today is \$52,636.19.

19 THE COURT: How much is being held in Thurmon
20 Kirschner Tims?

21 MS. MONOC: 27,034.02.

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

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

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

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

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

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

12 MS. MONOC: No, Your Honor.

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

16 MS. MONOC: Yes, Your Honor.

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

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

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

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1 under oath.

2 MR. CANTRELL: So she has to pay attorney's fees
3 supplemental to that judgment that haven't even been proven
4 up in court and she hasn't had the opportunity to confront
5 or cross examine the witnesses on. Your Honor, due process.
6 Come on. This is due process, Your Honor. I mean, as far
7 as the original judgment I see what Your Honor's saying
8 except for the fact that there's motions to vacate that
9 judgment if those motions were successful an order enforcing
10 a void judgment, Your Honor. I don't see that that would be
11 proper.

12 THE COURT: Well, I'll go back to my original
13 statement, which is this Court considers it to be valid
14 unless and until overturned.

15 MR. CANTRELL: And there are pending motions
16 before this Court today to overturn it. So I mean, I
17 understand that. And on the original judgment but 27,000
18 doubling, doubling attorney fees. And she hasn't even been
19 here but a couple of short hearings. Your Honor, without
20 even being able to examine those time records and see how
21 she can get to that number in a few short months. What kind
22 of hourly rate are they using? I don't get a thousand an
23 hour, Your Honor. She certainly shouldn't. So I got to
24 know. I got to object to any supplemental attorney's fees
25 past that judgment amount without proof.

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

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

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

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

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

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

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1 THE COURT: I'm reading it from your filing in
2 May. Invoice April 1 through May 5, 2014 was 5,880. And
3 cost to May 2 were 553.12, the same figure you had here.
4 I'm going to award that sum, 15,195.62. I'm going to award
5 that as additional costs. Those are fees and costs.
6 Interest is whatever interest is.

7 MS. MONOC: Does that include the costs?

8 THE COURT: Yes.

9 MS. MONOC: 15,195.62?

10 THE COURT: Yeah, that's costs. That was based on
11 your filing of May 6th, which I did review in camera. If
12 you'd like to submit this additional amount in camera for
13 review we'll do that and take that up at another time. And
14 clearly you're entitled to interest. The 4,818 figure is
15 interest not through today but through 30 days?

16 MS. MONOC: 30 days from today, but we could
17 recalculate it.

18 THE COURT: If you'll recalculate that for today,
19 you can put that figure in there as well.

20 MS. MONOC: Sure.

21 THE COURT: So that should be another 4,000 some
22 odd dollars.

23 MS. MONOC: Your Honor, may I approach just to
24 hand up my amended affidavit?

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

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

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

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

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

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

9 MS. MONOC: Yes, Your Honor.

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

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

14 THE COURT: Sure.

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

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1 foreclosure. And to this date opposing counsel has not
2 provided where Ms. Peery was personally served with the
3 foreclosure proceedings still as of today.

4 And again, we submit that in light of that the Court
5 did indicate that based upon that there had been mass
6 confusion in this case. And again, they haven't provided
7 proof that she was ever served. Again, we go back to the
8 notice of the judgment. There still hasn't been
9 verification of that.

10 The last time at the proceedings for the entry of the
11 judgment we provided in our motion that the Court in the
12 transcript indicated and questioned whether or not Ms. Peery
13 even had notice of those proceedings. And no one was ever
14 able to produce that. We submitted an affidavit from Barry
15 Holden, who was mentioned in that transcript of having,
16 opposing counsel having communication with Mr. Holden
17 knowing full well that Mr. Holden did not represent
18 Ms. Peery and never did represent Ms. Peery.

19 So then again, we have a notice problem, and because of
20 that again, the Court would have lacked personal
21 jurisdiction over Ms. Peery therefore rendering the judgment
22 void. And again, that has been the problem throughout these
23 proceedings even again today with the rule to show cause
24 that was filed. There was still not notice. And that's
25 really the biggest issue, Your Honor, from Ms. Peery's

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1 standpoint. And we would ask that the motion, we would
2 submit that it's void and that it should be vacated.

3 THE COURT: Ms. Monoc?

4 MS. MONOC: Sure, I'll respond. And Your Honor,
5 all of our arguments, the law and facts, and the affidavit
6 of Ms. Davidson have been submitted to the Court. In
7 response to Ms. Hancock's statements just now I'd like to
8 point out that Rule 4 provides that voluntary appearance by
9 a defendant is equivalent to personal service. Ms. Peery
10 personally appeared and showed up to at least one of the
11 hearings in the underlying matter. And so voluntary
12 appearance equals personal service. Even so there is an
13 affidavit on file by Ms. Davidson, who is here today to
14 answer any questions and clarify anything since the three of
15 us were not present in the underlying matter.

16 But with respect to their motion on 60(b)1, 2, and 3
17 which was filed with the Court, that motion must have been
18 filed within a year of the judgment. And you know, I've got
19 the law set forth in my initial opposition memo to that
20 motion. And at Mr. Cantrell's hearing to be relieved as
21 counsel he said that there had also been a motion made
22 before the Court that they seek to vacate the order under
23 60(b)4.

24 And I don't remember that from the initial hearing.
25 That doesn't mean it didn't happen. I haven't reviewed the

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1 transcript. But I then prepared a reply regarding their
2 arguments on 60(b)4, and Your Honor has that.

3 MR. CANTRELL: Your Honor, I would be heard on the
4 Rule 4 motion when Your Honor is ready.

5 THE COURT: Sure. Go ahead.

6 MR. CANTRELL: Your Honor, my co-counsel was the
7 originator of the B one through three motion. I take no
8 position regarding that. I also take no position regarding
9 proof of service in the original foreclosure since my client
10 has hired me to contest this cross claim issue with
11 Windswept. So I don't know anything about original service
12 on the foreclosure. Bank of America got a judgment there.
13 I'm not taking issue with that today.

14 I do want to take issue, however with the service of
15 the cross claim in that action which has the resulted in the
16 judgment that the Court is enforcing in today's supplemental
17 proceedings. I would argue that that is void under (b)4 as
18 I previously argued and as I will now do so in more detail.

19 Your Honor, there is a South Carolina Supreme Court
20 case, BB&T versus Taylor where the issue of service came up.
21 That was a situation where there was service of the original
22 summons and complaint. The process server left it on the
23 door, hollered out some stuff. I think you're probably
24 familiar with that case. And the Court there said that that
25 service was improper and that due process was not provided.

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1 When there was improper service there was lack of due
2 process, and that under 60(b)4 it's proper to void that
3 judgment. That is what we're proceeding under today, Your
4 Honor, that the judgment is void due to improper service
5 under 60(b)4. Now, you will note there has been no
6 allegation, there's no certificate of service of the cross
7 claim in the record against my client. It doesn't exist.

8 So here's the chronology of events as I understand it.
9 Bank of America files this foreclosure complaint. At the
10 time my client's represented by Barney Vaughan, a separate
11 attorney who's since been relieved. So the foreclosure
12 complaint is served against my client. Well, it's served
13 against my client and against Windswept, the HOA. The HOA
14 and my client are both served with this foreclosure
15 complaint.

16 Then the HOA filed a cross claim against my client.
17 Then my client files an answer to the foreclosure action
18 with a counter claim against Bank of America and a cross
19 claim against the HOA. So Lydia Davidson says in her
20 affidavit that when Ms. Peery's attorney filed an answer and
21 counter claim as Bank of America and included a cross claim
22 against Windswept this communicated to me that Ms. Peery was
23 in receipt of our answer and cross claim, not withstanding
24 the fact that she had evaded service up until that time.

25 THE COURT: Let me stop you and ask you which

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1 paragraph you're reading from.

2 MR. CANTRELL: Okay. I'm sorry. I'm talking
3 about paragraph six on page two of Ms. Davidson's affidavit.
4 This is her proof of service of the cross claim on my
5 client. So she doesn't produce a certificate of service.
6 She doesn't claim that. She claims that because Ms. Peery
7 answered the complaint with a cross claim against Windswept
8 that that meant to her that they'd received service of the
9 cross claim. That's a non-sequeter, Your Honor.

10 Think about this. We can cross claim against each
11 other all day long. That doesn't mean that we know what the
12 other party has said in a cross claim against us. Now, if
13 there had been a reply to that cross claim, like points in a
14 cross claim one, two, three, four, and then reply I could
15 see where she could make that argument. But it was even an
16 unrelated cross claim. There was no connection. So there's
17 no way for her to make that statement.

18 Frankly, we would move to strike that portion of her
19 affidavit because this is an opinion. This communicated to
20 me, this is her opinion. Opinion's not proper in affidavit.
21 It's supposed to have facts. This is her opinion. And Your
22 Honor should consider that she was the attorney, if I
23 understand correctly that was prosecuting this action
24 against her. So she's in the hot seat, if this service was
25 improper she's the one that's got the malpractice problem.

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1 So Your Honor should take that into consideration regarding
2 the credibility of this statement.

3 But in any event, what was communicated to her isn't
4 what's appropriate in an affidavit. What's appropriate is
5 facts. And the facts of the matter is there was no service.
6 There was no certificate of service. And the only thing
7 they're basing service of this cross claim on is the fact
8 that Ms. Peery filed a cross claim against them on an
9 unrelated matter not even acknowledging their cross claim.
10 So there's no proof that Mr. Vaughan was ever served with
11 this cross claim, Your Honor. So that's our first problem
12 with the service issue on the cross claim.

13 Now, the next thing they point to regarding proper
14 service was there was a merits hearing on the foreclosure.
15 And they point to a certificate of service that had been
16 filed by Bank of America --

17 THE COURT: Let me stop you and get you to flip
18 the page over to paragraph 13 of Ms. Davidson's affidavit.

19 MR. CANTRELL: Okay. Your Honor, you're saying
20 that she showed up at this hearing on -- Lydia Davidson is
21 saying she showed up to this hearing. Of course, I had no
22 knowledge of that personally since I wasn't involved. And
23 there was a receivership issue. So she showed up for that
24 receivership hearing.

25 THE COURT: At that time on August 1, 2011

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1 according to this affidavit the hearing of Mr. Vaughan's
2 motion to be relieved and Windswept's motion to appoint a
3 receiver, which is affirmative relief that the HOA is
4 seeking took place in this courtroom. And Ms. Peery along
5 with her husband appeared at the hearing. And I can tell
6 you that, I forget what his name --

7 MS. HANCOCK: Dr. Peery.

8 THE COURT: He appeared in a wheelchair.

9 MR. CANTRELL: He's now deceased, Your Honor.

10 THE COURT: I will tell you that's a matter of
11 fact that that happened.

12 MR. CANTRELL: Okay, Your Honor. I have no reason
13 to question that. But even if that had occurred does that
14 put them on notice of this cross claim? The fact that
15 they're there on a receivership hearing --

16 THE COURT: Is that not a voluntary appearance?
17 Something I can't seem to get since --

18 MR. CANTRELL: On the receivership issue perhaps,
19 Your Honor. But on this --

20 THE COURT: This is a jurisdictional, this is due
21 process. It's the same issue you brought up. Due process
22 is notice and the opportunity to be heard. If they're
23 showing up in the courtroom is that not notice?

24 MR. CANTRELL: Of the receivership motion, Your
25 Honor. Take the whole --

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1 THE COURT: Of the action.

2 MR. CANTRELL: Well, there was more than one
3 action here. There was a foreclosure. There was two cross
4 claims, one against both of them. And there was this third
5 motion for the receivership.

6 THE COURT: Well, let me ask you this. If the
7 request for the receiver was in the same document as the
8 request for the judgment is that not notice of the same
9 proceeding?

10 MR. CANTRELL: I don't think it was in the same
11 document, Your Honor. I think the cross claim was a
12 separate motion from this motion for receivership. What my
13 client told me, Your Honor, when she approached me in
14 December, I think after the supplemental proceedings was
15 that the first she'd ever heard or seen of this cross claim
16 was this supplemental proceedings motion. Now, if her
17 attorney had been properly served then that would be her
18 problem.

19 THE COURT: You have an affidavit to that effect?

20 MR. CANTRELL: I don't have communication with my
21 client. I haven't been able to -- I'm doing this from
22 memory, Your Honor. I wasn't even able to properly prepare
23 for this hearing. I'm extremely handicapped. I'm doing the
24 best I can under very difficult circumstances. So no, Your
25 Honor, I don't. But they've got the burden of proving that

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1 they had proper service in the first place. That's not my
2 burden. That's their's. And I don't think they've met that
3 burden. And the fact that she showed up at a receivership
4 hearing, you know, and that's a whole -- a lock out issue
5 comes up from all that. But that's a whole other issue
6 we're not going to go into today.

7 THE COURT: If she would show up after notice and
8 would provide her with an opportunity to be heard, would it
9 not?

10 MR. CANTRELL: She had an opportunity to be heard
11 on the receivership motion. She never got this cross claim.
12 And her attorney never got this cross claim. And there's no
13 proof of it. They've got the weakest of proof in here. And
14 I understand Your Honor saying well, she showed up later.
15 But she also showed up in the foreclosure. And I mean, she
16 was showing up for the receivership.

17 THE COURT: She did. And in fact, when I read the
18 record that y'all submitted, Ms. Hancock's letter of May 21
19 from the hearing on January 24, 2012, this paragraph 13,
20 August of '11, January 24, 2012 the Court in second
21 paragraph of this transcript reads, yesterday I received a
22 letter from Ms. Peery asking for a continuance citing her
23 difficulty with adult care. Ms. Peery had notice of the
24 January 24, 2012 hearing which is when the foreclosure went
25 down.

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

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

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

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

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

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

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

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

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

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

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

12 THE COURT: Yes.

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

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

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

19 THE COURT: Ms. Monoc, I'm going to ask you to
20 prepare an order covering the rule that we talked and the
21 judgments, and then I'll ask that you do that in one order.
22 And in a separate order if you'll cover the issue of
23 Mr. Cantrell's request to be relieved, that it was denied
24 for purposes of this hearing today. And I probably need to
25 be clear on the record, that's as to 60(b)4. And that would

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1 be your motion, correct?

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

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

5 MS. HANCOCK: Yes, Your Honor.

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

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

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

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

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1 paid, Your Honor.

2 THE COURT: If you file a motion to be relieved as
3 counsel again it may well be granted.

4 MR. CANTRELL: Prior to the next hearing, Your
5 Honor?

6 THE COURT: Period. End of this hearing.

7 MR. CANTRELL: Thank you, Your Honor.

8 (Hearing concluded at 11:00 o'clock a.m.)

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1 STATE OF SOUTH CAROLINA)

2 : C-E-R-T-I-F-I-C-A-T-E

3 COUNTY OF DORCHESTER)

4 I, Stacey L. Scoggan, Court Reporter and Notary Public,
5 certify that I did have The Honorable Judge Mikell
6 Scarborough to appear before me at 10:00 o'clock a.m. on
7 Friday, June 20, 2014, at the Charleston County Courthouse,
8 100 Broad Street, Suite 266, Charleston, South Carolina;
9 that the witness was sworn and cautioned to tell the truth,
10 the pages constitute a true and accurate transcript of the
11 testimony given at that time and place.

12 I further certify that I am not of counsel or kin to
13 any of the parties to this cause of action, nor am I
14 interested in any manner in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal this the 17th day of July, 2014.

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Stacey L. Scoggan

Notary Public for South Carolina

My Commission Expires February 23, 2021

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1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHARLESTON

4 WINDSWEPT VILLAS III HORIZONTAL PROPERTY
5 REGIME,

6 Petitioner/Judgment Creditor,

7 vs. CASE NO. 09-CP-10-5799

8 ELAINE DEVLIN PEERY a/k/a ELAINE D. PEERY

9 Respondent/Judgment Debtor.

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11
12
13 Hearing before the Honorable Mikell
14 R. Scarborough, reported by Christine A.
15 Smith, Court Reporter and Notary Public, at
16 10:04 a.m. on at August 29, 2014, 100 Broad
17 Street, Charleston, South Carolina.

18
19 **COPY**

20
21 CHRISTINE A. SMITH, Court Reporter

22 P.O. Box 30276
23 Charleston, SC 29417
24 (843) 367-9596
25 casmith@charlestoncounty.org

1. APPEARANCES OF COUNSEL:

2. ATTORNEYS FOR THE PLAINTIFF:

3. Katie Fowler Monoc, Esq.
4. Pratt-Thomas Walker
5. P.O. Drawer 22247
6. Charleston, SC 29413
7. (843) 727-2244
8. kfm@p-tw.com

9. ATTORNEYS FOR THE DEFENDANT:

10. Vernee C. Hancock, Esq.
11. Law Office of Vernee C. Hancock
12. P.O. Box 2276
13. Summerville, SC 29484
14. (843) 851-1476
15. hancocklawfirm@gmail.com

P R O C E E D I N G S

THE COURT: We're back on the record. This case is captioned Windswept Villas versus Elaine Peery. We were previously here in June, I believe it was. The Court issued some orders at that time.

There was an inquiry, Ms. Hancock, of you about a motion to vacate?

MS. HANCOCK: Yes, Your Honor.

THE COURT: I found some e-mail correspondence my staff brought to my attention. I have issued a Form IV order denying that Motion to Vacate finding that Ms. Peery had voluntarily appeared in this action on a prior occasion. Okay?

MS. HANCOCK: Your Honor, may I receive a copy of that? I guess the reason why I was requesting, just to be clear for the Court, is because Ms. Monoc, on the same day that she issued all the other orders to the Court has an e-mail to the clerk, Spencer, where she's attached -- had four attachments which included her order to vacate, and that's what I was looking for.

1 THE COURT: Evidently I didn't sign
2 that. I don't know why. I don't know how.
3 I signed the Form IV this morning, and it
4 will be getting filed today. I will be glad
5 to provide you a copy.

6 MS. HANCOCK: Thank you, Your Honor.

7 THE COURT: Very good.

8 Meanwhile, Ms. Monoc, you're here
9 for Windswept?

10 MS. MONOC: Yes, Your Honor. This is
11 just the contempt hearing.

12 THE COURT: Was that for failure
13 previously to appear? Was that what it was?

14 MS. MONOC: Failure to appear and
15 produce discovery, and consent to a
16 deposition, or to answer questions under
17 oath.

18 THE COURT: Have you gotten anywhere
19 with that since then?

20 MS. MONOC: No, Your Honor.

21 THE COURT: Ms. Hancock?

22 MS. HANCOCK: May it please the Court,
23 Your Honor. At this time we are moving under
24 Rule 241 that these proceedings should be
25 stayed given the filing of the Notice of

1 Intent to appeal that was filed in July of
2 this year.

3 I'm sure that Windswept, as a
4 Plaintiff will be arguing against the stay of
5 these proceedings pursuant to 18-9-138(A)(1).
6 However, that statute does indicate that as a
7 presiding Judge that you -- since you're
8 going to issue the judgment that you have the
9 discretion to stay these proceedings or grant
10 the stay of execution, and that's what we're
11 asking for today.

12 Further, Your Honor, under 18-9-150
13 we're also requesting a stay of execution for
14 the production of documents under the
15 supplemental proceedings.

16 We're requesting under that statute
17 which allows that any documents that have
18 been requested, being under the custodial
19 care of a receiver, anyone that the Court
20 orders to be kept in its care. Under those
21 two, Your Honor, we're certainly asking again
22 for a stay of execution.

23 Finally, Your Honor, with the
24 filing of the notice to appeal under
25 Ms. Monoc's order of judgment creditor's

1 motion for a Rule to Show Cause in contempt
2 proceedings she has found Ms. Peery in
3 contempt. I'm sorry. She hasn't found --
4 pursuant to her drafting of the order and the
5 Court's signature -- the Court has found her
6 to be in contempt.

7 That's what these proceedings were
8 because Your Honor ordered on June 26th that
9 Ms. Peery be served with a Rule to Show Cause
10 and make an appearance today, so we believe
11 and our position is that finding her in
12 contempt pursuant to Ms. Monoc's drafting of
13 that order and the Court signing it, it is
14 not valid.

15 It's not an interlocutory order as
16 the Plaintiff would suggest because at that
17 point Ms. Peery had not been served with the
18 Rule, and again the Court, Your Honor,
19 ordered that she be served, and she, in fact,
20 was after that particular hearing. Given
21 those three points, Your Honor, we're asking
22 again that this matter be stayed.

23 THE COURT: Ms. Monoc?

24 MS. MONOC: Thank you. May it please
25 the Court. I would like to point out that

1 the only order on appeal right now is the
2 Order of Contempt on August -- earlier this
3 month the South Carolina Court of Appeals
4 issued a clarification order which said that
5 the only order on appeal right now was the
6 Order of Contempt. They did not appeal the
7 Order of Supplemental Proceedings which
8 required the disbursement of the funds. I
9 sent Jesse Kirchner an e-mail earlier this
10 week clarifying that the order requiring the
11 disbursement of funds was not currently on
12 appeal, and that even if it wasn't on appeal
13 under -- under South Carolina Code Section
14 18-9-130 (A) (1), we're entitled to
15 disbursements and he hasn't gotten back to me
16 since that e-mail and phone call.

17 With respect to her arguments about
18 the contempt my understanding of your order
19 was that the Court found an Order of Contempt
20 and our Motion for Contempt was to be heard
21 today after personal service but that the
22 Court has the inherent authority to find
23 contempt in and of itself and that that was
24 the distinction of that order.

25 It is interlocutory, but in any

1 event -- I've got all the filings with the
2 Appellate Court and Ms. Hancock has several
3 inconsistent positions, and I don't really
4 think you even have the time to sort it all
5 out.

6 THE COURT: So the Rule to Show Cause
7 followed the -- was it late May or June that
8 you had the hearing?

9 MS. HANCOCK: It was June 26th, Your
10 Honor.

11 THE COURT: June 26th? All right.

12 MS. HANCOCK: I'm sorry. June 20th was
13 the hearing.

14 THE COURT: June 20th was the hearing?

15 MS. HANCOCK: The Court signed it on
16 the 26th.

17 MS. MONOC: And the order from the
18 hearing ordered today's hearing on our motion
19 for a Rule to Show Cause and Ms. Peery was
20 personally served for today's hearing. So
21 today is the hearing on our motion for a Rule
22 to Show Cause. The last hearing was
23 continued but the Court recognized contempt
24 in Your Honor's own power separate and apart
25 from our motion.

1 THE COURT: Right. Okay.

2 MS. MONOC: I have addressed the
3 arguments, but --

4 THE COURT: So the Court of Appeals has
5 issued a ruling that -- which issue -- I have
6 not seen that, so which issue have they taken
7 jurisdiction on?

8 MS. MONOC: They haven't. They
9 actually issued -- let me pull my time line
10 out. Ms. Hancock filed her Notice of Appeal
11 in late July and the Court issued a letter to
12 both Ms. Hancock and myself asking us to
13 brief the issue of appealability on the
14 contempt order. That was the only order that
15 was filed with the Court of Appeals.

16 So right now they haven't assumed
17 jurisdiction. We don't know the outcome, but
18 the Court's preliminary question was: This
19 doesn't look appealable. Get back to us on
20 this. Ms. Hancock then wrote the Court of
21 Appeals asking for clarification as to which
22 order they wanted clarification on and the
23 Court said the only order that we have filed
24 is the Order of Contempt and that is
25 essentially -- and then take away from that

1 is that they wanted a memorandum on the
2 appealability of the contempt order. That
3 was clear to me because the only order that
4 was on file with the Court of Appeals was the
5 Order of Contempt although none of the orders
6 were attached in the materials provided to me
7 by Ms. Hancock. That's neither here nor
8 there.

9 THE COURT: All right.

10 MS. MONOC: Your Honor, may I add one
11 thing?

12 THE COURT: Yes..

13 MS. MONOC: I would also like to point
14 out that matters of civil contempt are not
15 automatically saved notwithstanding a Notice
16 of Appeal and that's under 322-SC-212.

17 MS. HANCOCK: And Your Honor, I believe
18 I indicated that in terms of mentioning
19 18-9-130(A)(1), and certainly the Court then
20 has the discretionary ability since Your Honor
21 was the one who issued the original judgment,
22 and for verification purposes, Your Honor,
23 the entire packet that I sent to the Court of
24 Appeals as well as the Clerk of Court and
25 Ms. Monoc also included the oral supplemental

1 proceedings.

2 There is an issue -- the reason why
3 I asked the Court of appeals for
4 clarification. They never had those two
5 orders attached. They asked me to file an
6 amended Notice of Appeal to include the two
7 orders, and then I received an order from the
8 Court of Appeals that indicated that at this
9 particular time the only one they're
10 considering now is the order on the Rule to
11 Show Cause.

12 I am filing a motion indicating
13 that they, in fact, did receive the order on
14 supplemental proceedings. In the interim
15 Ms. Monoc has a Rule to Show Cause that's
16 been filed with the Appellate Court
17 requesting that the Master in Equity maintain
18 jurisdiction, so that's still up in the air
19 and being decided, Your Honor.

20 It's our request today that Your
21 Honor utilize his discretion, and documents
22 that we've presented today pretty much be
23 held in trust.

24 THE COURT: Aren't they already in
25 trust?

1 MS. HANCOCK: The funds, Your Honor,
2 but certain documents that were acquired in
3 discovery, that's what I was asking under the
4 other such section, Your Honor. I believe --

5 THE COURT: To what extent are they
6 privileged? Under what basis would the
7 documents not be produced in discovery, in
8 supplemental proceedings?

9 MS. HANCOCK: Because Your Honor,
10 that's one of the orders that we are
11 appealing.

12 THE COURT: You'll have to post a bond
13 to stop the transfer of some documentation.
14 My recollection -- let me stop this.

15 It's my recollection of this case
16 that there's money in Jesse Kirchner's trust
17 account to pay the underlying judgment. Am I
18 correct in that, Ms. Monoc?

19 MS. MONOC: Yes, Your Honor, and it was
20 ordered in June that that money automatically
21 be disbursed. I've got the order from the
22 Court of Appeals that says that the only
23 order that they have on file is the Order of
24 Contempt if you would like to see it?

25 THE COURT: Well, I'm going to again

1 order that those funds be transferred. All
2 right? I don't know on what basis they have
3 not been transferred. To the extent that
4 they have not been transferred they are to be
5 transferred today by 5:00 p.m. Okay? That's
6 some \$27,000, correct?

7 MS. MONOC: Yes, Your Honor.

8 THE COURT: In addition to that the
9 contempt citation will provide for attorney's
10 fees. What are the attorney's fees that you
11 have incurred pursuing this matter?

12 MS. MONOC: Today we have got
13 attorney's fees of \$27,662 and costs of
14 \$726.39 -- I've got an Affidavit -- and all
15 of the bills for your in camera review.

16 THE COURT: Do you want to be heard on
17 that?

18 MS. HANCOCK: Yes, Your Honor, may it
19 please the Court again. I want to reiterate
20 our request.

21 THE COURT: I'm going to deny your
22 request of this Court to stay the judgment.
23 I'm going to stay the transfer of the funds.
24 If you want to get that stayed you'll have to
25 go to the Court of Appeals. Okay? I'm

1 denying your request under 18-9-130. Okay?
2 That's been denied. The Court's now got to
3 look at -- I'm going to again order that
4 those funds be turned over and now I'm going
5 to look at the sanctions for contempt. So
6 let's talk about that.

7 MS. HANCOCK: Yes, Your Honor. I
8 understand the Court's ruling. Again, my
9 position was that these proceedings for the
10 Rule be stayed pursuant to the fact that my
11 client was already found in contempt.

12 This wasn't a rule that was issued by
13 Your Honor. This was a rule that was issued
14 by Ms. Monoc.

15 THE COURT: I don't think Ms. Monoc can
16 issue a rule. I think only a Court can issue
17 a rule.

18 MS. HANCOCK: Well, she issued a rule,
19 Your Honor, to have served and the Court
20 ordered that she have that order served. It
21 wasn't a rule that was initiated by the
22 Court. It was not a sua sponte rule by the
23 Court. It's not the Court's rule. The Court
24 did not issue its own rule.

25 THE COURT: What document are you

1 referring to?

2 MS. HANCOCK: The order on judgment,
3 Your Honor, for the Rule to Show Cause.
4 She's been found in contempt already.

5 THE COURT: Order on judgment,
6 creditor's motion for Rule to Show Cause and
7 Order of Contempt, correct?

8 MS. HANCOCK: Yes, Your Honor.

9 THE COURT: Filed June 30, 2014 signed
10 by myself on June 26, 2014?

11 MS. HANCOCK: Yes, Your Honor.

12 THE COURT: And you're saying that
13 that's not my rule?

14 MS. HANCOCK: No. No. No. I'm saying
15 that that is -- Ms. Monoc drafted a Rule to
16 Show Cause that she filed to have served on
17 Ms. Peery. At our last hearing on June 20th,
18 she was prepared to go forward on that Rule
19 of Contempt proceedings. However, our
20 argument was that Ms. Monoc had not properly
21 served either of the attorneys of record.

22 At that time it was -- Mr. Cantrell
23 was present -- that she had not asked myself
24 nor Mr. Cantrell to accept service of the
25 Rule to Show Cause, and neither had she

1 provided to the Court that she had personally
2 served Ms. Peery.

3 THE COURT: Okay.

4 MS. HANCOCK: And as a result the Court
5 ordered that she personally serve Ms. Peery
6 with a Rule to Show Cause and in that that
7 she also be served with a notice of today's
8 hearing.

9 THE COURT: That was done, right?
10 That's why we're here today?

11 MS. HANCOCK: Yes, Your Honor. Yes,
12 Your Honor.

13 THE COURT: Okay.

14 MS. HANCOCK: All I was just saying was
15 that this order was premature because the
16 actual rule hearing was going to be held
17 today and -- whether the Court's going to
18 find her in contempt and apply these
19 sanctions, and that's not what this order
20 provided.

21 THE COURT: This order provides that I
22 find Ms. Peery is in Contempt of Court and
23 subject to sanctions, specifically her
24 contempt provides an additional ground for
25 the judgment/creditor to recover reasonable

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

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

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

1 sanctions. My position is that that would
2 have been reserved for today wherein there's
3 already an order --

4 THE COURT: That's what I keep asking
5 you. I'm ready to move forward today. Are
6 you?

7 MS. HANCOCK: I am, Your Honor. I'm
8 suggesting, though that --

9 THE COURT: Clearly your appeal is
10 interlocutory. You just indicated that to
11 me, so I'm not worried about that. We're
12 here today for a Rule to Show Cause, right?

13 MS. HANCOCK: Yes, Your Honor, but this
14 order has already determined --

15 THE COURT: -- that she's in contempt?

16 MS. HANCOCK: Yes.

17 THE COURT: Correct. And so today's
18 hearing is to determine what the sanction is
19 going to be? She's ruled out the worst
20 sanction because she's sitting here. Okay?
21 To me going to jail is not such a great
22 thing. I would not want that to happen. So
23 you-all have resolved that issue, so now
24 we've got attorney's fees and costs to
25 wrestle with. Okay?

1 MS. HANCOCK: And my position again,
2 Your Honor, is that in order to find that
3 she's in violation of a rule, a contempt
4 proceeding, is that she has to be served
5 first with that contempt proceeding, and
6 then, based upon what the opposing side is
7 alleging she's in contempt of, then she would
8 be presented with that today as opposed to
9 appearing for the sanctionary (sic) period.

10 THE COURT: Let me go back and read the
11 sentence just above the one I read from my
12 June 26 order. I find that Peery has been on
13 notice of these proceedings and the
14 applicable discovery requests set forth in
15 the Court's October 31, 2013 order since late
16 2013 yet has failed to comply with the same
17 and has failed to appear at a single hearing.

18 MS. HANCOCK: May I be heard on that,
19 Your Honor?

20 THE COURT: For these reasons I find
21 her in contempt and subject to sanctions.

22 MS. HANCOCK: And Your Honor, on Page 1
23 of the same order, Your Honor, it indicates
24 that service -- although service has had not
25 been affected on Ms. Peery as of the January

1 13 hearing of this year, that Mr. Cantrell
2 appeared on her behalf on that day. So it
3 wouldn't have been since that October hearing
4 because again, that first page on the top of
5 Page 2 accounts have even indicated that
6 Ms. Peery was put on notice, was not served
7 until that day.

8 THE COURT: I think you're confusing
9 notice and service. Notice is one thing.

10 MS. HANCOCK: It says service, Your
11 Honor. It indicates that she wasn't served.

12 THE COURT: Well -- Ms. Monoc?

13 MS. MONOC: Your Honor, I would just
14 for the record refer back to the transcript
15 from our last hearing. I don't have it in
16 front of me, but I know we addressed the law,
17 and I know we flushed this issue out with the
18 last hearing.

19 THE COURT: I think so. The original
20 order of reference was issued by Judge Dennis
21 on October 31, 2013. Okay?

22 MS. MONOC: Your Honor, that order
23 announced the first hearing on supplemental
24 proceedings in January, and when Mr. Cantrell
25 appeared that constituted a voluntary

1 appearance by Ms. Peery, and you know, a
2 voluntary appearance trumps everything.

3 THE COURT: Ms. Monoc, do you have any
4 explanation as to why the funds in the
5 Thurman Kirchner account have not been paid
6 over to you?

7 MS. MONOC: Yes, Your Honor. I called
8 Jessie, and I sent him the order after the
9 hearing, and then some time passed and he
10 left me a message that he had had a baby and
11 he was sorry he was only just getting back to
12 me, and Ms. Hancock fought for Notice of
13 Appeal, and a number of communications
14 transpired with the Court of Appeals.

15 I just got back to Jesse earlier
16 this week and sent him an e-mail with the
17 statute that requires if the order -- it is
18 my understanding that the funds ought to and
19 must be disbursed. He said he would take a
20 look at it and get back to me as soon as
21 possible. That was on Monday or Tuesday of
22 this week. I have to pull up the e-mail.

23 THE COURT: So it just hadn't been
24 done?

25 MS. MONOC: (Nods head.)

1 THE COURT: I think the appeal of a
2 monetary judgment doesn't stay the collection
3 on the monetary judgment anyway at least
4 without posting a bond. I haven't heard of
5 any bonds being posted. Again, I go back to
6 my fervent ruling that the funds need to be
7 paid over today by 5:00.

8 At the time of the June 20th
9 hearing the attorney's fees were 15,000 in
10 costs and post judgment interest was close to
11 \$5,000. Do you have any of those figures on
12 those as well?

13 MS. MONOC: I didn't have -- I failed
14 to calculate interest from the last hearing.
15 I know that that was -- at the last hearing
16 it was \$4,818.05. The attorney's fees are --
17 I have the grand total as of now which is
18 \$27,662.

19 MS. HANCOCK: Your Honor, one more
20 thing. I wanted to suggest to the Court that
21 we've made an attempt to post bond on that
22 amount that's being held in trust by -- I'm
23 sorry -- being held in trust by Mr. Kirchner.
24 I would like to ask the Court -- we're still
25 trying to affect that, and if we're able to

1 do so will the Court allow us --

2 THE COURT: I'm ordering those funds be
3 transferred today by 5:00 p.m. Okay? I'm
4 going to put together a Form IV right now.
5 I'm going to find that the Defendant is in
6 contempt, that the Court has jurisdiction
7 over that. I'm going to find that the
8 sanction for contempt is a figure of \$20,000
9 in attorney's fees and payment of post
10 judgment interest to continue to accrue.

11 Currently I find it to be the
12 \$4,800 figure. It's going to be roughly
13 \$5,000 until those funds are paid over.
14 Okay?

15 MS. MONOC: Your Honor, would you like
16 for me to calculate those and get back to
17 everyone?

18 THE COURT: You can calculate post
19 judgment interest. I'm assuming that the
20 funds are paid today by 5:00 p.m. Okay?

21 MS. HANCOCK: Your Honor, may I ask
22 for -- may I get a -- I would love to have a
23 copy of the Affidavit of Attorney's Fees from
24 Ms. Monoc?

25 THE COURT: Sure.

1 MS. MONOC: May I approach to hand up
2 our bills for your review?

3 THE COURT: Sure.

4 MS. MONOC: Your Honor, just to
5 clarify, when are the attorney's fees order
6 due?

7 THE COURT: Those are due within 30
8 days.

9 MS. MONOC: Your Honor, this
10 supplements the previous submission.

11 THE COURT: Thank you.

12 MS. MONOC: I've just updated the
13 Affidavit. Thank you.

14 THE COURT: Thank you.

15 MS. HANCOCK: Your Honor, I would ask
16 that Ms. Monoc -- I see an Amended Affidavit
17 of Attorney's Fees. I would ask for an
18 itemization of what those fees are.

19 THE COURT: If she wants to she can
20 send you a redacted copy of whatever you've
21 got. You can provide her with an itemization
22 and can redact whatever you want. I looked
23 at the last one. It was 15,000. With the
24 amount of work it sounds like you all have
25 been doing on appeal and otherwise I would

1 imagine that 5,000 is de minimus between June
2 20th and August 29th. All right? I find
3 that to be a reasonable sanction. 20,000 in
4 attorney's fees, and then you'll calculate
5 the amount of the post judgment interest.

6 I'm going to do a Form IV order for
7 funds to be sent up there today. I'll get
8 that filed to go along with the other order
9 and get those out to you-all today and
10 you-all just let Mr. Kirchner know that
11 that's what the Court's ordered. Okay?

12 MS. MONOC: Thank you. Have we
13 addressed costs, or are costs not being
14 addressed?

15 THE COURT: Do you have a separate
16 figure just for costs?

17 MS. MONOC: Yes.

18 THE COURT: What is that?

19 MS. MONOC: \$726.39.

20 THE COURT: All right. You can add
21 that to the 20. I'll get you to do me a
22 formal order on that one. Okay?

23 MS. MONOC: Sure.

24 THE COURT: Okay. So he can pay
25 exactly what it is. All right, Ms. Hancock.

1 Thank you very much.

2 MS. HANCOCK: Thank you, Your Honor.

3 THE COURT: Thank you for coming.

4 MS. MONOC: I'm sorry, may I raise one
5 other point? All the discovery that was done
6 in January of 2014, is there a ruling on
7 that? The sanctions were addressed, but we
8 still don't have discovery.

9 THE COURT: Is there some additional
10 information or additional funds that you-all
11 need at this time?

12 MS. MONOC: Well, I guess it would only
13 matter if they don't pay the attorney's fees
14 within the 30 days. So maybe we will --

15 THE COURT: If the attorney's fees
16 aren't paid within 30 days then you can issue
17 a new rule and we'll bring that in. I don't
18 know that I need discovery on that. Okay?

19 MS. MONOC: Thank you, Your Honor.

20 THE COURT: Very good. Thank you all.

21 (The proceedings were concluded at
22 10:34 a.m.)

23

24

25

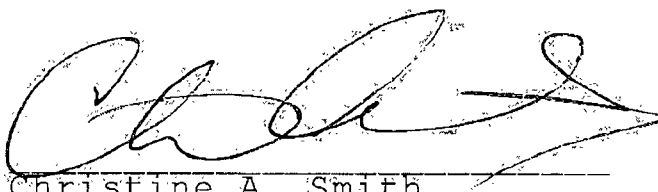
1 State of South Carolina)

2 County of Charleston) C E R T I F I C A T E

3
4 I, Christine A. Smith, Court Reporter
5 and Notary Public for the State of South
6 Carolina at Large, do hereby certify that
7 the foregoing transcript is a true, accurate,
8 and complete record.

9 I further certify that I am neither
10 related to nor counsel for any party to the
11 cause pending or interested in the events
12 thereof.

13 Witness my hand, I have hereunto
14 affixed my official seal this 20th day of
15 November, 2014 at Charleston, Charleston
16 County, South Carolina.

17
18
19
20 

21 Christine A. Smith
22 Notary Public
23 My Commission Expires
24 May 12, 2021
25

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME
Petitioner/ Judgment Creditor,

vs.

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

Respondent/ Judgment Debtor.

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

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

FILED
2014 MAY -6 PM 11:08
JULIE J. ARONSON
CLERK OF COURT

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

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

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

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

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

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

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

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

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

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

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

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

PRATT-THOMAS WALKER, P.A.



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

Charleston, South Carolina
May 6, 2014

EXHIBIT A

Affidavit of Lydia Davidson, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 09-CP-10-5799
WINDSWEPT VILLAS III HORIZONTAL	)	
PROPERTY REGIME	)	
Petitioner/ Judgment Creditor,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	LYDIA DAVIDSON, ESQUIRE
	)	
ELAINE DEVLIN PEERY A/K/A	)	
ELAINE D. PEERY,	)	
	)	
	)	
<u>Respondent/ Judgment Debtor.</u>	)	

PERSONALLY APPEARED BEFORE ME Lydia Davidson, Esquire, who, being first duly sworn, avers and states as follows:

1. I have personal knowledge of the information herein and am competent to testify to the matters described herein.
2. I represented Windswept Villa III, HPR, Inc. (hereinafter "Windswept") in the underlying, above-referenced matter. I am familiar with Elaine Peery who owned Villa Number 5108 (5108 Sea Forest Drive) in Windswept III, Kiawah Island, South Carolina 29455. I am also familiar with Ms. Peery's involvement in the underlying matter.
3. In my client's Answer and Cross-Claim filed with the Court on September 24, 2009, Windswept alleged that Ms. Peery was behind on her assessments and that Windswept was owed those assessments along with interest, service fees, and penalties from the date of the assessment first becoming due, along with attorneys' fees, the cost of collection, and any other and further charges and assessments as had accrued since September 15, 2009, all as authorized by the Master Deed.

4. On September 30, 2009, Windswept attempted service of its Cross-Claim on Ms. Peery via certified mail return receipt requested and received no response.
5. On October 28, 2009, Windswept again attempted service on Ms. Peery and, again, such papers were returned unclaimed.
6. On November 25, 2009, Barnwell Vaughn, Esquire, filed an Answer and Counterclaim against Bank Of America and included a Cross-Claim as to Windswept. This communicated to me that Ms. Peery was in receipt of our Answer and Cross-Claim notwithstanding the fact that she had evaded service up until that time.
7. On November 30, 2009, my law firm Krawcheck & Davidson, L.L.C. accepted service of Ms. Peery's Cross-Claim on behalf of our client, Windswept.
8. On December 2, 2009, my office emailed Mr. Vaughn's office to let them know we received neither our registered mail nor the green card from our attempted service of Windswept's Cross-Claim on Ms. Peery.
9. On December 3, 2009, Mr. Vaughn was served with Windswept's Summons, Answer and Cross-Claim.
10. On December 11, 2009, Windswept filed a Reply to Ms. Peery's Cross-Claim as to it. In its prayer for relief, Windswept requested that the Court dismiss Ms. Peery's Cross-Claim and grant it judgment on the past-due assessment amount together with accrued interest, service fees, penalties, attorneys' fees, collection costs, and other relief deemed proper by the Court. The relief requested in its Reply to Ms. Peery's Cross-Claim was the same relief requested in its Cross-Claim as to Ms. Peery.
11. Subsequently, various motions were filed including Mr. Vaughn's motion to be relieved as counsel and Windswept's Motion to Appoint a Receiver.

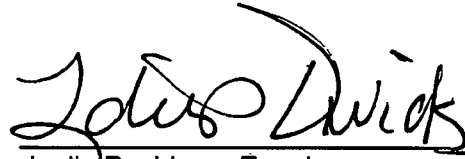
12. Windswept's Notice of Motion and Motion to Appoint a Receiver was served on Mr. Vaughn as attorney for Ms. Peery by mail on July 15, 2011. Paragraph 1 of that Motion stated: "The Association filed a Cross-Claim against Defendant Peery on September 23, 2009, to recover Peery's accrued unpaid assessments owed to the Association. In its Cross-Claim, the Association showed that it possesses the rights, powers, and duties set forth in the Master Deed of Windswept Villas III Horizontal Property Regime as recorded in the Charleston County RMC Office in Book A128, Page 186, as may have been amended from time to time ("Master Deed")."
13. On August 1, 2011, the hearing on Mr. Vaughn's motion to be relieved as counsel and Windswept's Motion to Appoint a Receiver took place before the Honorable Mikell R. Scarborough. Ms. Peery, as well as her husband, attended that hearing.
14. When the Court heard Mr. Vaughn's request to be relieved as counsel, I objected on behalf of my client because almost \$45,000 in back assessments were owed on the Peery unit, and my client was concerned that having a new attorney appointed would further delay the already protracted proceedings.
15. When the Court granted Mr. Vaughn's motion to be relieved as counsel, Ms. Peery requested that she be provided with all case filings. Judge Scarborough stipulated that Mr. Vaughn provide Ms. Peery with whatever was in the file and noted "[t]here were some motions, some answers, I think some Cross-Claims."
16. With respect to my client's motion to have a receiver appointed, it was acknowledged on the record that the purpose of that motion was to obtain rent proceeds from the property in order to pay Windswept and/or Bank of America.
-
- When the Court granted my client's motion to have a receiver appointed, Ms.

Peery seemed to understand the process and requested that she be allowed in to the unit to collect some personal belongings.

17. The Court granted Ms. Peery 60 days to retain new counsel or else proceed pro se.
18. A status conference took place on October 7, 2011.
19. The foreclosure hearing scheduled for November 28, 2011 was cancelled.
20. The foreclosure hearing was again scheduled for January 24, 2012. Such hearing was noticed by Bank of America on December 1, 2011, and the bank's certificate of service reflects that Ms. Peery was notified of such hearing.
21. I spoke to Barry Holden, Ms. Peery's attorney, on January 23, 2012. He knew about the hearing and so did Ms. Peery.
22. Upon information and belief, Ms. Peery requested a continuance of such hearing, and her request was denied as evidenced by a Form 4 Order issued by the Honorable Mikell R. Scarborough on January 24, 2012.
23. At the January 24, 2012 hearing, the Court held that the judgment on Windswept's claims would be entered upon a hearing on the receivership funds. That hearing was set for March 26, 2012. Charles Gwynne, attorney for Bank of America, changed the date to March 27, 2012, and sent notice of the same on March 14, 2012. According to his Certificate of Service, Ms. Peery was served with such notice by mail.
24. At the March 27, 2012 hearing on Receivership Funds, the judgment amount owed to Windswept was determined and an Order of Judgment was issued.
25. Following entry of the Court's Orders, I received Notice of Entry of Judgment from the Clerk's office communicating that the Order Discharging Receiver, Order of Judgment, and Order for Final Distribution of Funds was mailed first.

class on April 3, 2012 to all counsel of record and all parties entitled to receive notice, which would have included Ms. Peery.

FURTHER AFFIANT SAYETH NAUGHT.


Lydia Davidson, Esquire

SWORN to before me
this 5 day of May, 2014.

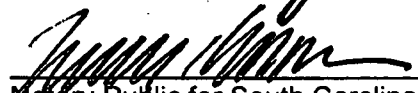

Notary Public for South Carolina
My Commission Expires: 5/4/19.

EXHIBIT B

Affidavit of Katie Fowler Monoc, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME

Petitioner/Judgment Creditor,

vs.

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

Respondent/ Judgment Debtor.

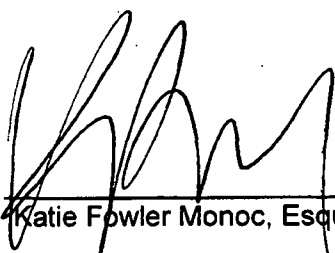
**AFFIDAVIT OF
KATIE FOWLER MONOC, ESQUIRE**

PERSONALLY APPEARED BEFORE ME Katie Fowler Monoc, Esquire, who, being
first duly sworn, avers and states as follows:

1. I have personal knowledge of the information herein and am competent to testify to the matters described herein.
2. I am the attorney for Windswept Villas III Horizontal Property Regime (hereinafter "Windswept") and instituted these supplemental proceedings on behalf of my client.
3. When submitting my client's Motion for an Order of Reference and for Supplemental Proceedings, I copied Jesse Kirchner, Esquire, who I understood was actively representing Ms. Peery in an ongoing construction matter, and Barnwell Vaughn, Esquire, who previously represented Ms. Peery in the present matter.
4. I did this out of an abundance of caution and in my best effort to comply with Rule 4.2 of the South Carolina Rules of Professional Conduct.
5. I subsequently learned that Ms. Peery was not represented by counsel in this matter.

6. Once the matter was referred and a hearing date was obtained, my office attempted twelve times via a process server to personally serve Ms. Peery at 3053 Pignatelli Crescent, Mount Pleasant, SC, 29464 with notice of the hearing.
7. 3053 Pignatelli Crescent, Mount Pleasant, SC, 29464 is the address on file with the Court and the last known address for Ms. Peery.
8. In addition, we sent notice of the hearing via certified mail return receipt requested, restricted delivery to that address and received no response.
9. Ms. Peery's current counsel, John Cantrell, Esquire, contacted me by email on December 31, 2013 to let me know he was "recently retained to represent Elaine D. Peery" in the "Windswept Villas v. Elaine Peery supplemental proceedings." In that email, Mr. Cantrell conveyed awareness of the January 13, 2014 hearing set before Judge Scarborough. Mr. Cantrell further stated awareness of the January 6, 2014 discovery deadline set forth in the Court's Order of Reference dated October 28, 2013. His email to me states, "It is my understanding based on recently reading the supplemental proceedings order in this case that there is an order for my client to appear before the Master on January 13, 2014, and to produce documents to you on January 6, 2014." I interpreted this communication and other communications by telephone to mean that Ms. Peery was aware of the supplemental proceedings that had been instituted by the judgment creditor Windswept to collect on the judgment issued against her on March 29, 2012.
10. On January 13, 2014, John Cantrell, Esquire, appeared at the hearing on Supplemental Proceedings and filed his notice of appearance on that day. Mr. Cantrell also formally accepted service of the Order of Reference and Notice of Supplemental Proceedings on January 13, 2014 as evidenced by his January 24, 2014 filing with the Court.

FURTHER AFFIANT SAYETH NAUGHT.


Katie Fowler Monoc, Esquire

SWORN to before me
this 6 day of May, 2014.


Notary Public for South Carolina
My Commission Expires: Aug. 21, 2016

EXHIBIT C

Notices of Entry of Judgment

Dated April 3, 2012

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



www3.charlestoncounty.org

49



LYDIA PRUITT DAVIDSON
KRAWCHECK & DAVIDSON
9 STATE ST
CHARLESTON SC 29401-3008

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRC

Master/Master's Order Discharging Receiver

CASE NO: 2009CP1005799

Bank Of America N A VS Elaine Devlin Peery , defendant, et al

This judgment was entered on the 29th day of March, 2012, and a copy mailed first class on Tuesday, April 03, 2012, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



www3.charlestoncounty.org

Lydia Pruitt Davidson
Krawcheck & Davidson
9 State Street
Charleston, SC 29401

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Judgment

CASE NO: 2009CP1005799

Bank Of America N A VS Elaine Devlin Peery , defendant, et al

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100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



www3.charlestoncounty.org

Lydia Pruitt Davidson
Krawcheck & Davidson
9 State Street
Charleston, SC 29401

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Master/Master's Order Final Distribution of Funds

CASE NO: 2009CP1005799

Bank Of America N A VS Elaine Devlin Peery , defendant, et al

This judgment was entered on the 29th day of March, 2012, and a copy mailed first class on Tuesday, April 03, 2012, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the Judgment Creditor's Memorandum in Opposition to Judgment Debtor's Untimely Motion to Vacate and Affidavit of Attorneys' Fees by mailing a copy, United States First Class, to the following counsel/parties, in accord with applicable Rules of Civil Procedure on this 6th day of May, 2014:

Vernee C. Hancock, Esq.
P.O. Box 2276
Summerville, SC 29484

John Cantrell, Esq.
Cantrell Law Firm, PC
PO Box 1276
Goose Creek, SC 29445

FILED

MAY 06 2014

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.



Chris Morrow
Paralegal to Katie Fowler Monoc

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

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

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

FILED
JUN 17 PM 1:06
CLERK OF COURT

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

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

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

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

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

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

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

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

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

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

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

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

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

PRATT-THOMAS WALKER, P.A.



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

Charleston, South Carolina
June 17, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME)

Petitioner/ Judgment Creditor,)

vs.)

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

Respondent/ Judgment Debtor.)

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

**AFFIDAVIT OF
LYDIA DAVIDSON, ESQUIRE**

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2. I represented Windswept Villa III, HPR, Inc. (hereinafter "Windswept") in the underlying, above-referenced matter. I am familiar with Elaine Peery who owned Villa Number 5108 (5108 Sea Forest Drive) in Windswept III, Kiawah Island, South Carolina 29455. I am also familiar with Ms. Peery's involvement in the underlying matter.
3. In my client's Answer and Cross-Claim filed with the Court on September 24, 2009, Windswept alleged that Ms. Peery was behind on her assessments and that Windswept was owed those assessments along with interest, service fees, and penalties from the date of the assessment first becoming due, along with attorneys' fees, the cost of collection, and any other and further charges and assessments as had accrued since September 15, 2009, all as authorized by the Master Deed.

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Peery seemed to understand the process and requested that she be allowed in to the unit to collect some personal belongings.

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18. A status conference took place on October 7, 2011.

19. The foreclosure hearing scheduled for November 28, 2011 was cancelled.

20. The foreclosure hearing was again scheduled for January 24, 2012. Such hearing was noticed by Bank of America on December 1, 2011, and the bank's certificate of service reflects that Ms. Peery was notified of such hearing.

21. I spoke to Barry Holden, Ms. Peery's attorney, on January 23, 2012. He knew about the hearing and so did Ms. Peery.

22. Upon information and belief, Ms. Peery requested a continuance of such hearing, and her request was denied as evidenced by a Form 4 Order issued by the Honorable Mikell R. Scarborough on January 24, 2012.

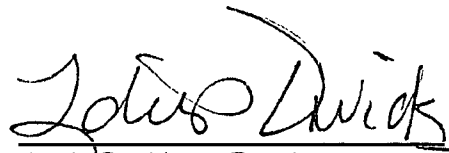
23. At the January 24, 2012 hearing, the Court held that the judgment on Windswept's claims would be entered upon a hearing on the receivership funds. That hearing was set for March 26, 2012. Charles Gwynne, attorney for Bank of America, changed the date to March 27, 2012, and sent notice of the same on March 14, 2012. According to his Certificate of Service, Ms. Peery was served with such notice by mail.

24. At the March 27, 2012 hearing on Receivership Funds, the judgment amount owed to Windswept was determined and an Order of Judgment was issued.

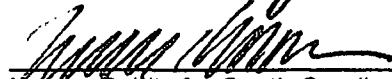
25. Following entry of the Court's Orders, I received Notice of Entry of Judgment from the Clerk's office communicating that the Order Discharging Receiver, Order of Judgment, and Order for Final Distribution of Funds was mailed first

class on April 3, 2012 to all counsel of record and all parties entitled to receive notice, which would have included Ms. Peery.

FURTHER AFFIANT SAYETH NAUGHT.


Lydia Davidson, Esquire

SWORN to before me
this 5 day of May, 2014.


Notary Public for South Carolina
My Commission Expires: 5/4/19.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

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

Defendant(s).

(511263-02244 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 09-CP-10-5799

**NOTICE OF FINAL FORECLOSURE
HEARING**

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

JB

TO THE DEFENDANTS ABOVE NAMED:

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

[Signature]

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

ATTORNEYS FOR PLAINTIFF

Rogers Townsend & Thomas, PC and its staff are debt collectors

December 1, 2011

5252171

EXHIBIT

B

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

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

Document(s) Served:

Notice of Final Foreclosure Hearing

Counsel/Parties Served:

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

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

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

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

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



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

ROGERS TOWNSEND & THOMAS, PC
POST OFFICE BOX 100200 (29202)
220 EXECUTIVE CENTER DRIVE
COLUMBIA, SOUTH CAROLINA 29210
P 803 771 7500 F 803 343 7017
W RTT-LAW.COM

CHARLES S. GWYNNE JR.
SHAREHOLDER
CHARLIE.GWYNNE@RTT-LAW.COM
P 803 744 1933
F 803 343 7017

LICENSED IN SOUTH CAROLINA



ROGERS TOWNSEND
ATTORNEYS AT LAW

December 1, 2011

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

Re: Bank of America, N.A. vs. Elaine Devlin Peery a/k/a Elaine D. Peery; Kiawah
Island Community Association, Inc.; Windswept Villas III Horizontal Property
Regime, Inc.
Civil Action # 09-CP-10-5799
Our File # 511263 - 02244

Dear Ms. Armstrong:

Enclosed are an original and one copy of a Notice of Final Foreclosure Hearing and Certificate
of Service in this matter. Please file the original documents and return clocked copies to me in
the envelope provided for your convenience.

By copy of this letter, I am serving the Notice of Hearing on all opposing counsel and
interested parties.

This case has been referred to the Charleston County Master in Equity.

Thank you for your assistance in this matter.

Sincerely yours,

Charles S. Gwynne Jr.

/nb
Enclosures

The Honorable Mikell R. Scarborough
Master in Equity for Charleston County
100 Broad Street, Suite 266
Charleston, SC 29401

This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have
previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only an
enforcement of the lien against the property
5252193

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

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

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

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

This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only an enforcement of the lien against the property.



[Charleston County Home Page](#) [Clerk of Court Home Page](#) [SC Judicial Home Page](#) [Search Tips](#)

Switch View

Bank Of America N A VS Elaine Devlin Peery, defendant, et al

Case Number:	2009CP1005799	Court Agency:	Common Pleas	Filed Date:	09/14/2009
Case Type:	Common Pleas	Case Sub Type:	Foreclosure 420	File Type:	Non-Jury
Status:	Referred To Master	Assigned Judge:	Solicitor / Master In Equity G S And C P		
Disposition:	Ended by Non Jury	Disposition Date:	02/09/2012	Disposition Judge:	Scarborough, Mikell R.
Original Source Doc:		Original Case #:			
Judgment Number:	2009CP1005799	Court Roster:			

Case Parties **Judgments** **Tax Map Information** **Associated Cases** **Actions** **Financials**

Click the ☒ icon to show associated parties.

Name	Address	Race	Sex	Date Of Birth	Party Type	Party Status	Last Updated
☒ Bank Of America N A					Plaintiff		04/16/2014
☒ Cantrell, John R Jr.	PO Box 1276 Goose Creek SC 294451276				Defendant Attorney		05/09/2014
☒ Davidson, Lydia Prulitt	9 State Street Charleston SC 29401				Defendant Attorney		01/22/2014
☒ Hancock, Vernee Chnita	Hancock Law Law Firm PO Box 2276 Summerville SC 29484				Defendant Attorney		03/27/2014
Klawah Island Community Association Inc Etc					Defendant		03/25/2013
☒ MonoC, Kathleen Fowler	PO Drawer 22247 Charleston SC 294132247				Defendant Attorney		06/10/2014
Peery, Elaine D					Defendant		03/25/2013
☒ Peery, Elaine Devlin(Inactive)	3053 Pignatelli Crescent Mt Pleasant SC 294668057				Defendant Pro Se		01/14/2014
☒ Peery, Elaine Devlin					Defendant		03/25/2013
☒ Vaughan, William H. Jr(Inactive)	Vaughn Law Firm, Pa 102 Wappoo Creek Dr Ste. 2a Charleston SC 29412				Defendant Attorney		08/08/2011
☒ Waters, Samuel Calvin	PO Box 100200 Columbia SC 292023200				Plaintiff Attorney		05/29/2014
☒ Windswept Villas III Horizontal Property Regime Inc Etc					Defendant		04/16/2014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

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

Defendant(s).

(511263-02244 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 09-CP-10-5799

**NOTICE OF HEARING ON
RECEIVERSHIP FUNDS**

FILED
2012 MAR 15 PM 3:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

TO THE DEFENDANTS ABOVE NAMED:

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

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

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



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

March 14, 2012

5505780

EXHIBIT

D

325

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

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

Document(s) Served:

Notice of Hearing on Receivership Funds

Counsel/Parties Served:

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

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

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2012 MAR 15 PM 3:30

FILED

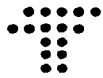


Charles S. Gwynne Jr. (SC Bar # 73844)

ROGERS TOWNSEND & THOMAS, PC
POST OFFICE BOX 100200 (29202)
220 EXECUTIVE CENTER DRIVE
COLUMBIA, SOUTH CAROLINA 29210
P 803 771 7900 F 803 343 7017
W RTT-LAW.COM

CHARLES S. GWYNNE JR.
SHAREHOLDER
CHARLIE.GWYNNE@RTT-LAW.COM
P 803 744 1933
F 803 343 7017

LICENSED IN SOUTH CAROLINA



ROGERS TOWNSEND
ATTORNEYS AT LAW

March 14, 2012

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

Re: Bank of America, N.A. vs. Elaine Devlin Peery a/k/a Elaine D. Peery; Kiawah
Island Community Association, Inc.; Windswept Villas III Horizontal Property
Regime, Inc.
Civil Action # 09-CP-10-5799
Our File # 511263 - 02244

Dear Ms. Armstrong:

Enclosed are an original and one copy of a Notice of Hearing on Receivership Funds and
Certificate of Service in this matter. Please file the original documents and return clocked
copies to me in the envelope provided for your convenience.

By copy of this letter, I am serving the Notice of Hearing on Receivership Funds on all
opposing counsel and interested parties.

This case has been referred to the Charleston County Master in Equity.

Thank you for your assistance in this matter.

Sincerely yours,

Charles S. Gwynne Jr.

/nb
Enclosures

The Honorable Mikell R. Scarborough
Master in Equity for Charleston County
100 Broad Street, Suite 266
Charleston, SC 29401

This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have
previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only an
enforcement of the lien against the property
5505850

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

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

This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only an enforcement of the lien against the property.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME

Petitioner/ Judgment Creditor,

vs.

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

Respondent/ Judgment Debtor.

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

CERTIFICATE OF SERVICE

FILED
2014 JUN 17 PM 1:06
CLERK OF COURT

The undersigned hereby certifies that a copy of the **Judgment Creditor's Reply to Judgment Debtor's Submission in Support of Its Motion to Vacate** in the above-referenced matter has been served upon counsel listed below on June 17, 2014, by mailing copies properly addressed with sufficient postage affixed thereto via United States Mail to:

John R. Cantrell, Jr., Esq.
P.O. Box 1276
Goose Creek, SC 29445-1276

Vernee C. Hancock, Esq.
P.O. Box 2276
Summerville, SC 29484

PRATT-THOMAS WALKER, P.A.

Christine Morrow

Christine Morrow
Paralegal to Katie Fowler Monoc
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: (843) 727-2244
Fax: (843) 727-2236
E-mail: kfm@p-tw.com
Attorney for Judgment Creditor

Charleston, South Carolina

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403PO DRAWER 22247
CHARLESTON, SC 29413-2247PHONE: 843.727.2200
FAX: 843.727.2238

WWW.P-TW.COM

(843) 727-2244 (direct dial)
(843) 727-2239 (fax)
kfm@p-tw.com (e-mail)E. DOUGLAS PRATT-THOMAS
C. TRENHOLM WALKER
W. ANDREW GOWDER, JR.
JON L. AUSTEN
LINDSAY K. SMITH-YANCEY (SC, NC)
THOMAS H. HESSE (SC, GA)
IAN W. FREEMAN (SC, CA)
DANIEL S. McQUEENEY, JR.
KATHLEEN FOWLER MONOC
JOHN P. LINTON, JR.OF COUNSEL
THOMAS P. GRESSETTE, JR. (SC, USVI)

June 17, 2014

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401**Re: Windswept Villas III Horizontal Property Regime v. Elaine Devlin
Peery**

Case No.: 2009-CP-10-5799

Our File No.: 6835-003

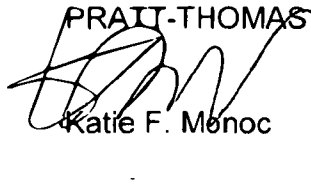
Dear Ms. Armstrong:

Please find enclosed the original and one copy of the Judgment Creditor's Reply to Judgment Debtor's Submission in Support of Its Motion to Vacate in the above referenced matter. Please file the original and return a stamped copy to me in the enclosed envelope.

Thank you for your many courtesies in these regards.

Yours very truly,

PRATT-THOMAS WALKER, P.A.


Katie F. Monoc

KFM\cam

Enclosures

cc: John R. Cantrell, Jr., Esq. (w/encl.)

Vernee Hancock, Esq. (w/encl.)

ProVest, LLC - Tampa (Rome)

202 S. Rome Suite 150 Tampa, FL 33606



Affidavit of Service

DOCKET NUMBER: 09-CP-10-5799
COURT OF COMMON PLEAS FOR CHARLESTON COUNTY, SC
CASE STYLE:

FILE NUMBER: 011263-02244

PLAINTIFF BANK OF AMERICA, N.A.; et seq.
vs.
DEFENDANT ELAINE DEVLIN PEERY A/K/A ELAINE D. PEERY; et al
SERVICE OF PROCESS ON: ELAINE DEVLIN PEERY A/K/A ELAINE D. PEERY

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

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

PLACE OF SERVICE. W. Barnwell Vaughan, P.A.
102 Wappo Creek Drive, suite 2-A
Charleston, SC 29412

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

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

TYPE OF DOCUMENTS: (x) SUMMONS & COMPLAINT (x) LIS PENDENS
() OTHER:

DESCRIPTION OF PARTY RECEIVING DOCUMENTS. The person receiving the documents is described as follows:
Name W. BARNWELL VAUGHN; Relationship/Title ATTORNEY
Sex MALE; Race WHITE; Facial Hair NO;
Age(prox.) 46-50; Height(prox.) 5'7"; Weight(prox.) 210

MARITAL STATUS ☐ Single ☐ Married ☐ Separated ☒ Unknown

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

IS THE SUBJECT PROPERTY A ☐ YES ☐ NO ☐ MOBILE HOME VIN NOT VISIBLE
MOBILE HOME? VIN #:

COMMENTS:

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

NAME: CHRIS BALLARD

Signature of Process Server

Notary Public: Sworn and subscribed before me this 10 day of OCT in the year of 2009

☒ Personally known to me or ☐ identified by the following document:

Type:

Number/Reference:

Notary Public (Legal Signature)

Notary Public for SOUTH CAROLINA Commission Expiration 3/20/2012

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

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

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

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

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

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

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

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

10. Rents and profits of Villa Number 5108 are in danger of being lost or materially injured or impaired. If a receiver is not appointed as provided in the Master Deed and Bylaws, the Association likely will never recover any amount on its unpaid assessments. The high rental season is fast passing.
11. There are only 44 units in Windswept III. Peery's failure to pay the two years of assessments coupled with the extended duration of this foreclosure is having a significant adverse effect on the financial condition of the Association. Additionally, in the past several months the Association has incurred the cost of additional expensive repairs, including replacing all the railings in the building, that has put even more strain on the Association's finances.
12. Because Peery is in default in the payment of her assessments, the By-Laws of Windswept III allow the exclusion of Peery from the common areas and recreational facilities of Windswept Villas III.
13. I request that the Court appoint Ravenel Associates as receiver with full authority to rent Peery's unit, collect such rents and apply them to the accumulated assessment debt, and pay any excess proceeds to Peery; and request further that the Court enjoin Peery from using the common elements and recreational facilities of Windswept III until such time as the accrued assessment debt is paid.

FURTHER AFFIANT SAYETH NAUGHT.

Marilyn Summers
Marilyn Summers

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

S. Zuchowski
Notary Public for South Carolina
My Commission Expires: Sept. 11, 2017



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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

CASE NO.: 2009-CP-10-5799

AFFIDAVIT OF LYDIA P. DAVIDSON

FILED
2012 MAR 29 PM 2:17
JULIE ARMSTRONG
CLERK OF COURT

PERSONALLY appeared before me Lydia P. Davidson, who being first duly sworn deposes and states as follows:

1. That she is the attorney for the Defendant, Windswept Villas III Horizontal Property Regime, Inc. (hereinafter "Windswept III"), in the above captioned action.

2. That the Answer and Crossclaim of Windswept III were duly served upon Defendant Elaine Devlin Peery a/k/a Elaine D. Peery (hereinafter "Peery") and Peery appeared, by and through her attorney, and filed a Counterclaim against Windswept III in this matter.

3. That attached is the account history of Windswept III, an accounting of the Court appointed Receiver, and a statement of attorney's fees and costs, which total \$27,034.02 said amount comprised of \$19,726.895 in unpaid assessments and late fees, \$2,616.42 in receivership expenses and \$4,690.71 in attorney's fees and costs, which is sought as sum certain damages in this matter.


Lydia P. Davidson

Sworn to before me 27
day of March, 2012.



Notary Public for South Carolina
My Commission Expires: 5/23/13

Account History Report Windswept III HPR

Elaine D & Charlie Peery

00105-0350

Community Address 5108 Sea Forest Dr
Kiawah Island, SC 29455

Date Settled
Unit Type 03 - Unit Type 03

Mailing Address 3053 Pignatelli Crescent
Mt Pleasant, SC 29466-8057

Last payment date:
Last payment amount: 0.00
Current balance: 19,726.89

Trans Date	Transaction	Charges	Payments	Balance	Date Billed	Reference	Comments
03/31/2008	Late Fee	63.71		63.71	03/27/2009	Converted	Opening Balance
04/30/2008	Late Fee	32.86		96.57	03/27/2009	Converted	Opening Balance
05/31/2008	Late Fee	6.62		103.19	03/27/2009	Converted	Opening Balance
05/31/2008	Assessment	441.48		544.67	03/27/2009	Converted	Opening Balance
06/30/2008	Late Fee	6.62		551.29	03/27/2009	Converted	Opening Balance
07/31/2008	Late Fee	36.17		587.46	03/27/2009	Converted	Opening Balance
08/31/2008	Late Fee	36.17		623.63	03/27/2009	Converted	Opening Balance
09/30/2008	Late Fee	36.17		659.80	03/27/2009	Converted	Opening Balance
09/30/2008	Assessment	1,969.95		2,629.75	03/27/2009	Converted	Opening Balance
10/31/2008	Late Fee	65.72		2,695.47	03/27/2009	Converted	Opening Balance
11/30/2008	Late Fee	65.72		2,761.19	03/27/2009	Converted	Opening Balance
12/31/2008	Late Fee	65.72		2,826.91	03/27/2009	Converted	Opening Balance
12/31/2008	Assessment	1,969.95		4,796.86	03/27/2009	Converted	Opening Balance
01/31/2009	Late Fee	95.27		4,892.13	03/27/2009	Converted	Opening Balance
03/31/2009	Late Fee	29.55		4,921.68		Late Fee	Late Fee 03/31/2009
04/01/2009	Assessment	1,969.95		6,891.63		Quarterly Charges	Recurring Charges 04/01/2009
04/01/2009	Insurance Assessment	4,200.00		11,091.63		Annual Charges	Recurring Charges 04/01/2009
04/30/2009	Late Fee	29.55		11,121.18		Late Fee	Late Fee 04/30/2009
05/30/2009	Late Fee	158.27		11,279.45		Late Fee	Late Fee 05/30/2009
06/30/2009	Late Fee	158.27		11,437.72		Late Fee	Late Fee 06/30/2009
07/01/2009	Assessment	1,209.65		12,647.37		Quarterly Charges	Recurring Charges 07/01/2009
07/31/2009	Late Fee	176.41		12,823.78		Late Fee	Late Fee 07/31/2009
08/31/2009	Late Fee	176.41		13,000.19		Late Fee	Late Fee 08/31/2009
09/30/2009	Late Fee	176.41		13,176.60		Late Fee	Late Fee 09/30/2009
10/01/2009	Assessment	1,209.65		14,386.25		Quarterly Charges	Recurring Charges 10/01/2009
10/28/2009	Legal Fees	350.00		14,736.25		K&D-crossclaim	Krawcheck & Davidson-crossclaim
10/28/2009	Lien Fee	235.00		14,971.25		lien fee	lien fee-K & D
10/28/2009	Legal Fees	20.71		14,991.96		filing fee for lien	filing fee for lien & mailing
10/31/2009	Late Fee	194.56		15,186.52		Late Fee	Late Fee 10/31/2009
11/30/2009	Late Fee	194.56		15,381.08		Late Fee	Late Fee 11/30/2009
12/31/2009	Late Fee	194.56		15,575.64		Late Fee	Late Fee 12/31/2009
01/01/2010	Assessment	1,589.80		17,165.44		Quarterly Charges	Recurring Charges 01/01/2010
01/31/2010	Late Fee	218.41		17,383.85		Late Fee	Late Fee 01/31/2010
02/28/2010	Late Fee	218.41		17,602.26		Late Fee	Late Fee 02/28/2010
03/31/2010	Late Fee	218.41		17,820.67		Late Fee	Late Fee 03/31/2010
04/01/2010	Assessment	2,709.08		20,529.75		Monthly Charges	Recurring Charges 04/01/2010
04/01/2010	Insurance Assessment	4,500.00		25,029.75		Annual Charges	Recurring Charges 04/01/2010
04/30/2010	Late Fee	326.54		25,356.29		Late Fee	Late Fee 04/30/2010
05/18/2010	Foreclosure Credit		-15,575.64	9,780.65		wrote off-12 31 09	wrote off balance at 12 31 09
05/31/2010	Late Fee	131.98		9,912.63		Late Fee	Late Fee 05/31/2010
06/30/2010	Late Fee	131.98		10,044.61		Late Fee	Late Fee 06/30/2010
07/01/2010	Assessment	2,149.44		12,194.05		Quarterly Charges	Recurring Charges 07/01/2010
07/31/2010	Late Fee	164.22		12,358.27		Late Fee	Late Fee 07/31/2010
08/31/2010	Late Fee	164.22		12,522.49		Late Fee	Late Fee 08/31/2010
09/30/2010	Late Fee	164.22		12,686.71		Late Fee	Late Fee 09/30/2010
10/01/2010	Assessment	2,149.44		14,836.15		Quarterly Charges	Recurring Charges 10/01/2010
10/31/2010	Late Fee	196.47		15,032.62		Late Fee	Late Fee 10/31/2010

Account History Report
Windswept III HPR
Elaine D & Charlie Peery 00105-0350

Trans Date	Transaction	Charges	Payments	Balance	Date Billed	Reference	Comments
11/30/2010	Late Fee	196 47		15,229.09		Late Fee	Late Fee 11/30/2010
12/31/2010	Late Fee	196 47		15,425.56		Late Fee	Late Fee 12/31/2010
01/01/2011	Assessment	2,149 44		17,575.00		Quarterly Charges	Recurring Charges 01/01/2011
01/31/2011	Late Fee	228 71		17,803.71		Late Fee	Late Fee 01/31/2011
02/28/2011	Late Fee	228 71		18,032.42		Late Fee	Late Fee 02/28/2011
03/31/2011	Late Fee	228 71		18,261.13		Late Fee	Late Fee 03/31/2011
04/01/2011	Assessment	2,750 64		21,011.77		Quarterly Charges	Recurring Charges 04/01/2011
04/01/2011	Insurance Assessment	4,324 32		25,336.09		Annual Charges	Recurring Charges 04/01/2011
04/30/2011	Late Fee	334 83		25,670.92		Late Fee	Late Fee 04/30/2011
05/31/2011	Late Fee	334 83		26,005.75		Late Fee	Late Fee 05/31/2011
06/21/2011	Foreclosure Credit		-15,425 56	10,580.19		w/off 12 31 2010	w/off balance at 12 31 2010
06/30/2011	Late Fee	138 37		10,718.56		Late Fee	Late Fee 06/30/2011
07/01/2011	Assessment	2,450 04		13,168.60		Quarterly Charges	Recurring Charges 07/01/2011
07/31/2011	Late Fee	175 12		13,343.72		Late Fee	Late Fee 07/31/2011
08/31/2011	Late Fee	175 12		13,518.84		Late Fee	Late Fee 08/31/2011
09/30/2011	Late Fee	175 12		13,693.96		Late Fee	Late Fee 09/30/2011
10/01/2011	Assessment	2,450 04		16,144.00		Quarterly Charges	Recurring Charges 10/01/2011
10/31/2011	Late Fee	211 87		16,355.87		Late Fee	Late Fee 10/31/2011
11/30/2011	Late Fee	211 87		16,567.74		Late Fee	Late Fee 11/30/2011
12/31/2011	Late Fee	211 87		16,779.61		Late Fee	Late Fee 12/31/2011
01/01/2012	Assessment	2,450 04		19,229.65		Quarterly Charges	Recurring Charges 01/01/2012
01/31/2012	Late Fee	248 62		19,478.27		Late Fee	Late Fee 01/31/2012
02/29/2012	Late Fee	248 62		19,726.89		Late Fee	Late Fee 02/29/2012

Ravenel Associates, Inc. as Receiver for Elaine D. Peery							
Beginning August 2011							
Date	Description	Hours	Revenue	Expense	Total Cash Received for Rentals	Due to WSIII	Due to Ravenel Associates
8/8/2011	Research - Marilyn Summers						
	Collection of rent package info for unit	1 50		187 50			187 50
8/11/2011	fact investigation - M Summers						
	review of rental information	1 00		125 00			125 00
8/29/2011	Appearance-M. Summers						
	meet rental agent (Nancy Buck) to						
	review villa & take photos	1 00		125 00			125 00
8/30/2011	Appearance-M Summers						
	meet Elaine Peery & attorney Katie Monoc						
	at villa so that Ms. Peery could obtain						
	personal property	5 30		662 50			662 50
8/30/2011	Appearance - David Reese						
	meet Elaine Peery & attorney Katie Monoc						
	at villa so that Ms Peery could obtain						
	personal property	5 30		662 50			662 50
8/31/2011	Appearance - M Summers						
	meet Paul Steadman at villa to assess						
	value for insurance policy	1 00		125 00			125 00
10/5/2011	Office Administration-B Tyrrell						
	open SCBT checking account	0 50		62 50			62 50
10/19/2011	Ravenel Associates, Inc			176 89		176 89	
	reimburse for CC payment to Comcast						
	for cable installation, phone, wifi, TV						
10/19/2011	Berkeley Electric Cooperative, Inc			25 73		25 73	
	electricity for 9/19-10/5						
10/20/2011	Comcast			22 74		22 74	
	9/27-10/26						
10/31/2011	Comcast			137 82		137 82	
	10/27-11/26						
10/31/2011	Office Administration-V Phillips						
	Data entry for accounts payable	0 50		62 50		62 50	
10/1/2011	VRBO Annual Lockbox/installation		Page 1 of 3	419 32			

Ravenel Associates, Inc. as Receiver							
for Elaine D. Peery							
Beginning August 2011							
Date	Description	Hours	Revenue	Expense	Total Cash Received for Rentals	Due to WSIII	Due to Ravenel Associates
10/12/2011	Lockbox install			55.00			
	Cleaning			100.00			
10/13-10/15	Alex		824.75				
	(includes 11.5% tax of \$74.75)						
10/13-10/15	Pet/Cleaning						
	Alex			197.50	52.93		
11/21/2011	Berkeley Electric Cooperative, Inc.			54.50		54.50	
	The Steadman Agency, Inc.						
	H06 policy			1,089.17		1,089.17	
11/23-11/27	Everett (Coastal Getaways of SC)		1,125.00				
	(includes 11.5% tax of \$125.00)						
	agent fee			150.00			
	cleanings			100.00			
11/25/2011	service call for TV/Wireless			25.00	850.00		
11/26/2011	Office Administration-B Tyrrell						
	set up spreadsheet to account for revenue and expenses	1.50		187.50			187.50
12/7/2011	Comcast						
	11/27/11-12/26/11			137.82			137.82
12/31/2011	Comcast						
	12/27/11-1/26/12			137.62			137.62
12/31/2011	Berkeley Electric Cooperative, Inc.						
	11/2/2011-12/5/2011			99.60			99.60
1/12/2012	Office Administration-B Tyrrell						
	reconcile bank account			37.50			37.50

Ravenel Associates, Inc. as Receiver							
for Elaine D. Peery							
Beginning August 2011							
Date	Description	Hours	Revenue	Expense	Total Cash Received for Rentals	Due to WSIII	Due to Ravenel Associates
1/19/2012	Berkeley Electric Cooperative, Inc						
	12/5/2011-1/4/2012			166 76		166 76	
2/9/2012	Comcast - 1/27-2/26			146 39			
2/22/2012	Comcast - 2/27-3/26			142 05			
	Berkeley Electric Cooperative						
	1/4-2/3			290 30			
2/20/2012	Office Administration-B. Tyrrell						
	reconcile bank account	0 30		37 50			
3/21/2012	Office Administration-B. Tyrrell						
	reconcile bank account	0 30		37 50			
			1,949 75	4,566 17	902 93	1,569 35	1,950 00

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Bank of America, N.A.,)
Plaintiff,)

vs.)

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

CASE NO.: 2009-CP-10-5799

AFFIDAVIT OF
ATTORNEYS FEES AND COSTS

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2012 MAR 29 PM 2:17

FILED

PERSONALLY appeared before me, the undersigned Attorney for Defendant, Windswept Villas III Horizontal Property Regime, Inc. (hereinafter "Windswept III"), who, after being duly sworn, deposes and states as follows:

1. I am an attorney for Windswept III in the above referenced matter.
2. This case is an action in Circuit Court in which Plaintiff is seeking to foreclose its Mortgage and Defendant Windswept III is seeking to collection of past due assessments on property located in Charleston County, South Carolina from Defendant Elaine Devlin Peery a/k/a Elaine D. Peery (hereinafter "Peery").
3. That the Master Deed for Windswept III allows, in relevant part, for an award of attorney's fees and costs in this action.
4. That Exhibit "A" to this Affidavit which is a listing of my firm's billing in this matter, as well as the costs incurred with all available invoices and raw billing, and reflects the attorney's fees actually incurred through the date of this Affidavit. These fees and costs total **\$4,690.71** in connection with this action. Where applicable, the hourly rate charged was \$225.00 - \$300.00 per hour.
5. Under Dede v. Strickland, 414 S.E.2d 1348, (S.C. 1992), the Supreme Court has set forth the factors to be considered in an award of attorney's fees in real property actions. These

factors include the nature, extent and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fees charged in the locality for similar services, and the beneficial result obtained. These factors, as applied for this case, are as follows:

- a. Nature, Extent and Difficulty of Legal Services Rendered. As stated earlier, this is an action to collect past due assessments on real property. This case involved issues of real property and condominium law. Accordingly, the factual and legal issues presented were somewhat complex and detailed in nature, the extent of the work performed was necessary to adequately prepare and try these matters, and the matters decided were of some legal and factual difficulty.
- b. Time and Labor Necessarily Devoted to the Case. As stated above, this case involved issues of both legal and factual natures. Numerous documents were drafted for this case by my firm. This is reflected through the facts stated earlier, as well as from the listing of services performed in Exhibit "A". Accordingly, the time and labor devoted to this case were necessary to properly prepare and try this case.
- c. Professional Standing of Counsel. I am a licensed member of the Board of the State of South Carolina, as well as the United States Court of Appeals for the Fourth Circuit, and United States District Court for the District of South Carolina. I completed law school approximately 30 years ago. For approximately the last 29 years, I have been employed with the firm of Krawcheck & Davidson, LLC in Charleston, South Carolina. I am a member of the Charleston County Bar Association, the American Bar Association, the Real Estate Section of the Charleston County Bar Association, and other professional organizations. Approximately, eighty (80%) percent of my practice various aspects of real property law, including representation of developers of Horizontal Property Regimes and Planned Unit Developments, defense of mechanic's liens, foreclosure cases, community association representation including lien and collection cases,

land title questions, and other land related issues. I enjoy a position of respect with members of both the local and statewide real estate bar.

- d. Contingency of Compensation. Compensation in this case is based on the hourly rate of \$225.00 - \$300.00 per hour and a flat rate for documents drafted.
 - e. Customary Fee Charged in the Locality of Similar services. I am aware from discussions with clients, other attorneys in the Charleston area, and from my general familiarity with the legal profession that the fees charged for services similar to those in this case are, in the Charleston area, from \$150.00 to \$300.00 per hour. As stated earlier, my hourly rate is within this range in this case. Accordingly, this hourly rate is the fee customarily charged in this locality for similar services.
 - f. Beneficial Results Obtained. This attorney obtained beneficial results for the Plaintiff in this case by securing an Order for awarding a judgment to the Plaintiff. Accordingly, it is submitted that beneficial results were obtained by this firm on the client's behalf.
6. After the consideration of the nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, I respectfully submit that an award of attorney's fees and costs to the full extent set forth in this Affidavit is appropriate; therefore, my client is entitled to recover \$4,690.71 in attorney's fees and costs.

KRAWCHECK & DAVIDSON, LLC

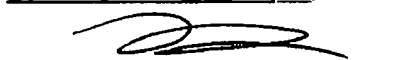


Lydia P. Davidson

Attorney for Defendant Windswept III Horizontal
Property Regime, Inc.

SWORN TO BEFORE ME THIS

27 day of March, 2012



Notary Public for South Carolina

My Commission Expires: 5/23/13

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

LEONARD KRAWCHECK
LYDIA P. DAVIDSON
LYDIA P. BROOKS

(843) 577-2577
(843) 723-9951 (FAX)

Invoice submitted to.

Windswept Villas III
c/o Ravenel Assoc - Chad Hammond
3690 Bohicket Road, Ste 1-A
Johns Island SC 29455

March 27, 2012

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
9/18/2009 Drafting, review and revision of Answer and Crossclaim regarding Peery (Villia 5108)		350 00
9/29/2009 Preparation of Lien against Peery (Unit 5108)		235 00
3/8/2011 Drafting letter to Barney Vaughn, Esq. regarding rent, Email to Trenholm Walker, Esq.	1 10 300 00/hr	330 00
7/14/2011 Review and revision of Motion for Receivership in Peery matter, Review of Rules of Civil Procedure and applicable statutes.	1 75 300.00/hr	525 00
8/1/2011 Preparation for Motions Hearing on Receivership in Peery Matter, Attendance of hearing	3 60 300.00/hr	1,080.00
8/2/2011 Email correspondence to the Board of Directors; Drafting, review and revision of Proposed Order, review and response to emails regarding Receivership; Telephone conference with John Kinney and Marilyn Summers, Revision to Proposed Order	4 25 300 00/hr	1,275 00
10/6/2011 Telephone conference with Barry Holden, Esq regarding Peery and requests made by Ms. Peery.	0.20 300 00/hr	60 00
1/23/2012 Telephone conference with Barry Holden, Esq regarding Peery receivership and foreclosure; Telephone conference with Karen Martin.	0.30 300.00/hr	90.00
Drafting, review and revision of Order of Judgment in Peery foreclosure		200 00
1/24/2012 Preparation for and attendance of Final Foreclosure hearing regarding Peery.		300.00
3/27/2012 Attendance at Hearing before the Master in Equity regarding final receivership accounting in Peery matter		200.00

Please return a copy of this Invoice with your payment.

	<u>Hours</u>	<u>Amount</u>
For professional services rendered	11.20	\$4,645.00
Additional Charges		
9/29/2009 Filing and Satisfaction of Lien against Peery (Unit 5108)		15.00
9/30/2009 Service of Process via Registered Mail Return Receipt Requested - Answer and Crossclaim in action against Peery (Unit 5108)		5 71
7/15/2011 Filing Fee - Motion for Receiver (Peery).		25.00
Total additional charges		\$45.71

Please return a copy of this Invoice with your payment.

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

[illegible]

**AFFIDAVIT OF
LYDIA DAVIDSON, ESQUIRE**

the 1990s, the number of people in the world who are under 15 years of age is expected to increase from 1.1 billion to 1.5 billion. The number of people aged 65 and over is expected to increase from 250 million to 450 million. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion.

Lydia Davidson, Esquire, who, being first

- ation herein and am competent to testify
- R, Inc. (hereinafter "Windswept") in the
- un familiar with Elaine Peery who owned
- Drive) in Windswept III, Kiawah Island
- lar with Ms. Peery's involvement in the
- filed with the Court on September 24
- ry was behind on her assessments and
- ssments along with interest, service fees
- essment first becoming due, along with
- and any other and further charges and
- ember 15, 2009, all as authorized by the

4. On September 30, 2009, Windswept attempted service of its Cross-Claim on Ms. Peery via certified mail return receipt requested and received no response.
5. On October 28, 2009, Windswept again attempted service on Ms. Peery and again, such papers were returned unclaimed.
6. On November 25, 2009, Barnwell Vaughn, Esquire, filed an Answer and Counterclaim against Bank Of America and included a Cross-Claim as to Windswept. This communicated to me that Ms. Peery was in receipt of our Answer and Cross-Claim notwithstanding the fact that she had evaded service up until that time.
7. On November 30, 2009, my law firm Krawcheck & Davidson, L.L.C. accepted service of Ms. Peery's Cross-Claim on behalf of our client, Windswept.
8. On December 2, 2009, my office emailed Mr. Vaughn's office to let them know we received neither our registered mail nor the green card from our attempted service of Windswept's Cross-Claim on Ms. Peery.
9. On December 3, 2009, Mr. Vaughn was served with Windswept's Summons, Answer and Cross-Claim.
10. On December 11, 2009, Windswept filed a Reply to Ms. Peery's Cross-Claim as to it. In its prayer for relief, Windswept requested that the Court dismiss Ms. Peery's Cross-Claim and grant it judgment on the past-due assessment amount together with accrued interest, service fees, penalties, attorneys' fees, collection costs, and other relief deemed proper by the Court. The relief requested in its Reply to Ms. Peery's Cross-Claim was the same relief requested in its Cross-Claim as to Ms. Peery.
11. Subsequently, various motions were filed including Mr. Vaughn's motion to be relieved as counsel and Windswept's Motion to Appoint a Receiver.

12. Windswept's Notice of Motion and Motion to Appoint a Receiver was served on Mr. Vaughn as attorney for Ms. Peery by mail on July 15, 2011. Paragraph 1 of that Motion stated: "The Association filed a Cross-Claim against Defendant Peery on September 23, 2009, to recover Peery's accrued unpaid assessments owed to the Association. In its Cross-Claim, the Association showed that it possesses the rights, powers, and duties set forth in the Master Deed of Windswept Villas III Horizontal Property Regime as recorded in the Charleston County RMC Office in Book A128, Page 186, as may have been amended from time to time ("Master Deed")."

13. On August 1, 2011, the hearing on Mr. Vaughn's motion to be relieved as counsel and Windswept's Motion to Appoint a Receiver took place before the Honorable Mikell R. Scarborough. Ms. Peery, as well as her husband, attended that hearing.

14. When the Court heard Mr. Vaughn's request to be relieved as counsel, I objected on behalf of my client because almost \$45,000 in back assessments were owed on the Peery unit, and my client was concerned that having a new attorney appointed would further delay the already protracted proceedings.

15. When the Court granted Mr. Vaughn's motion to be relieved as counsel, Ms. Peery requested that she be provided with all case filings. Judge Scarborough stipulated that Mr. Vaughn provide Ms. Peery with whatever was in the file and noted "[t]here were some motions, some answers, I think some Cross-Claims."

16. With respect to my client's motion to have a receiver appointed, it was acknowledged on the record that the purpose of that motion was to obtain rent proceeds from the property in order to pay Windswept and/or Bank of America. When the Court granted my client's motion to have a receiver appointed, Ms.

Peery seemed to understand the process and requested that she be allowed in to the unit to collect some personal belongings.

17. The Court granted Ms. Peery 60 days to retain new counsel or else proceed pro se

18. A status conference took place on October 7, 2011

19. The foreclosure hearing scheduled for November 28, 2011 was cancelled

20. The foreclosure hearing was again scheduled for January 24, 2012. Such hearing was noticed by Bank of America on December 1, 2011, and the bank's certificate of service reflects that Ms. Peery was notified of such hearing

21. I spoke to Barry Holden, Ms. Peery's attorney, on January 23, 2012. He knew about the hearing and so did Ms. Peery.

22. Upon information and belief, Ms. Peery requested a continuance of such hearing, and her request was denied as evidenced by a Form 4 Order issued by the Honorable Mikell R. Scarborough on January 24, 2012.

23. At the January 24, 2012 hearing, the Court held that the judgment on Windswept's claims would be entered upon a hearing on the receivership funds. That hearing was set for March 26, 2012. Charles Gwynne, attorney for Bank of America, changed the date to March 27, 2012, and sent notice of the same on March 14, 2012. According to his Certificate of Service, Ms. Peery was served with such notice by mail.

24. At the March 27, 2012 hearing on Receivership Funds, the judgment amount owed to Windswept was determined and an Order of Judgment was issued.

25. Following entry of the Court's Orders, I received Notice of Entry of Judgment from the Clerk's office communicating that the Order Discharging Receiver, Order of Judgment, and Order for Final Distribution of Funds was mailed first

class on April 3, 2012 to all counsel of record and all parties entitled to receive notice, which would have included Ms. Peery.

FURTHER AFFIANT SAYETH NAUGHT.


Lydia Davidson, Esquire

SWORN to before me
this 5 day of May, 2014.


Notary Public for South Carolina
My Commission Expires: 5/15/19

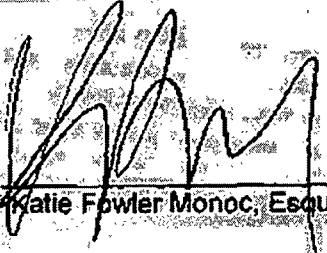
Respondent/ Judgment Debtor.

**AFFIDAVIT OF
KATIE FOWLER MONOC, ESQUIRE**

1. I have personal knowledge of the information herein and am competent to testify to the matters described herein.
2. I am the attorney for Windswept Villas III Horizontal Property Regime (hereinafter "Windswept") and instituted these supplemental proceedings on behalf of my client.
3. When submitting my client's Motion for an Order of Reference and for Supplemental Proceedings, I copied Jesse Kirchner, Esquire, who I understood was actively representing Ms. Peery in an ongoing construction matter, and Barnwell Vaughn, Esquire, who previously represented Ms. Peery in the present matter.
4. I did this out of an abundance of caution and in my best effort to comply with Rule 4.2 of the South Carolina Rules of Professional Conduct.
5. I subsequently learned that Ms. Peery was not represented by counsel in this matter.

6. Once the matter was referred and a hearing date was obtained, my office attempted twelve times via a process server to personally serve Ms. Peery at 3053 Pignatelli Crescent, Mount Pleasant, SC, 29464 with notice of the hearing.
7. 3053 Pignatelli Crescent, Mount Pleasant, SC, 29464 is the address on file with the Court and the last known address for Ms. Peery.
8. In addition, we sent notice of the hearing via certified mail return receipt requested, restricted delivery to that address and received no response.
9. Ms. Peery's current counsel, John Cantrell, Esquire, contacted me by email on December 31, 2013 to let me know he was "recently retained to represent Elaine D. Peery" in the "Windswept Villas v. Elaine Peery supplemental proceedings." In that email, Mr. Cantrell conveyed awareness of the January 13, 2014 hearing set before Judge Scarborough. Mr. Cantrell further stated awareness of the January 6, 2014 discovery deadline set forth in the Court's Order of Reference dated October 28, 2013. His email to me states, "It is my understanding, based on recently reading the supplemental proceedings order in this case that there is an order for my client to appear before the Master on January 13, 2014, and to produce documents to you on January 6, 2014." I interpreted this communication and other communications by telephone to mean that Ms. Peery was aware of the supplemental proceedings that had been instituted by the judgment creditor Windswept to collect on the judgment issued against her on March 29, 2012.
10. On January 13, 2014, John Cantrell, Esquire, appeared at the hearing on Supplemental Proceedings and filed his notice of appearance on that day. Mr. Cantrell also formally accepted service of the Order of Reference and Notice of Supplemental Proceedings on January 13, 2014 as evidenced by his January 24, 2014 filing with the Court.

FURTHER AFFIANT SAYETH NAUGHT


Katie Fowler Monoc, Esquire

SWORN to before me
this 6 day of May, 2014.


Notary Public for South Carolina
My Commission Expires: Aug. 21, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME,)

PETITIONER/JUDGMENT CREDITOR,)

vs.)

ELAINE DEVLIN PEERY a/k/a)
ELAINE D. PEERY,)

RESPONDENT/JUDGMENT DEBTOR.)

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

AFFIDAVIT OF ATTORNEY'S FEES

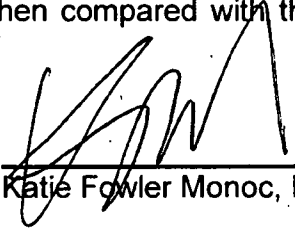
FILED
2014 MAY -6 PM 4:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

PERSONALLY APPEARED BEFORE ME, the undersigned, who, upon being
duly sworn, deposes and says:

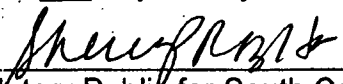
1. I am an attorney with the firm of Pratt-Thomas Walker, P.A. located in Charleston, South Carolina.
2. Our firm has represented Plaintiff Windswept Villas III Horizontal Property Regime ("Windswept") since approximately October 2013 in pursuit of the funds owed to it by Defendant.
3. Windswept obtained a judgment on March 29, 2012, which was not paid, and was forced to pursue supplemental proceedings against the judgment debtor.
4. To date, Windswept has incurred attorneys' fees in the amount of \$14,642.50 since October 2013 in supplemental proceedings.
5. To date, Windswept has incurred costs in the amount of \$553.12 since October 2013 for filing fees, service of process fees and other express services arising out of these supplemental proceedings.
6. My hourly rate for this matter is \$200.00 per hour.
7. G. Trenholm Walker's rate for this matter is \$325.00 per hour.
8. Our paralegal's rate for this matter is \$90.00 per hour.
9. We have logged approximately 92.8 hours in this matter since initiating supplemental proceedings, attempting to locate the judgment debtor, preparing

for hearings, etc. Excluded from this figure are the fees relating to the judgment debtor's unrelated, frivolous contentions relating to a supposed "lockout."

10. I believe that our hourly fees and our paralegal's hourly fee are fair and reasonable in light of the nature, extent, and difficulty of the case.
11. The time devoted to this matter in preparation, filing, research, and appearances is reasonable under the circumstances.
12. Our hourly fee and our paralegal's hourly fee, along with the amount of time logged in this matter are reasonable when compared with the customary legal fees for similar litigation services.


Katie Fowler Monoc, Esquire

Sworn to before me
this 6 day of May, 2014


Notary Public for South Carolina

My Commission Expires: Aug. 21, 2016

PRATT-THOMAS WALKER, P.A.

Invoices for *in camera* Review

1.	Invoices: October 18, 2013 through March 27, 2014	\$ 8,762.50
2.	Invoice April 1, 2014 through May 5, 2014	\$ 5,880.00
3.	Costs through May 2, 2014	<u>\$ 553.12</u>
	Total	\$15,195.62

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

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

WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME,)

PETITIONER/JUDGMENT CREDITOR,)

-VS-)

ELAINE DEVLIN PEERY a/k/a)
ELAINE D. PEERY,)

RESPONDENT/JUDGMENT DEBTOR.)

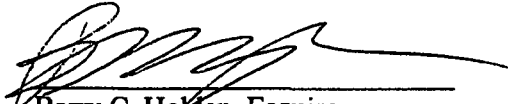
AFFIDAVIT OF
BARRY HOLDEN

FILED
2014 MAY 29 AM 9:03
JULIE J. HARRINGTON
CLERK OF COURT

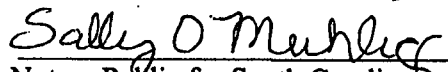
PERSONALLY appeared before me, BARRY HOLDEN, who, being first duly
sworn, deposes and says:

1. I, Barry C. Holden hereby being under oath do state and represent the following:
2. That I am an attorney licensed in the State of South Carolina and in good standing.
3. That I am acquainted with Elaine Perry having represented business interests of her and her deceased husband, being primarily tax issues related thereto.
4. That I did not represent her in a matter concerning foreclosure of property known generally as a unit at Windswept Villas in Kiawah.
5. That I never made appearance in the above matter on Ms. Perry's behalf.
6. That at no time did Elaine Peery have proper notice of any of these proceedings by or through me.
7. That I did not accept service of process on Elaine Peery' behalf on any pending matters currently before the Master in Equity.

The Deponent sayeth not more.


Barry C. Holden, Esquire

SWORN to before me this
21st day of May, 2014.


Notary Public for South Carolina
My Commission Expires: Sept 10, 2023



IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

)

2

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) CASE NO.: 2009-10-CP-5799

1

y

;

Hearing before the

For the Plaintiff: Charles S. Gwynne, Esq.
Rogers Townsend & Thonas, PC
PO Box 100200
Columbia, S.C. 29202-3200

For the HOA: Lydia Davidson, Esq.
Krawcheck & Davidson
PO Drawer 1018
Charleston, S.C. 29401

360

1 (Hearing commenced.)

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

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

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

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

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

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

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

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

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

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

5 THE COURT: Negative balance? Great.

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

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

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

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

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

21 MR. GWYNNE: I have, Your Honor.

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

24 MR. GWYNNE: Yes, Your Honor.

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

1 forward?

2 MR. GWYNNE: Yes, Your Honor.

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

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

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

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

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

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

19 THE COURT: All right.

20 (Hands up document.)

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

22 DIRECT EXAMINATION BY MR. GWYNNE:

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

25 A Judith Moore.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

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

WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME,)

PETITIONER/JUDGMENT CREDITOR,)

-VS-

AFFIDAVIT OF RESPONDENT
ELAINE D. PEERY

ELAINE DEVLIN PEERY a/k/a)
ELAINE D. PEERY,)

RESPONDENT/JUDGMENT DEBTOR.)

FILED
2014 MAY 29 AM 9:05
JULIE ANN STRONG
CLERK OF COURT
BY 2

PERSONALLY appeared before me, ELAINE D. PEERY, who, being first duly
sworn, deposes and says:

1. That I am the Respondent in the above entitled action.
2. That on or about January 23, 2012, I received a phone call from Barry Holden asking me if I knew a hearing was scheduled with Bank of America for the next day. I replied I did not know what he was talking about. He explained to me that he had just received a phone call from Mr. Gwynne the attorney for Bank of America, and that he was moving for a motion to foreclose on 5108 Windswept, Kiawah, SC. Barry explained to me that he told Mr. Gwynne that he did not represent me in this case, that he was only trying to get the bank to not put a deficiency judgment against me.
3. That I explained to Barry Holden that I knew nothing about any hearing from the court on that day or any future time. I also explained that there was no way I would be able to attend due to my husband's failing health and that I was also taking care of my disabled father as well. I also explained that I had no one to help watch my husband or my father and would be unable to attend any hearing.

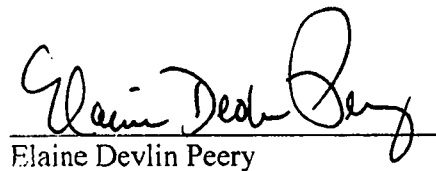
4. That Barry Holden told me I should write on piece of paper asking the Judge for a continuance for this hearing, and he provided me with a fax number for the Master in Equity. He also provided me with a fax number for Mr. Gwynne's law firm in Columbia, SC. He then suggested I also fax the continuance request to Ravenell and Assoc. as well.

5. That I hand wrote a letter asking the court for a continuance and explaining my difficulties with my husband and father and that I was unable to attend the hearing the next day. I also faxed this letter to Mr. Gwynne's office and Ravenell & Assoc.

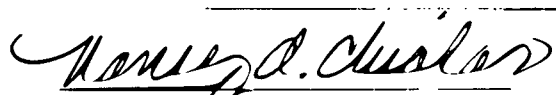
6. The next morning, I phoned Mr. Gwynne's office to make sure he had received my fax asking for a continuance, but there was no answer, so I left a message including my phone number, but never heard from him or the court.

7. That the Petitioner nor anyone else has ever notified me of a foreclosure hearing or notice of entry of judgment that would give me the ability to contest the foreclosure on the entry of judgment. That I certainly was never made aware that Windswept Villas Homeowners Association and Lydia Davidson would be making appearances for the scheduled hearing of January 24, 2012. Upon information and belief I was never notified but I believe my former attorney was receiving these notices.

The Deponent sayeth not more.


Elaine Devlin Peery

SWORN to before me this
16th day of May, 2014.


Notary Public for South Carolina
My Commission Expires: 11/8/20

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME

Petitioner/ Judgment Creditor,

vs.

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

Respondent/ Judgment Debtor.

AFFIDAVIT IN SUPPORT OF
PETITIONER'S MOTION FOR RULE
TO SHOW CAUSE

I, Katie Fowler Monoc, having been duly sworn, depose and say that:

1. I am over the age of 18 and make this affidavit on personal knowledge and information.
2. I am counsel for the Petitioner/Judgment Creditor Windswept Villas III Horizontal Property Regime ("Windswept") in the above-matter.
3. I emailed John Cantrell, counsel for the Respondent/Judgment Debtor, on February 14, 2014 to communicate the need to proceed with discovery to determine whether Elaine Peery has assets to pay my client's legal fees, interest on the judgment, and costs owed by the Respondent Judgment Debtor. I asked that Cantrell provide me with dates he and his client would be available for her deposition and reminded him I needed the materials outlined in the Court's October 31, 2013 Order to prepare for that deposition.
4. I emailed John Cantrell again on March 3, 2014 to remind him to speak with his client about her availability for a deposition over the next three weeks and the discovery owed pursuant to the Order of Reference.
5. Having not received deposition dates or discovery, I emailed Jeff McDaniel, copying John Cantrell, on March 14, 2014 to set the continued hearing on Supplemental Proceedings and to request that the Court order the debtor's timely cooperation with discovery for the identification of assets which may be used to satisfy (in full) the amounts owed per the underlying judgment.
6. As of today, I still have not received any documents owed by the Elaine Peery in accordance with the Court's October 31, 2013 Order. Nor has Counsel for the Judgment Debtor provided me with Elaine Peery's availability for a deposition.

Nor has Elaine Peery personally appeared at any of the noticed hearings on these Supplemental Proceedings.

Further Affiant sayeth naught.


Katie Fowler Monoc, Esquire

SWORN to and subscribed before me this

10 day of June, 2014

[Signature] (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires Aug. 21, 2016

AFFIDAVIT OF SERVICE

09-5799

State of South Carolina

County of Charleston

Common Pleas Court

Case Number: ²⁴⁰⁹~~2010~~-CP-10-5799 Court Date: 8/29/2014 10:00 am

Plaintiff:

Windswept Villas III Horizontal Property Regime

vs.

Defendant:

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

For:

Katie Fowler Monoc

Pratt-Thomas Walker Professional Association

P.O. Drawer 22247

Charleston, SC 29413

Received by PROCESS SERVICE, INC. to be served on Elaine D. Peery, 3053 Pignatelli Crescent, Mount Pleasant, SC 29466.

I, John Gordon, being duly sworn, depose and say that on the 9th day of July, 2014 at 11:25 am, I:

PERSONALLY served by delivering a true copy of the **LETTER, MOTION AND ORDER INFORMATION FORM AND COVERSHEET, NOTICE OF MOTION AND MOTION FOR RULE TO SHOW CAUSE AND FOR AN ORDER OF CONTEMPT, EXHIBITS A-B, ORDER ON JUDGMENT CREDITOR'S MOTION FOR A RULE TO SHOW CAUSE AND ORDER OF CONTEMPT and NOTICE OF HEARING** with the date and hour of service endorsed thereon by me, to: **Elaine D. Peery** at the address of: **3053 Pignatelli Crescent, Mount Pleasant, SC 29466**, and informed said person of the contents therein.

I am over eighteen and have no interest in the above action.

Subscribed and Sworn to before me on the 9th day of July, 2014 by the affiant who is personally known to me.

Rebecca Sparks

NOTARY PUBLIC

Commission Expires: 02/20/23

John Gordon

John Gordon
Process Server

PROCESS SERVICE, INC.
P.O. Box 20097
Charleston, SC 29413
(843) 577-2355

Our Job Serial Number: LEX-2014001649

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

WINDSWEPT VILLAS III HORIZONTAL
PROPERTY REGIME

PETITIONER/JUDGMENT CREDITOR

vs.

ELAINE DEVLIN PEERY a/k/a
ELAINE D. PEERY,

RESPONDENT/JUDGMENT DEBTOR.

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

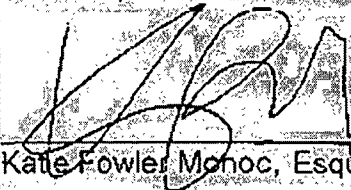
AMENDED
AFFIDAVIT OF ATTORNEY'S FEES

PERSONALLY APPEARED BEFORE ME, the undersigned, who, upon being
duly sworn, deposes and says:

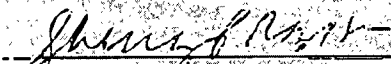
1. I am an attorney with the firm of Pratt-Thomas Walker P.A. located in Charleston, South Carolina.
2. Our firm has represented Plaintiff Windswept Villas III Horizontal Property Regime ("Windswept") since approximately October 2013 in pursuit of the funds owed to it by Defendant.
3. Windswept obtained a judgment on March 29, 2012, which was not paid, and was forced to pursue supplemental proceedings against the judgment debtor.
4. To date, Windswept has incurred attorneys' fees in the amount of \$27,662.00 since October 2013 in supplemental proceedings.
5. To date, Windswept has incurred costs in the amount of \$726.39 since October 2013 for filing fees, service of process fees and other express services arising out of these supplemental proceedings.
6. My hourly rate for this matter is \$200.00 per hour.
7. G. Trenholm Walker's rate for this matter is \$325.00 per hour.
8. Our paralegal's rate for this matter is \$90.00 per hour.
9. We have logged approximately 170 hours in this matter since initiating supplemental proceedings, attempting to locate the judgment debtor, preparing

for hearings, etc. Excluded from this figure are the fees relating to the judgment debtor's unrelated, frivolous contentions relating to a supposed "lockout." We anticipate that appearance at the hearing on August 29, 2014 will be three hours for my time for a total of 173 hours.

10. Lydia Davidson of Krawcheck & Davidson, L.L.C. previously represented Windswept and has incurred attorneys' fees in the amount of \$480.00 for her assistance in providing documentation for the supplemental proceedings. This amount has been included in our attorneys' fees amount set forth above.
11. I believe that our hourly fees and our paralegal's hourly fee are fair and reasonable in light of the nature, extent, and difficulty of the case.
12. The time devoted to this matter in preparation, filing, research, and appearances is reasonable under the circumstances.
13. Our hourly fee and our paralegal's hourly fee, along with the amount of time logged in this matter are reasonable when compared with the customary legal fees for similar litigation services.


Kate Fowler Monoc, Esquire

Sworn to before me
this 29 day of August, 2014


Notary Public for South Carolina
My Commission Expires Aug 21, 2016

RECEIVED

NOV 13 2015

Certificate of Counsel

SC Court of Appeals

The undersigned hereby certifies that the Second Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Date: November 12, 2015



Vernee C. Hancock

SC Bar No.: 15174

Post Office Box 2276

Summerville SC 29484-2276

(843) 851-1476

(843) 851-0183

ATTORNEY FOR APPELLANT