

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable Patrick R. Watts  
Master-in-Equity

Case No. 2008-CP-18-1996

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SOUTHCOAST COMMUNITY BANK,

Respondent,

v.

LOW-COUNTRY STATE LEASING, LLC a/k/a LOW-COUNTRY  
STATE LEASING, LLC d/b/a MCGUIRES IRISH PUB, LLC; MCGUIRES  
IRISH PUB, LLC; JACQUELINE KROTH; DAVID KROTH; THE  
UNITED STATES OF AMERICA; SOUTH CAROLINA DEPARTMENT  
OF REVENUE, SOUTH CAROLINA EMPLOYMENT SECURITY  
COMMISSION; TOWN OF SUMMERVILLE; CAROLINA WASTE  
SERVICES; OK GROCERY; and QUATTLEBAUM & MURPHY, LLP

.....  
Defendants,

and

CHARLES R. GILES, JR and ALBERT SHEPPARD,

.....  
Petitioners.

---

**APPENDIX**

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## INDEX

Decision of the Court of Appeals, June 17, 2011 .....	1
Order of the Court of Appeals Denying Motion to Reconsider, August 15, 2011 .....	4
Brief of Appellants .....	5
Brief of Respondent Southcoast Community Bank .....	13
Reply Brief of Appellants .....	21
Appellants' Petition for Rehearing .....	25
Record on Appeal .....	36

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

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

Southcoast Community Bank,            Respondent,

v.

Low-Country State Leasing,  
LLC a/k/a Low-Country State  
Leasing, LLC d/b/a McGuire's  
Irish Pub, LLC; McGuire's Irish  
Pub, LLC, Jacqueline Kroth;  
David Kroth; The United States  
of America; South Carolina  
Department of Revenue; South  
Carolina Employment Security  
Commission; Town of  
Summerville; Carolina Waste  
Services; OK Grocery; and  
Quattlebaum & Murphy, LLP,            Defendants,

---

Charles R. Giles, Jr. and Albert  
Sheppard, Intervenors,            Appellants.

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Appeal From Dorchester County  
Patrick R. Watts, Master-In-Equity

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Unpublished Opinion No. 2011-UP-305  
Submitted June 1, 2011 – Filed June 17, 2011

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**AFFIRMED**

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Steven L. Smith, of North Charleston, for Appellants.

Richard W. Urban, of Columbia; and Samuel H. Altman, of Charleston, for Respondent.

**PER CURIAM:** Charles R. Giles, Jr. and Albert Sheppard (collectively, "Appellants") appeal a master-in-equity's denial of their motion to intervene in the foreclosure of property owned by Low-Country State Leasing, LLC (Low-Country). The master held a loan granted by Appellants and purportedly secured by the property did not grant Appellants a valid interest in the property because the loan was executed by the owners of Low-Country in their personal capacity. We affirm<sup>1</sup> pursuant to Rule 220(b)(1), SCACR, and the following authorities: Ex parte Gov't Emps. Ins. Co., 373 S.C. 132, 135, 644 S.E.2d 699, 701 (2007) ("The decision to grant or deny a motion to . . . intervene in an action . . . lies within the sound discretion of the trial court. This Court will not disturb the lower court's decision on appeal unless a manifest abuse of discretion is found resulting in an error of law.") (internal citations and quotation marks omitted); see also id. at 138-39, 644 S.E.2d at 702 (holding a claimant does not have a right to intervene in the action if the claimant lacks "'an interest relating to the property . . . which is the subject of the action' as required by Rule 24(a)(2), SCRCP"); Frasier v. Palmetto Homes of Florence, Inc., 323 S.C. 240, 244, 473 S.E.2d 865, 867 (Ct. App. 1996) (stating that a party may not use "agency as a basis of liability" if "the existence of the agency" is not "clearly established by the facts") (citations and internal quotation marks omitted).

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

**AFFIRMED.**

**HUFF, WILLIAMS, and THOMAS, JJ., concur.**

# The South Carolina Court of Appeals

Southcoast Community Bank, Respondent,

v.

Low-Country State Leasing, LLC a/k/a  
Low-Country State Leasing, LLC d/b/a  
McGuire's Irish Pub, LLC; McGuire's  
Irish Pub, LLC, Jacqueline Kroth;  
David Kroth; The United States of  
America; South Carolina Department  
of Revenue; South Carolina  
Employment Security Commission;  
Town of Summerville; Carolina Waste  
Services; OK Grocery; and  
Quattlebaum & Murphy, LLP, Defendants,

of whom

Charles R. Giles, Jr. and Albert  
Sheppard, Intervenor, are Appellants.

The Honorable Patrick R. Watts  
Dorchester County  
Trial Court Case No. 2008-CP-18-1996

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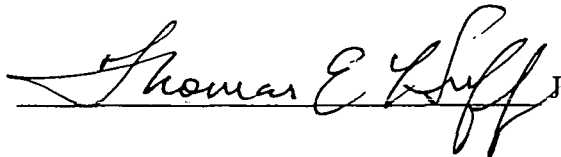
## ORDER

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After a careful consideration of the Petition for Rehearing, the Court is unable to discover any material fact or principle of law that has been either overlooked or disregarded. Hence, it is ordered that the Petition for Rehearing be denied.

**FILED**

AUG 15 2011

 J.

 J.

 J.

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
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SERVICES; OK GROCERY; and QUATTLEBAUM & MURPHY, LLP

Respondents

and

CHARLES R. GILES, JR. and ALBERT SHEPPARD,

Intervenors/Appellants

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**FINAL BRIEF OF APPELLANTS**

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1-13

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2010

## TABLE OF CONTENTS

Table of Authorities .....	ii
Statement of the Case .....	1
Facts .....	2
ARGUMENT	
I.    The Trial Court Incorrectly Denied the Motion for Leave to Intervene Where Appellants Had a Recorded Interest in the Property at Issue in the Action and Had No Other Method of Protecting that Interest .....	4
Conclusion .....	8

## STATEMENT OF THE CASE

The instant action was commenced as a bank foreclosure action. In the Summons and Complaint, Plaintiff Southcoast Community Bank identified a number of persons and entities having potential claims on the property in question. Many of those parties filed their own claims. Following the sale of the property, the Master-in-Equity for Dorchester County determined that there remained a surplusage in the sum of \$114,001.71. A number of claimants filed against the surplusage.

Appellents herein did not receive notice of the filing of the foreclosure action, and were never served with the Summons and Complaint commencing this suit. They first became aware of the existence of the case at the time the hearing on disbursement of the surplusage was scheduled, and attempted to intervene in the action, based upon their status as holders of a Promissory Note secured by the property upon which Southcoast Bank had foreclosed. That Motion was denied, and the instant appeal followed.

There exists no transcript of the hearing before the Honorable Patrick Watts denying Appellants' Motion for Leave to Intervene, and Judge Watts did not issue any written ruling.

## ARGUMENT

### I. THE TRIAL COURT INCORRECTLY DENIED THE MOTION FOR LEAVE TO INTERVENE WHERE APPELLANTS HAD A RECORDED INTEREST IN THE PROPERTY AT ISSUE IN THE ACTION AND NO OTHER METHOD OF PROTECTING THAT INTEREST.

It is difficult to discuss the reasoning underlying the decision of the trial Court to refuse to permit intervention in this action because there is no written decision. However, Rule 24, which provides for intervention as of right or by leave of Court, specifically provides for such leave in cases where the party seeking to intervene has “an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.” S.C.R.C.P. 24(a)(2). That is precisely the situation here, and the trial court erred by not permitting Appellants to intervene below.

The South Carolina Supreme Court has stated that the Rules are intended to provide for liberal intervention. *Berkeley Electric Co-Op, Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 394 S.E.2d 712 (1990). Using the Federal Rule, identical in language, as a guideline, the Court determined that the applicant must establish four fundamental requirements to demonstrate that it meets the criteria of Rule 24: 1) timeliness of the application; 2) an interest relating to the property or transaction which is the subject of the action; 3) that it is in a position such that, without intervention, disposition of the action may impair or impede its ability to protect that interest; and 4) that its interest is otherwise inadequately protected. *Id.* at 189, 394 S.E.2d at 714 (citing *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525 (9<sup>th</sup> Cir. 1983)). Because intervention is to be liberally granted, the burden of proof is minimal. *Id.*

axiom that a corporation cannot act save through the physical bodies of its officers, *see, e.g., United States Tire Co. v. Keystone Tire Sales Co.*, 153 S.C. 56, 150 S.E. 347 (1929), and the signatures of David and Jacqueline Kroth on the various mortgage documents were clearly intended to bind the corporation they controlled. Certainly Southcoast, which proceeded to foreclose on a mortgage executed by the same individuals, treated its own documents as being sufficient to attach property owned by the corporate entity.

If the Master's ruling was predicated upon a finding that Appellants did not have an interest in the property at issue in the action, that ruling was in error. There was a mistake made in the RMC Office of Dorchester County, and Appellants' interest in the real property that was the subject of the foreclosure action was not properly cross-indexed. The Mortgage itself, however, was and is valid and was properly recorded. It clearly evidences an interest in the land, which interest was terminated without their knowledge by the Order and Decree of Foreclosure. It was clearly not Appellants' fault that their Mortgage was improperly referenced or that neither the parties nor the trial court were made aware of their interest. Appellants, who hold a Note secured by an interest in the realty, similarly have an interest in the distribution of the proceeds now held in the Court. That interest is not one capable of being advanced by the parties to the action, and it is highly unlikely that any of those parties would be willing to make Appellants' arguments, given that Appellants have a priority to funds sought by all.


Although there is no written explanation for the decision of the Master-in-Equity to deny Appellants' Motion for Leave to Intervene, it is clear that the decision was in error. Appellants have demonstrated that they meet the criteria set out by *Sagebrush*, and that they should be permitted to intervene in this action for the purposes of advancing their claim of right to the funds remaining after the satisfaction of the first mortgages of Plaintiff Southcoast.

## CONCLUSION

For the reasons set forth above, Appellants Charles Giles and Albert Sheppard would respectfully request that the decision of the Court below be reversed, and that they be permitted to intervene in this action for the purposes of establishing their claim to the surplus funds held by the Court of Common Pleas of Dorchester County in this matter.

Respectfully submitted,

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

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SOUTHCOAST COMMUNITY BANK,

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STATE LEASING, LLC d/b/a MCGUIRES IRISH PUB, LLC; MCGUIRES  
IRISH PUB, LLC; JACQUELINE KROTH; DAVID KROTH; THE  
UNITED STATES OF AMERICA; SOUTH CAROLINA DEPARTMENT  
OF REVENUE, SOUTH CAROLINA EMPLOYMENT SECURITY  
COMMISSION; TOWN OF SUMMERVILLE; CAROLINA WASTE  
SERVICES; OK GROCERY; and QUATTLEBAUM & MURPHY, LLP

..... Respondents

and

CHARLES R. GILES, JR and ALBERT SHEPPARD,

Intervenors/Appellants.

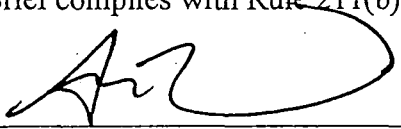
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CERTIFICATE OF COUNSEL

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The undersigned hereby certifies that this Final Brief complies with Rule 211(b),  
S.C.A.C.R.

January 12, 2010



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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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MCGUIRES IRISH PUB, LLC; JACQUELINE KROTH; DAVID A.  
KROTH; THE UNITED STATES OF AMERICA; SOUTH  
CAROLINA DEPARTMENT OF REVENUE; SOUTH CAROLINA  
EMPLOYMENT SECURITY COMMISSION; TOWN OF  
SUMMERVILLE; CAROLINA WASTE SERVICES; OK GROCERY;  
and QUATTLEBAUM & MURPHY, LLP,

Respondents

and

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INITIAL BRIEF OF SOUTHCOAST COMMUNITY BANK

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TABLE OF CONTENTS

Table of Authorities.....ii

Statement of the Case ..... 1

ARGUMENT

    I.    THE FORECLOSURE OF SOUTHCOAST COMMUNITY BANK  
SHOULD NOT BE DISTURBED .....2

Conclusion.....4

TABLE OF AUTHORITIES

Cases

*BB&T v. Kidwell*, 350 S.C. 382, 565 S.E.2d 316 (Ct. App. 2002).....4

Rules

S.C.R.C.P. 71(c) .....2

## STATEMENT OF THE CASE

This case was commenced by Southcoast Community Bank [hereinafter “the Bank”] to foreclose a mortgage on certain real property located in Dorchester County. In its filing, Southcoast identified all persons or entities who it believed had potential claims that were filed in the Office of the Register of Deeds for Dorchester County. Following the sale of the property, the Master-in-Equity for Dorchester County determined that there was a surplus of \$114,001.71. A number of claimants filed against the surplus. The Bank was thereafter served on November 18, 2008 and the resultant issue of a Decree of Foreclosure and Order of Sale dated December 18, 2008. The property was finally sold on February 3, 2009 to 127 Richardson Associates, LLC which sale yielded a surplus in the amount of \$114,001.71. Thereafter, the Appellants served a notice on Southcoast seeking relief in the form of leave to intervene and set aside the Decree of Foreclosure and Sale or in the alternative for excess proceeds. Southcoast responded to the Motion by stating that if the Appellants did have a lien it was not properly indexed in the Office of the Register of Deeds and therefore could not have been possibly joined as a party in the foreclosure proceeding. Southcoast affirmatively asserted the position that it held a first mortgage irrespective of any right to intervene and therefore any claim that the Appellants had related to the surplus only.

The motion filed by the Appellants was heard before the Master-in-Equity on August 11, 2009 and the Master issued an Order dated November 24, 2009 making a decision denying the Appellants’ motions.

## ARGUMENT

### I. THE FORECLOSURE OF SOUTHCOAST COMMUNITY BANK SHOULD NOT BE DISTURBED.

Plaintiff Southcoast Community Bank [hereinafter “the Bank”] believes it has no interest in this appeal but files this Brief out of an abundance of caution.

Southcoast Community Bank was Plaintiff in the court below, but the Appellants’ caption does not identify the Bank as appellant or respondent or in any other fashion as to this appeal. The reason appears to be that Appellants do not seek any relief from this Court that would affect the interests of the Bank. Appellants are seeking relief only against parties other than the Bank as is shown by the prayer for relief at the end of Appellants’ brief, which is described below.

This suit began when the Bank, as the senior creditor, brought the action below to foreclose a mortgage that it held on property owned by Low-Country State Leasing, LLC d/b/a McGuire’s Irish Pub, LLC, and secured by a mortgage on the property held in the name of Low-Country State Leasing, LLC d/b/a McGuire’s Irish Pub, LLC. In that suit, the Bank obtained an Order of Foreclosure and Sale. When the property was sold, the proceeds were more than sufficient to satisfy the obligations owed to the Bank. Accordingly, the surplus was held in accordance with Rule 71(c) of the South Carolina Rules of Civil Procedure.

Thereafter, Appellants moved to intervene in the action, claiming that they held a lien on the property and would have been parties in the foreclosure action except that they never received notice of the action because the mortgage they claimed had been improperly indexed by the Register of Deeds for Dorchester County. Significantly, the mortgage that Appellants claimed to have was junior to the mortgage held by the Bank.

Therefore, even if Appellants claimed mortgage was properly indexed, it would not have affected the Bank's right to the relief of foreclosure, sale and satisfaction of the Bank's mortgage.

Although the Appellants' motion in the court below was styled Motion For Leave to Intervene and Set Aside Decree of Foreclosure and Sale, it appears that Appellants did not in fact seek to upset the sale and the satisfaction of the Bank's senior lien, but only to participate in the allocation of the surplus funds along with other junior creditors.

The motion to intervene was denied by the Master-in-Equity, and Appellants filed this appeal. However, the prayer for relief at the conclusion of Appellants' brief makes clear that the relief it seeks is only to share in the surplus funds, not to upset the foreclosure, sale, and satisfaction of the Bank's lien:

#### "CONCLUSION

"For the reasons set forth above, Appellants Charles Giles and Albert Shepard would respectfully request that the decision of the court below be reversed, and that they be permitted to intervene in this action for the purpose of establishing their claim to the surplus funds held by the Court of Common Pleas of Dorchester County in this matter." [Initial Brief of Appellants, p. 8 (emphasis added).]

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MCGUIRES IRISH PUB, LLC; JACQUELINE KROTH; DAVID A.  
KROTH; THE UNITED STATES OF AMERICA; SOUTH  
CAROLINA DEPARTMENT OF REVENUE; SOUTH CAROLINA  
EMPLOYMENT SECURITY COMMISSION; TOWN OF  
SUMMERVILLE; CAROLINA WASTE SERVICES; OK GROCERY;  
and QUATTLEBAUM & MURPHY, LLP,

Respondents

and

CHARLES R. GILES, JR. and ALBERT SHEPPARD,

Intervenors/Appellants.


---

CERTIFICATE OF COUNSEL

---

The undersigned hereby certifies that this Final Brief complies with Rule 211(b),  
S.C.A.C.R.

January 21, 2010



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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
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The Honorable Patrick R. Watts  
Master-in-Equity

Case No. 2008-CP-18-1996

Charles R. Giles, Jr. and Albert Sheppard.....Intervenors/Appellants

v.

Southcoast Community Bank.....Respondent.

PROOF OF SERVICE

I, Liza Walsh, hereby certify that I have this 21<sup>st</sup> day of January, 2010 served a copy of the attached Final Brief of Southcoast Community Bank, on all parties by depositing same in the United States Mail with sufficient postage attached, addressed as follows:

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THE STATE OF SOUTH CAROLINA  
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Respondents

and

CHARLES R. GILES, JR and ALBERT SHEPPARD,

Intervenors/Appellants.

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**REPLY BRIEF OF APPELLANTS**

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1-11, 2010

The instant appeal was filed following the denial by the Master-in-Equity of Dorchester County of Appellants' Motion for Leave to Intervene. Appellants' filed their Initial Brief some months ago; due to the Master's subsequent issuance of a written decision the briefing schedule was somewhat delayed. The time period for the filing of briefs by Respondents has, however, now expired.

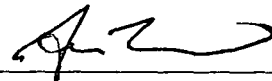
Appellants sought leave to intervene for the purposes of submitting a claim of right to recover excess proceeds remaining following the foreclosure sale of real property in Dorchester County. The underlying action was initially filed by Southcoast Community Bank, the only one of the named parties who has filed a Response in this Court. That Response recognizes that Southcoast's interests are not in any manner affected by the intervention, and that there is no dispute regarding the precedence of Southcoast's interest in the receipts of the sale. Southcoast has specifically indicated that it filed its Response out of an abundance of caution, and that it does not intend to further participate in this appeal.

None of the other claimants to the excess funds being held by Dorchester County filed any initial objection to the Motion for Leave to Intervene, and none has filed any responsive pleading in this Court. Although Southcoast Community Bank did object to the initial Motion when filed in the court below, the gist of that objection was the reiteration of its position that it held a first mortgage on the property, and that Appellants had merely an interest in the surplusage. Appellants do not disagree with that position, and do not make any claim that would in any manner interfere with Southcoast Community Bank's position or right to recover the principal of its mortgage. With all due respect, Appellants would submit to this Court that their Motion is therefore unopposed, and that none of the parties identified in the caption of this matter has any objection to Appellants' intervention in the claims process.

Appellants would respectfully request that the decision of the Master-in-Equity of Dorchester County denying their Motion for Leave to Intervene be reversed, and that this matter be remanded to the Master for further hearings on the question of the appropriate distribution of the excess funds remaining following the sale of the subject real property and the payment to Southcoast Community Bank of the full amount of its mortgage.

Respectfully submitted,

SMITH & KOONTZ, PA



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..... Respondents

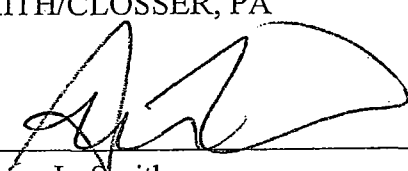
and

CHARLES R. GILES, JR and ALBERT SHEPPARD,

Intervenors/Appellants.

APPELLANTS' PETITION FOR REHEARING

SMITH/CLOSSER, PA

  
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## TABLE OF CONTENTS

Table of Authorities .....	i
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Argument:

**Under the Specific Facts of this Case, the Decision of the Master in  
Equity to Deny Appellants' Motion to Intervene Was an Abuse of  
Discretion, and This Court Should Reconsider Its Order**

1

Conclusion .....	8
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Table of Authorities:

<i>Berkeley Elec. Coop., Inc. v. Town of Mt. Pleasant</i> , 302 S.C. 186, 394 S.E.2d 712 (1990) .....	2
<i>Ex parte Gov't Emps. Ins. Co.</i> , 373 S.C. 132, 644 S.E.2d 699 (2007) .....	2
<i>Ex parte Horry County State Bank</i> , 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004) .....	5
<i>Hayne Fed. Credit Union v. Bailey</i> , 327 S.C. 242, 489 S.E.2d 472 (1997) .....	6
<i>In re Healthsouth Corp. Ins. Litig.</i> , 219 F.R.D. 688 (N.D. Ala. 2004) .....	3
<i>Regions Bank v. Wingate Properties, Inc.</i> , Case No. 4846 (Ct. App. June 22, 2011) .....	6
<i>Steinke v. South Carolina Dep't of Labor, Licensing and Regulation</i> , 336 S.C. 373, 520 S.E.2d 142 (1999) ...	4

## Argument

Pursuant to Rule 225 of the Rules of Appellate Procedure, Appellants Charles Giles and Albert Sheppard respectfully request that this Court reconsider its decision of June 17, 2011, affirming the decision of the Master in Equity of Dorchester County to refuse to permit them to ~~intervene in this case.~~ Regardless of the eventual outcome of the case on its merits, Appellants have demonstrated that they have, facially, an interest in the property in question in the action, and consequently the denial of their motion to intervene constitutes an abuse of discretion.

The instant action arose as a foreclosure case commenced by Southcoast Community Bank. In its original complaint, Southcoast properly named as defendants all those parties it was able to identify as having potential claims against the real property it sought to foreclose upon, by conducting a search in the RMC Office of Dorchester County. Giles and Sheppard were not included, although they had filed and recorded a pre-existing Note and Mortgage on the property. The omission was not the result of any fault or error on the part of either Southcoast or Giles and Sheppard, but rather occurred because the RMC Office of Dorchester County admittedly failed to properly cross-index the documents. The Appellants only became aware of the existence of the foreclosure action after the sale of the property, and filed their motion for leave to intervene at the point at which the Circuit Court scheduled the hearing on disbursement of the surplusage from the sale.

Southcoast opposed the motion for leave to intervene and filed the only brief in this Court. It did not, at any time, specifically address whether or not Appellants had a right to intervene in the case. Rather, both in the Court below and in its filings in this Court, addressed the merits of Appellants' asserted interest in the property upon which it had already foreclosed. It asserted, in both its memoranda, that it had unquestioned priority over Appellants, and argued

that the foreclosure should not be set aside. At no time did any party to the action address the right of intervention independent of the merits of Appellants' asserted interest in the property.

On appeal, this Court properly reviewed the decision of the Master in Equity under an abuse of discretion standard, as mandated by *Ex parte Gov't Emps. Ins. Co.*, 373 S.C. 132, 644 S.E.2d 699 (2007). At the same time, however, this Court focused on the potential merits of the Appellants' ultimate argument, and affirmed the denial of the motion for leave to intervene because it concluded that Appellants lacked "an interest relating to the property . . . which is the subject of the action." See S.C.R.C.P. 24(a)(2). Although there is certainly some interaction between the merits of the claim and the request for intervention, that the moving party may ultimately lose its case in chief does not mean that it should automatically be denied the opportunity to present that case. Appellants have met the threshold burden of demonstrating that they have a right to intervene in this action, even though they may ultimately fail to prevail and consequently not recover the value of their interest in the realty.

In addition to holding that the grant or denial of a motion for leave to intervene is within the sound discretion of the trial court, the South Carolina Supreme Court has also held that Rule 24 is to be liberally construed. *Berkely Elec. Coop., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 394 S.E.2d 712 (1990). Furthermore, each case is viewed in the context of its unique facts and circumstances. *Id.* The particular circumstances surrounding the specific motion made by Appellants herein, viewed in light of the documents presented to the Master in Equity and the pleadings filed in the underlying case, demonstrate that it was a manifest abuse of discretion for the Master to deny Appellants' request.

In his decision denying Appellants' motion for leave to intervene, the Master in Equity discussed the documents upon which Appellants relied to show that they had an interest in the

property. Appellants were the creditors on a Promissory Note, in default at the time of the filing of the Motion, executed by David and Jacqueline Kroth, and purporting to be secured by a mortgage on the real property that was at issue in Southcoast's foreclosure action. Throughout the pendency of the decision on Appellants' Motion, both Southcoast – the only party that responded either in the Court below or in this forum – and Appellants referred to their interest in the property as having been improperly indexed. No party to this action raised any improprieties with respect to the drafting of the instruments evidencing Appellants' interest in the land. Southcoast indicated that it had not picked up Appellants as interested parties at the time of the filing of its action because of this improper indexing, an error committed in the RMC Office of Dorchester County; its only challenge to the merits of Appellants' argument was a footnote in its return to the Motion, in which it stated that there was no question that regardless of any outcome on the merits of Appellants' claims, its own mortgage had priority. The affidavit of Charles Giles, attached to Appellants' Motion, further makes it clear that Appellants properly recorded their Note and accompanying security interest.

In order to demonstrate a right to intervene, the moving party must show that: (1) the application to intervene is timely, (2) the non-party has a legally protectable interest relating to property or transaction that is the subject of the action, (3) the non-party is so situated that disposition of action, as practical matter, may impede or impair its ability to protect that interest, and (4) the non-party's interest is represented inadequately by the existing parties to the lawsuit. *See, e.g., In re Healthsouth Corp. Ins. Litig.*, 219 F.R.D. 688 (N.D. Ala. 2004)(construing identical federal rule). The only one of the four criteria that is at issue is the second. In determining that Appellants had no protectable interest relating to the property, however, the Master's decision was manifestly erroneous.

In order to reach the conclusion that Appellants had failed to demonstrate an interest in the property at issue in the action, the Master looked behind the pleadings and evaluated Appellants' claims on their merits. As the Master notes in his Order, neither the Kroths nor their corporation, Low-Country Leasing, appeared at the hearing, and there was no testimony other than that of Appellants to support or dispute the fact that the documents executed by the borrowers were intended to create a mortgage upon the real property at issue in the action. Not only Appellants themselves, but Southcoast Community Bank, the only party to appear, have consistently maintained that the sole reason Appellants were not originally included in this case was because of an error committed by the RMC Office of Dorchester County. Prior to the Order of the Master, there had been no argument or contention by any party that the documents introduced by Appellants failed to create an enforceable interest in the real property, or at least the excess proceeds of its sale.

There is little case law defining the standard used to determine when a particular act is or is not an abuse of discretion. Much of what does exist is circular in nature: an abuse of discretion occurs when the trial court is "controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support," *Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 398, 520 S.E.2d 142, 155 (1999), and the making of errors of law or drawing factual conclusions that are without support are, almost by definition, abuses of discretion. In this particular case, the Master's decision to go well beyond the pleadings, and to effectively rule on the merits of Appellants' ultimate case in order to determine whether or not Appellants should be permitted to bring their case at all, constitutes an abuse of discretion.

There is no question but that Appellants, as the moving party, bear the burden of demonstrating to the trial court why it is that they have the right to intervene in this action. *Ex parte Horry County State Bank*, 361 S.C. 503, 604 S.E.2d 723, (Ct. App. 2004). That having been said, there is no precise definition of how precisely to determine when or how that burden is met. This Court has, however, repeatedly stated that Rule 24 is not to be rigidly applied, and that intervention should be liberally granted. *Id.*, *Berkeley Elec.*, *supra*. Given that instruction, the Master's decision to hold Appellants to the same standard of proof that would be necessary for a decision on the merits of their claim is clear error.

In moving to intervene, Appellants presented evidence and affidavits demonstrating their interest in the real property at issue. They were not prepared to present their case in chief. There was no objection to the evidence, and no arguments by any existing party or counter-evidence presented. Although Appellants concede that Southcoast's principal argument – that it has priority over any interest in the property due to its first mortgage on the land – forecloses any attack on the validity of the foreclosure sale or disbursement of the amount due to Southcoast, Appellants demonstrated, at least facially, that they have a valid and legitimate claim to the surplus. There was no objection to this assertion.

Rather than relying solely on the evidence presented, the Master examined the case as though ruling – post-intervention – on the merits of Appellants' entitlement to the surplus funds. In essence, the Order denying the motion for leave to intervene reads as though it were a final order in the case. It avoids altogether the intervention issue, and issues a decision on the matter of entitlement. It does so, however, without affording Appellants any opportunity to present their case, to marshal their facts and witnesses, or to offer testimony.

Intervention is a preliminary and procedural step designed to permit one not a party to the action, but having an interest in the property at issue, to protect that interest. A motion for leave to intervene is not intended to be the equivalent of a ruling on the merits; the device is designed to afford persons not already parties to the action an opportunity to present their arguments. In this instance, however, the Master failed to differentiate between the proof necessary to show the existence of an interest sufficient to warrant intervention and the proof needed to prevail in the underlying case.

On June 22, 2011, this Court issued its decision in *Regions Bank v. Wingard Properties, Inc.*, Case No. 4846 (Ct. App. June 22, 2011), an appeal from a decision of the Circuit Court of Horry County. The underlying action, similar to that addressed herein, was a foreclosure case involving potentially multiple claims to the same property. In its Opinion, the Court noted that a foreclosure action is “an action in equity.” *Id.*, citing *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 489 S.E.2d 472 (1997). Throughout the Opinion, the Court emphasizes the importance of fairness and equitable considerations when making decisions that will impact property rights and potential forfeitures, a possibility that certainly arises in the instant action if Appellants are not permitted to intervene. The entirety of the *Wingard Properties* decision is based upon the discussion of which equitable maxims apply – the Court specifically reiterates the notion that “a court of equity abhors forfeitures” as well as that well-known precept that equity applies substance over form and regards as done that which ought to have been done.

Appellants herein seek merely to have their day in court. At the time their Note and Mortgage were issued, the documents were properly recorded – as noted above, those of the parties to the action who responded in any manner to the Motion for Leave to Intervene agree that any recording errors were made by the RMC Office, and that, but for those errors,

Appellants would have been identified in the original complaint commencing this case.

Following the equitable principles set out by this Court in its recent *Regions Bank* opinion, it is more than possible that Appellants can adequately establish an interest in the surplus funds held by the Court below. That is not, however, the issue, and should not have been the basis for the decision on whether or not to permit Appellants to intervene in the action in order that they might attempt to establish such a right. A minimal application of the equitable doctrines set out by this Court should establish that Appellants should be permitted to intervene and be afforded an opportunity to state their case.

Appellants make no representations regarding the likelihood of their ability to prevail on the merits of their claim against the funds held by the Court following the foreclosure sale. However, ultimate success should not be the criterion used to determine whether or not a right to intervene exists. Appellants made a facial showing of a protectable interest in the real property in question in the case. None of the existing parties objected to intervention. The Trial Court's denial of the motion was an abuse of discretion, and Appellants would respectfully request that this Court reconsider its decision affirming that holding.

Conclusion

Based upon the foregoing, Appellants would respectfully request that the Court reconsider its Opinion of June 17, 2011.

Respectfully submitted,

SMITH/CLOSSER, P.A.



---

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6-28, 2011  
Charleston, SC

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable Patrick R. Watts  
Master-in-Equity

Case No. 2008-CP-18-1996

Charles R. Giles, Jr. and Albert Sheppard.. . . . Intervenor/Appellants

V.

Southcoast Community Bank.. . . . Respondent

PROOF OF SERVICE

I, Corey M. Plis, hereby certify that I have this date served a copy of the attached and foregoing Appellants Petition for Rehearing, on all parties by depositing same in the United States Mail with sufficient postage attached, addressed as follows:

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P.O. Box 60547  
N. Charleston, SC 29419

Romi Y. Robinson, Esquire  
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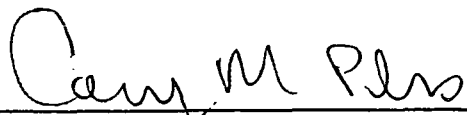
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June 29, 2011  
Charleston, South Carolina

  
\_\_\_\_\_  
Corey M. Plis

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable Patrick R. Watts  
Master-in-Equity

Case No. 2008-CP-18-1996

---

SOUTHCOAST COMMUNITY BANK,

v.

LOW-COUNTRY STATE LEASING, LLC a/k/a LOW-COUNTRY  
STATE LEASING, LLC d/b/a MCGUIRES IRISH PUB, LLC; MCGUIRES  
IRISH PUB, LLC; JACQUELINE KROTH; DAVID KROTH; THE  
UNITED STATES OF AMERICA; SOUTH CAROLINA DEPARTMENT  
OF REVENUE, SOUTH CAROLINA EMPLOYMENT SECURITY  
COMMISSION; TOWN OF SUMMERVILLE; CAROLINA WASTE  
SERVICES; OK GROCERY; and QUATTLEBAUM & MURPHY, LLP

..... Respondents

and

CHARLES R. GILES, JR and ALBERT SHEPPARD,

Intervenors/Appellants.

---

**RECORD ON APPEAL**

---

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## INDEX

Order Denying Motion and Disbursing Surplus Funds. . . . .	1
Decree of Foreclosure and Order of Sale . . .	10
Notice of Surplus Funds . . . . .	20
Claim of Entitlement to Surplus Funds of United States . . . . .	24
Claim of Entitlement to Surplus Funds of South Carolina Employment Security Commission. . .	25
Claim of Entitlement to Surplus Funds of Quattlebaum & Murphy, LLC . . . . .	26
Motion for Leave to Intervene and Set Aside Decree of Foreclosure or, in the Alternative, For Excess Funds . . . . .	28
Claim of Entitlement to Surplus Funds of Giles and Sheppard . . . . .	42
Return to Motion of Southcoast Community Bank . . .	54
Notice of Hearing . . . . .	57
Note, Mortgage, and Guarantee . . . . .	60

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER ) CASE NO.: 2008-CP-18-1996

Southcoast Community Bank,
Plaintiff,

vs.

Low-Country State Leasing, LLC a/k/a
Low-Country State Leasing, LLC d/b/a
McQuire's Irish Pub, LLC; McQuire's
Irish Pub, LLC, Jacqueline Kroth;
David A. Kroth; The United States of
America; South Carolina Department
Of Revenue; South Carolina Employment
Security Commission; Town of Summerville;
Carolina Waste Services; OK Grocery; and
Quattlebaum & Murphy, LLP;
Defendants.

Charles R. Giles, Jr. and
Albert Sheppard,
Intervenors/Claimants.

ORDER
DENYING MOTION
AND
ORDER
DISBURSING
SURPLUS FUND

CERTIFIED COPY
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Clerk of Court
DORCHESTER COUNTY

On August 11, 2009, this Court conducted the hearing on a Motion For Leave To Intervene And Set Aside Decree Of Foreclosure And Sale, Or, In The Alternative, For Excess Proceeds. The Motion was brought by Charles R. Giles, Jr. and Albert Sheppard (Movants) and filed on May 15, 2009. They brought it pursuant to Rule 24(a)(2), SCRPC.

At the same time this Court conducted the hearing to determine entitlement to the surplus fund in this case in accordance with Rule 71(c), SCRPC.

The following widely respected counsel attended.

[Handwritten signature]

- o Steven L. Smith, Esq., attorney for both Movants.
- o Samuel H. Altman, Esq., attorney for Southcoast Community Bank.
- o Lee E. Berlinsky, Esq., attorney for the United States of America, on behalf of the Internal Revenue Service.
- o Romi Y. Robinson, Esq., attorney for the South Carolina Employment Security Commission.
- o D. Mark Stokes, Esq., attorney for the Town of Summerville.
- o William J. Hennessy, Jr., Esq., attorney for 127 Richardson Associates, LLC.

The South Carolina Department of Revenue and the Murphy Law Firm timely filed claims for the surplus but neither appeared at the hearing after due notice.

#### PROCEDURAL BACKGROUND

Plaintiff commenced this mortgage foreclosure action on August 5, 2008. It filed a lis pendens the same day.

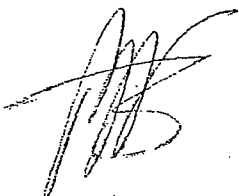
Defendants Low-Country State Leasing, LLC, David Kroth and Jacqueline Kroth received process on August 18, 2008.

On August 29, 2008, Plaintiff filed amended pleadings simply to add a defendant.

This Court acquired jurisdiction by the Order of Default/Consent Order of Reference filed November 25, 2008. In connection with that reference this Court scheduled the trial on the merits for December 8, 2008.

Plaintiff served a Notice of Hearing on all Defendants on November 18, 2008.

This Court conducted the hearing as scheduled. Mr. Kroth attended. This Court issued its Order of Foreclosure and Order of Sale on December 18, 2008.



The Plaintiff advertised the public auction of the subject property in a newspaper circulated in the area where the property is located during three weeks in December 2008 and again during three weeks in January 2009.

This Court sold the property on February 3, 2009, to 127 Richardson Associates, LLC. It executed and delivered a deed to that company on February 11, 2009.

This Court served its Notice of Surplus Fund to all named Defendants on March 27, 2009, directing that claims to the fund be filed and served no later than May 15, 2009.

The following duly filed and served claims.

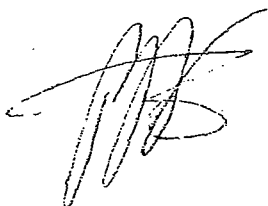
- o The United States of America for the Internal Revenue Service
- o The South Carolina Department of Revenue
- o The South Carolina Employment Security Commission
- o The Town of Summerville
- o The Murphy Law Firm
- o Charles R. Giles, Jr. and Albert Sheppard, in conjunction with their Motion To Intervene

REGARDING THE MOTION TO INTERVENE OF RIGHT

FINDINGS OF FACT

Messrs. Giles and Sheppard asserted they had a mortgage on the subject real property. They asserted that as owners of this mortgage they had an interest relating to the subject real property and were so situated that disposition of the foreclosure action without them would impair their ability to protect that interest.

They also asserted that their mortgage was indexed improperly at the Register of Deeds office.



They introduced a document entitled "Promissory/Guaranty Agreement" dated October 1, 2007, as that mortgage. They stated they prepared the document themselves. The Register of Deeds recorded it on October 8, 2007.

The principal operative language of this document is, For value and consideration received David and Jacqueline Kroth (Borrowers) personally guarantee to repay Albert Sheppard and Charles R. Giles, Jr. (Lender) in full the total amount borrowed.

The only language that speaks of security for this loan is the following.

These debts are to be secured by a Dejan clause with deeds in lieu, holding as collateral the title and deeds in lieu of the two properties stated in this agreement as Exhibit 1 and 2.

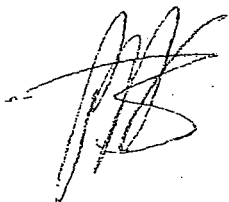
\*\*\*

This will be secured by holding title and deeds in lieu of the primary residence ... and commercial building ... located in Dorchester County.

\*\*\*

Remedies of default will result in a call on the note backed by the title and deeds in lieu of the 407 Fairington Dr. Summerville, SC 29485 property and the 127 Richardson Ave Summerville SC 29483 and protected by a dejan clause.

Mr. and Ms. Kroth signed the document as the borrowers. They signed as individuals. Nothing in the signature block indicated they signed as members, managers or other principals or agents of the property's owner.

A handwritten signature in black ink, appearing to be a stylized name, possibly 'JK' or similar, written over a horizontal line.

The owner of the property at the time was Low-Country State Leasing, LLC. It did not sign. The document contained no authorization by the company that the Kroths sign on its behalf.

Neither the Kroths nor Low-Country State Leasing, LLC appeared at the hearing to share their perspective on the subject document.

#### CONCLUSIONS OF LAW REGARDING MOTION

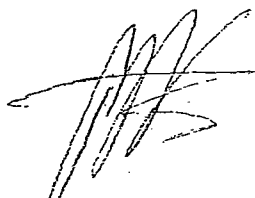
The Movants have no right to intervene. They have no interest relating to the subject property. The document they rely upon is not a mortgage or any other type of security interest in the property.

A mortgage is,

A conveyance of title to property that is given as security for the payment of a debt or the performance of a duty and that will become void upon payment or performance according to the stipulated terms. It is a lien against property that is granted to secure an obligation (such as a debt) and that is extinguished upon payment or performance according to stipulated terms. Black's Law Dictionary (8th ed. 2004).

The subject document includes no signature by or on behalf of the property owner. It contains no language expressing the property owner's conveyance of title to the property. It contains no such language expressing the grant of a lien against the property. It contains no language at all that can be considered statements by the property owner.

The plain and unambiguous language of this document taken as a whole expresses the Kroths' guarantee to repay money the Movants loaned them. With respect to security for the loan, the document plainly states the parties' contemplation of some

A handwritten signature in black ink, consisting of several overlapping, stylized strokes that form a cursive name, likely 'Kroth'.

additional act (holding title) and some additional documents (dejan clause, title and deeds in lieu). Movants spoke of performing no such additional act and produced no such additional documents. *Ward v. West Oil Company, Inc.*; 379 S.C. 225, 665 S.E.2d 618, (Ct. App. 2008).

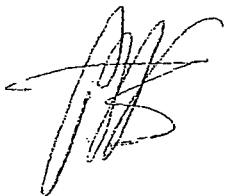
Movants' argument that their document was improperly indexed is meritless.

To the records of the registry, reference shall be had by means of two indexes, ... the alphabetical arrangement of one being according to the names of the parties who executed the writings ... . Section 30-9-10, Code of Laws of South Carolina (1976) as amended. (Italics added.)

The Kroths obviously executed the document as individuals; the Register of Deeds properly indexed it in their individual names.

As they have no interest relating to the subject property, Movants are not entitled to any of the surplus fund.

In no event should this Court's sale of the property and order of foreclosure be vacated in order to allow Movants an opportunity to present their case. In this regard, Movants did not timely apply for intervention. No one disputes the priority of Plaintiff's lien, or of some of the liens of some of the other defendants, over any lien Movants allege they may have. The final result would very likely be the same. Plaintiff has been paid. The case is ended. 127 Richardson Associates, LLC paid a great deal of money for the property. It is reasonable to conclude it has also invested a tremendous amount of money and effort into fitting it out, hiring employees and operating a going concern over the past nine months. To vacate the sale and order would be profoundly prejudicial to the Plaintiff and to 127 Richardson Associates, LLC.



REGARDING ENTITLEMENT TO SURPLUS FUND

Attached and incorporated into this Order by this reference is a chart that lists each claimant's lien. It lists the United States' liens according to the date it assessed the underlying taxes. It lists the other claimants' liens according to the date each filed its lien. It shows the amount of that lien as of the date of each claim. This Court paid liens according to such dates until depleting the surplus. Midway is a row showing the amount of this Court's award to each claimant.

The United States argued that with respect to the claims by it and the South Carolina Department of Revenue, priority should be based upon the dates they assessed the taxes, rather than the dates they filed the liens. The Department of Revenue did not appear at the hearing and did not respond to the United States' written memorandum on the subject.

The Department of Revenue did not provide the Court with the dates it assessed its taxes, only the dates it filed its liens. As those were the only dates in evidence, this Court used them.

This Court did not calculate any interest that accrued after the date of each claimant's written claim. The task of calculating additional accrued interest on so many liens of varying amounts was too onerous compared to a final result that would not appreciably change the amount of the awards.

ORDERS

Based upon the foregoing findings and conclusions, this Court hereby,

ORDERS the Motion for Leave To Intervene And Set Aside Decree Of Foreclosure And Sale, Or, In The Alternative, For Excess Proceeds, filed May 15, 2009, denied entirely.



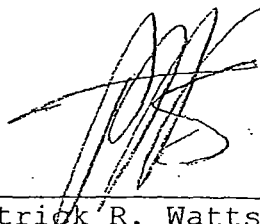
ORDERS the surplus fund, totaling \$114,001.71, disbursed to Claimants as follows.

- o United States of America: \$60,571.78
- o SC Department of Revenue: \$32,438.62
- o Murphy Law Firm: \$10,000.00
- o Employment Security Commission: \$10,991.72

ORDERS This Order to serve as the record of how the surplus was disbursed.

AND IT IS SO ORDERED.

November 24, 2009  
St. George, South Carolina



---

Patrick R. Watts  
Master in Equity for  
Dorchester County

4. **I FIND** that in conjunction with the execution of the aforementioned Note and Mortgage, Jacqueline Kroth and David A. Kroth executed guaranties in favor of Southcoast guaranteeing payment of all obligations of Lowcountry and McGuire's to Southcoast.

5. **I FIND** that Lowcountry and McGuire's are in default of their obligations to the Plaintiff under the terms of the Note and Mortgages referred to herein.

6. **I FIND** that Jacqueline Kroth and David A. Kroth are in default of their obligations to the Plaintiff under the terms of the guaranties executed by them.

7. **I FIND** that all parties were notified of this hearing.

8. **I FIND** that the subject matter of the Plaintiff's action is real property located in the County of Dorchester and that this Court has jurisdiction to render a final decision on the issues raised in the Complaint.

9. **I FIND** that there is due and owing to the Plaintiff on its collateral documents (Note secured by Mortgages One and Two) as of December 8, 2008, the principal amount of \$418,951.78, an escrow deficiency of \$7,692.76, accrued interest of \$54,697.21, partial attorney's fees and costs of \$517.50, appraisal fees of \$1,850.00 and late fees of \$1,408.48 for a total of \$485,117.73, with per diem interest accruing at the rate of \$84.37.

10. **I FIND** that the Plaintiff has waived its right to a deficiency judgment.

**AS TO SOUTHCOAST LOAN NO.: CL-015022006023**

11. **I FIND** that the property descriptions contained in the Lis Pendens filed by the Plaintiff and set forth herein below are the proper descriptions of the real property encumbered by the Plaintiff's mortgages.

12. **I FIND** that on February 15, 2006, Lowcountry and McGuire's executed and delivered to the Plaintiff a Note ("Note") in the principal amount of \$57,144.27 and a Mortgage ("Mortgage Three") in an amount not to exceed \$114,288.54. Under the terms of the Note, Lowcountry and McGuire's agreed to pay the principal amount due in monthly installments with interest. Lowcountry and McGuire's also agreed to pay all costs of collection, including reasonable attorney's fees should a foreclosure be necessary. In order to further secure the Note and debt represented thereby, David A. Kroth executed and delivered to Plaintiff a Mortgage ("Mortgage Four") in an amount not to exceed \$114,288.54.

13. **I FIND** that the Mortgages that secure repayment of the Note were filed of record in the Office of the Register of Deeds for Dorchester County as follows:

Mortgage Three was recorded on February 23, 2006 in Book 5210, at page 335;  
Mortgage Four was recorded on February 23, 2006 in Book 5210, at page 343.

14. **I FIND** that the foreclosure of Mortgages Two and Four are subject to a first mortgage held on the property by CitiMortgage, Inc. as successor by merger to ABN AMRO Mortgage Group, Inc.

15. **I FIND** that in conjunction with the execution of the aforementioned Note and Mortgage, Jacqueline Kroth and David A. Kroth executed guaranties in favor of Southcoast guaranteeing payment of all obligations of Lowcountry and McGuire's to Southcoast.

16. **I FIND** that Lowcountry and McGuire's are in default of their obligations to the Plaintiff under the terms of the Note and Mortgages referred to herein.

17. **I FIND** that all parties were notified of this hearing.

18. **I FIND** that the subject matter of the Plaintiff's action is real property located in the County of Dorchester and that this Court has jurisdiction to render a final decision on the issues raised in the Complaint.

19. **I FIND** that there is due and owing to the Plaintiff on its collateral documents (Note secured by Mortgages Three and Four) as of December 8, 2008, the principal amount of \$43,970.80, accrued interest of \$5,529.17, partial attorney's fees and costs of \$720.00 and late fees of \$375.04 for a total of \$50,595.01, with per diem interest accruing at the rate of \$11.60.

20. **I FIND** that based on the issues involved in this case, the experience of counsel, and the result being obtained, a reasonable attorney's fee is \$8500.00 together with costs of \$604.50.

21. **I FIND** that the Plaintiff has waived its right to a deficiency judgment.

NOW, THEREFORE, based on the foregoing findings of fact, it is hereby ORDERED, as follows:

1. **AS TO SOUTHCOAST LOAN NO.:** CL-015022005227, judgment of foreclosure and sale is entered in favor of Southcoast Community Bank against Defendants Low-Country State Leasing, LLC, McGuire's Irish Pub, LLC and David A. Kroth based on the default in the Note, Mortgages and Guaranties referenced herein, with the Court determining that the balance due and owing to Southcoast Community Bank is \$490,362.40, including reasonable attorney's fees and costs.

2. **AS TO SOUTHCOAST LOAN NO.:** CL-015022006023, judgment of foreclosure and sale is entered in favor of Southcoast Community Bank against Defendants Low-Country State Leasing, LLC, McGuire's Irish Pub, LLC and David A. Kroth based on the default in the Note, Mortgages and Guaranties referenced herein, with the Court determining that the balance due and owing to Southcoast Community Bank is \$53,217.34, including reasonable attorney's fees and costs.

3. That the real property be foreclosed and the Master-In-Equity, by advertisement according to law, shall give notice of the time and place of such sale, and the terms thereof, and shall convey to the purchaser or purchasers a deed to the premises sold; and the Plaintiff, or any other party to this action, may become a purchaser at such sale. If, upon such sale being made, the purchaser or purchasers should fail to comply with the terms thereof, 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 former highest bidder, and so from time to time thereafter until a compliance shall be secured. If the highest bidder shall be a party other than the Plaintiff, then that party shall submit upon completion of the sale, a deposit of five (5%) percent. Should the successful bidder fail to comply with his bid within thirty (30) days of the sales date, his deposit shall be forfeited and applied to the costs incurred by the Plaintiff in maintaining this action and in selling the property. In the event the Plaintiff is the successful bidder, at its option, or the option of its assignee, the deed may be taken subject to payment granted of any taxes or assessments constituting a lien against the property sold under this Order and hereinafter more fully described. The successful bidder shall pay the costs of deed stamps on the said deed.

4. The sale of the properties herein described are subject to the right of redemption of the United States of America per the provisions of the U.S. Code of Laws for 120 days.

5. The Court shall apply the proceeds of the sales as follows:

FIRST: to payment of any liens for taxes due and payable upon the premises to be sold, and any special assessments against such property, and any taxable disbursements by the attorneys in this action.

NEXT: to satisfaction of the Plaintiff's Note and Mortgage, and all costs including attorney's fees, expenses and debts arising therefrom.

7. IT IS FURTHER ORDERED that upon making the sale of said mortgaged premises as hereby ordered, the execution and delivery to the purchaser of a deed to the premises, said purchaser or purchasers shall be let into possession of the premises on production of the deed; and the Sheriff of Dorchester County shall put the holder of the deed into possession of the premises.

8. The following is a description of the premises herein **ORDERED** to be sold:

**As to Mortgages One and Three:**

All that certain piece, parcel or lot of land, with the buildings and improvements thereon, situate, lying and being on the Northeast side of Richardson Avenue, formerly First South Street, in the Town of Summerville, County of Dorchester, State of South Carolina; Butting and Bounding and Measuring and Containing, as Follows, to wit: Northeast on the lands now or formerly of Grainger, Fifty-eight (58) feet; Southeast, on lands now or formerly of H.M. Guerin, Two Hundred and Eight (208) Feet; Southwest on Richardson Avenue, aforesaid, Fifty-eight (58) Feet; and Northwest on lands now or formerly of Arnold W. Kornshrene, Sixty-one (61) feet; be all of said dimensions more or less.

Subject to any and all easements, restrictions and rights-of-way of record.

Being the same property conveyed to Low-Country State Leasing by deed of Michael Rabin and Elizabeth Rabin a/k/a Elizabeth D. Edelson dated 10/08/04 and recorded 12/02/04 in the RMC Office for Dorchester County in Deed Book 4445, page 208.

TMS: 137-07-07-018

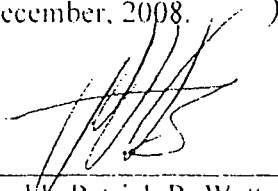
**As to Mortgages Two and Four**

All that lot, piece or parcel of land, with the buildings and improvements thereon, situate, in Dorchester County, South Carolina, known and designated as Lot No. 15, Block 12, King's Grant on the Ashley, as shown on a plat of Section 2 of King's Grant on the Ashley, by C. Roger Jennings, RLS. dated November, 1972, and recorded in the Plat Book 20, at page 72. in the Office of the Clerk of Court for Dorchester County, South Carolina.

Being the same property conveyed to David Allen Kroth by deed of  
Lynwood D. Locke, Jr. dated 08/26/98 and recorded 08/31/98 in the  
RMC Office for Dorchester County in Deed Book 2027, page 181.

TMS: 171-02-03-015

IT IS SO ORDERED this 8<sup>th</sup> day of December, 2008. )

  
-----  
Honorable Patrick R. Watts  
Master-In-Equity for Dorchester County

St. George, South Carolina

NOTICE OF MASTER'S SALE

STATE OF SOUTH CAROLINA, COUNTY OF DORCHESTER: IN THE COURT OF  
COMMON PLEAS - CASE NUMBER 08-CP-18-1996:

SOUTHCOAST COMMUNITY BANK vs. LOW-COUNTRY STATE LEASING, LLC a/k/a LOW-COUNTRY STATE LEASING d/b/a MCGUIRES IRISH PUB, LLC; MCGUIRES IRISH PUB, LLC; JACQUELINE KROTH; DAVID A. KROTH; THE UNITED STATES OF AMERICA; SOUTH CAROLINA DEPARTMENT OF REVENUE; SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION; TOWN OF SUMMERVILLE; CAROLINA WASTE SERVICES; OK GROCERY; and QUATTLEBAUM & MURPHY, LLP,

UPON authority of a Decree of Foreclosure and Sale dated December 8, 2008, I will offer for sale to the highest bidder for cash, at public auction, the premises and security interest fully described below, at the Dorchester County Courthouse, in St. George, South Carolina on the 9 day of January, 2009, at 11:00 o'clock a.m. or shortly thereafter:

All that certain piece, parcel or lot of land, with the buildings and improvements thereon, situate, lying and being on the Northeast side of Richardson Avenue, formerly First South Street, in the Town of Summerville, County of Dorchester, State of South Carolina; Butting and Bounding and Measuring and Containing, as Follows, to wit: Northeast on the lands now or formerly of Grainger, Fifty-eight (58) feet; Southeast, on lands now or formerly of H.M. Guerin, Two Hundred and Eight (208) Feet; Southwest on Richardson Avenue, aforesaid, Fifty-eight (58) Feet; and Northwest on lands now or formerly of Arnold W. Kornshrene, Sixty-one (61) feet; be all of said dimensions more or less.

CLERK OF COURT  
DORCHESTER COUNTY  
2008 DEC 18 AM 9:14  
FILED-RECORDED

Subject to any and all easements, restrictions and rights-of-way of record.

Being the same property conveyed to Low-Country State Leasing by deed of Michael Rabin and Elizabeth Rabin a/k/a Elizabeth D. Edelson dated 10/08/04 and recorded 12/02/04 in the RMC Office for Dorchester County in Deed Book 4445, page 208.

TMS: 137-07-07-018

Property Address: 127 W. Richardson Ave., Summerville, SC 29483

ALSO:

All that lot, piece or parcel of land, with the buildings and improvements thereon, situate, in Dorchester County, South Carolina, known and designated as Lot No. 15, Block 12, King's Grant on the Ashley, as shown on a plat of Section 2 of King's Grant on the Ashley, by C. Roger

Jennings, RLS, dated November, 1972, and recorded in the Plat Book 20, at page 72, in the Office of the Clerk of Court for Dorchester County, South Carolina.

Being the same property conveyed to David Allen Kroth by deed of Lynwood D. Locke, Jr. dated 08/26/98 and recorded 08/31/98 in the RMC Office for Dorchester County in Deed Book 2027, page 181.

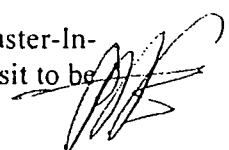
TMS: 171-02-03-015

Property Address: 407 Fairington Ave, Summerville, SC 29485

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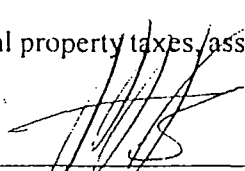
Plaintiff has waived its right to a deficiency judgment.

The property shall be sold for cash to the highest bidder and is subject to the right of redemption of the United States of America.

The highest bidder, other than the Plaintiff, will be required to deposit with the Master-In-Equity, cash or certified check in the amount of five (5%) percent of the bid; the said deposit to be applied to the purchase price. ~~The bidding will remain open for thirty (30) days.~~ 

Should the highest bidder fail to comply with the bid within thirty (30) days from the date of sale, the Master-In-Equity will resell the property at the risk and expense of the defaulting bidder upon the same terms as above set out. The Sheriff for Dorchester County may be authorized to put the purchaser in possession of the premises if requested by the purchaser.

The property is being sold subject to real property taxes/assessments and any easements that may affect the property.



---

Honorable Patrick R. Watts  
Master-In-Equity

St. George, South Carolina

December 8, 2008

Send bill to: DERFNER, ALTMAN & WILBORN, LLC  
Attn: Samuel H. Altman  
P.O. Box 600  
Charleston, SC 29402-0600

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT  
CASE NUMBER: 2008-CP-18-1996

Southcoast Community Bank, )  
 )  
Plaintiff, )

vs. )

Low-Country State Leasing, LLC )  
a/k/a Low-Country State Leasing, )  
LLC d/b/a McGuires Irish Pub, LLC; )  
McGuires Irish Pub, LLC; )  
Jacqueline Kroth; David A. Kroth; )  
The United States of America; )  
South Carolina Department of Revenue; )  
South Carolina Employment Security )  
Commission; Town of Summerville; )  
Carolina Waste Services; OK Grocery; )  
and Quattlebaum & Murphy, LLP, )  
 )  
Defendants. )

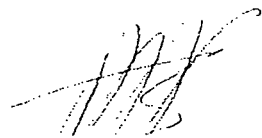
NOTICE OF SURPLUS FUND

FILED-RECORDED  
2009 MAR 27 PM 2:45  
CLERK OF COURT  
DORCHESTER COUNTY

TO THE DEFENDANTS NAMED ABOVE:

After accounting for all costs and disbursements related to this case, this Court has determined that a surplus fund exists in the amount of \$114,001.71.

You are hereby invited to file with this Court a Claim of Entitlement for this fund, in strict accordance with Rule 71(c), South Carolina Rules of Civil Procedure. You must file and serve your claim no later than May 15, 2009. If your claim is not filed of record and served by that date this Court will deem it

 1/2

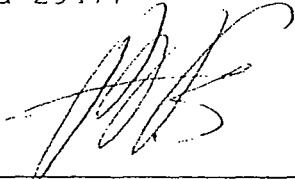
waived or abandoned. If your claim fails to meet the requirements of Rule 71(c) South Carolina Rules of Civil Procedure, or this notice, in any respect, this Court will deem it waived.

After the filing date set forth above, this Court will notify proper claimants of the date of any hearing to accept proof to support the claims filed.

File the original of your Claim with the Dorchester County Clerk of Court at 101 Ridge Street, St. George, South Carolina. Serve a clocked copy upon the other defendants. Provide this Court with a clocked copy of your claim at the following address:

Dorchester County Master in Equity  
101 Ridge Street  
St. George, South Carolina 29477

March 27, 2009  
St. George, South Carolina

  
Patrick R. Watts  
Equity Court Judge

2/12

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT  
CASE NUMBER: 2008-CP-18-1996

Southcoast Community Bank, )  
 )  
Plaintiff, )

vs. )

Low-Country State Leasing, LLC )  
a/k/a Low-Country State Leasing, )  
LLC d/b/a McGuire's Irish Pub, LLC; )  
McGuire's Irish Pub, LLC; )  
Jacqueline Kroth; David A. Kroth; )  
The United States of America; )  
South Carolina Department of Revenue; )  
South Carolina Employment Security )  
Commission; Town of Summerville; )  
Carolina Waste Services; OK Grocery; )  
and Quattlebaum & Murphy, LLP, )  
 )  
Defendants. )

AFFIDAVIT OF MAILING  
OF COPY OF  
NOTICE OF SURPLUS FUND

FILED--RECORDED  
2009 MAR 27 PM 2:45  
CLERK OF COMMON PLEAS  
DORCHESTER COUNTY

Personally appeared before me, Gail C. Evans, who, being duly sworn, says that she personally mailed a copy of the Notice of Surplus Fund in the above action to the parties whose names and addresses appear on the attached sheet by depositing such in the United States mail at the United States Post Office, St. George, South Carolina, at 5:30 o'clock p.m. on March 27, 2009, properly addressed with correct postage prepaid for first class delivery.

Gail C. Evans

SWORN TO before me this  
27th day of March, 2009.

[Signature] (L.S.)  
Notary Public for South Carolina  
My Commission expires: July 2, 2014

ATTACHMENT

Low-Country State Leasing, LLC  
David Kroth, Registered Agent  
407 Fairington Drive  
Summerville, SC 29485

McGuire's Irish Pub, LLC  
David Kroth, Registered Agent  
407 Fairington Drive  
Summerville, SC 29485

Jacqueline Kroth  
407 Fairington Drive  
Summerville, SC 29485

David A. Kroth  
407 Fairington Drive  
Summerville, SC 29485

Lee E. Berlinsky  
Assistant U.S. Attorney  
151 Meeting Street, Ste. 200  
Charleston, SC 29401

D. Mark Stokes  
Attorney at Law  
Town of Summerville  
P.O. Box 60547  
N. Charleston, SC 29419

Ronald W. Urban  
Chief Counsel for Litigation  
South Carolina Department  
of Revenue  
P.O. Box 12265  
Columbia, SC 29211

Quattlebaum & Murphy, LLP  
Attorneys at Law  
136 W. Richardson Avenue  
Summerville, SC 29483

Romi Y. Robinson  
South Carolina Employment  
Security Commission  
P.O. Box 995  
Columbia, SC 29202

George W. Fennell  
Registered Agent  
Carolina Waste Services, LLC  
5264-B International Blvd.  
N. Charleston, SC 29418

Beth Mickalis  
OK Grocery  
248 N. Main Street  
Summerville, SC 29483

STATE OF SOUTH CAROLINA )  
 ) CASE NO. 08 CP 18 1996  
COUNTY OF DORCHESTER )

Southcoast Community Bank, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Low-Country State Leasing, LLC, etc., )  
et al., )  
 )  
Defendants. )


UNITED STATES CLAIM OF  
ENTITLEMENT TO THE SURPLUS  
FUND  
S.C.R. Civ. P 71(c)

FILED-RECORDED  
2009 APR 17 AM 10:10  
CLERK OF COURT  
DORCHESTER COUNTY

The United States, Claimant, hereby files a claim in the amount of \$128,860.67 as of May 15, 2009, which is based on unpaid federal taxes owed by McGuire's Irish Pub LLC. A copy of the filed Notices of Federal Tax Liens is attached hereto as Exhibit A.

The calculation of such claim is set forth in the affidavit of Justin M. Whitaker of the Internal Revenue Service prepared on April 9, 2009 and computed to May 15, 2009, which is attached hereto as Exhibit B.

W. WALTER WILKINS  
UNITED STATES ATTORNEY

BY:   
LEE E. BERLINSKY  
Assistant U.S. Attorney  
151 Meeting Street, Ste 200  
Charleston, S.C. 29401  
Ph: (843) 727-4381; Fax: (843) 727-4443  
[Lee.berlinsky@usdoj.gov](mailto:Lee.berlinsky@usdoj.gov)

Charleston, S.C.  
April 16, 2009

✓

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
CASE NO. 08-CP-18-1996

Southcoast Community Bank, )  
Plaintiff, )

CLAIM OF ENTITLEMENT

v. )

TO SURPLUS FUNDS

South Carolina Employment Security )  
Commission, et al., )  
Defendant(s). )

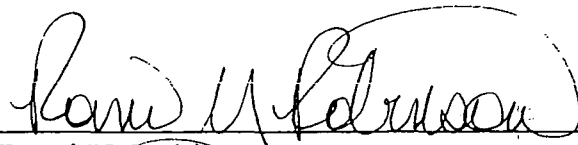
Rule 71 (c) of the South Carolina  
Rules of Civil Procedure

FILED-2009 APR 29 PM 3:21  
CLERK OF COURT  
DORCHESTER

Pursuant to Rule 71(c) of the South Carolina Rules of Civil Procedure the South Carolina Employment Security Commission hereby makes claim to any entitlement it may have to surplus funds in the above foreclosure action by virtue of the following unpaid unemployment tax executions filed in the Office the Clerk of Court for Dorchester County:

In Tax Lien Book 95, page 100, filed against McGuire's Irish Pub LLC on May 8, 2008 in the amount of \$11, 307.93 plus legal interest added of \$837.89 (pursuant to § 34-31-20 of the SC Code of Laws) for a total of \$12,145.72 through May 15, 2009.

WHEREFORE, having fully answered the Complaint herein, the defendant South Carolina Employment Security Commission prays that the Court inquire into the matters set forth herein and distribute such sums to this defendant as are required by law.



Romi Y. Robinson  
Attorney for the South Carolina  
Employment Security Commission

April 29, 2009  
Columbia, South Carolina

STATE OF SOUTH CAROLINA ) IN THE COMMON PLEAS COURT  
 ) FOR THE FIRST JUDICIAL CIRCUIT  
COUNTY OF DORCHESTER ) CASE NO.: 2008-CP-18-1996

Southcoast Community Bank, )

-versus- )

CLAIM OF ENTITLEMENT

Low-Country State Leasing, LLC, )  
a/k/a Low-Counry State Leasing, )  
LLC d/b/a McGuires Irish Pub, LLC,) )  
et al. )  
Defendants. )

FILED-RECORDED  
2009 APR - 7 AM 9:13  
CLERK OF COURT  
DORCHESTER COUNTY

NOW, COMES THE UNDERSIGNED, pursuant to Rule to Rule 71(c) of the South Carolina Rules of Civil Procedure and states the following:

- Claimant  
My name is Christopher J. Murphy, Esquire. I am an attorney with Murphy Law Firm, LLC, formerly known as, Quattlebaum & Murphy, LLP. We were retained by David and Jackie Kroth for legal representation on various legal matters.
- Nature of Claim  
Nature of Claim is that it was for legal services.
- Date Claim Arose  
Provided on or about April 1, 2008 as evidenced by attached Exhibit "A", copy of executed Promissory Note, and attached Exhibit "B", copy of executed mortgage recorded in Book 6565 at Pages 169-173 in the Dorchester County Register of Deeds Office.
- Amount of Claim  
Ten Thousand Dollars and no/100 (\$10,000.00)

Claimant asks that the Court seek to protect its interest.

MURPHY LAW FIRM, LLLC

BY: 

Christopher J. Murphy  
136 West Richardson Avenue  
Summerville, South Carolina 29483  
(843) 832-1120

Sworn and subscribed to me  
this 6<sup>th</sup> day of April, 2009.



Notary Public for South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

SOUTHCOAST COMMUNITY BANK, )  
( ) Plaintiff )  
v. )  
LOW-COUNTRY STATE LEASING, et al. )  
(x ) Defendant )  
check box above indicating submitting party )

Case No. 2008-CP-18-1996

MOTION INFORMATION FORM  
AND COVER SHEET

CERTIFIED COPY  
2009 MAY 15 PM 2:34  
Clerk of Court  
DORCHESTER COUNTY

name, SC Bar no. and address of plaintiff's attorney  
Steven L. Smith SC Bar No. 5173  
Smith & Koontz, PA  
P.O. Box 40578  
Charleston, SC 29423-0578  
telephone: 843-760-0220 fax: 843-552-2678  
e-mail:

name, SC Bar no. and address of defendant's attorney  
telephone: fax:  
e-mail:

- ( ) MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)  
(x) FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)  
( ) PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: \_\_\_\_\_ minutes Court Reporter Needed: NO

SECTION II: Motion Type

- (x) Written motion attached  
( ) Form Motion --

I hereby move for relief or action by the court as set forth in the attached proposed order.

[Signature]  
Signature of Attorney for Plaintiff / Defendant

5-15-09  
Date submitted

SECTION III: Motion Fee

- (X) PAID - AMOUNT: \$25.00  
( ) EXEMPT: ( ) Rule to Show Cause in Child or Spousal Support  
(check reason) ( ) Domestic Abuse or Abuse and Neglect  
( ) Indigent Status ( ) State Agency v. Indigent Party  
( ) Sexually Violent Predator Act ( ) Post-Conviction Relief  
( ) Motion for Stay in Bankruptcy  
( ) Motion for Publication ( ) Motion for Execution (Rule 69, SCRPC)  
( ) Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter: \_\_\_\_\_  
( ) Other:

JUDGE'S SECTION

- ( ) Motion Fee to be paid upon filing of the attached order.  
( ) Other:

\_\_\_\_\_  
JUDGE

CODE: \_\_\_\_\_

Date: \_\_\_\_\_

CLERK'S VERIFICATION

DATE FILED

Collected by: \_\_\_\_\_ (print name)

- ( ) MOTION FEE COLLECTION: \_\_\_\_\_  
( ) CONTESTED - AMOUNT DUE: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
  
CASE NO. 2008-CP-18-1996

SOUTHCOAST COMMUNITY BANK, )  
 )  
Plaintiff, )

v. )

MOTION FOR LEAVE TO INTERVENE  
AND SET ASIDE DECREE OF  
FORECLOSURE AND SALE, OR, IN  
THE ALTERNATIVE, FOR EXCESS  
PROCEEDS

LOW-COUNTRY STATE LEASING, )  
LLC a/k/a LOW-COUNTRY STATE )  
LEASING, LLC d/b/a MCGUIRES )  
IRISH PUB; LLC; MCGUIRES IRISH )  
PUB, LLC; JACQUELINE KROTH; )  
DAVID A. KROTH; THE UNITED )  
STATES OF AMERICA; SOUTH )  
CAROLINA DEPARTMENT OF )  
REVENUE; SOUTH CAROLINA )  
EMPLOYMENT SECURITY )  
COMMISSION; TOWN OF )  
SUMMERVILLE; CAROLINA WASTE )  
SERVICES; OK GROCERY; and )  
QUATTLEBAUM & MURPHY, LLP, )

Defendants. )

CHARLES R. GILES, JR. and ALBERT )  
SHEPPARD, )

Intervenors/Claimants. )

*Charles R. Giles, Jr.*  
CLERK OF COURT  
DORCHESTER COUNTY  
2009 MAY 15 PM 2:34  
CERTIFIED COPY

Charles R. Giles, Jr. and Albert Sheppard seek leave to intervene in the above-captioned matter, pursuant to Rule 24 of the South Carolina Rules of Civil Procedure, on the grounds that they have a secured interest in the property in question, are so situated that the disposition of the action will, as a practical matter, impair or impede their ability to protect that interest, and there interest is inadequately protected by the existing parties to this action. Giles and Sheppard would further respectfully request that the sale of the subject property be side aside and vacated, as they

are entitled as a matter of law to notice of the sale. In the alternative, Giles and Sheppard would claim entitlement to the surplus funds generated by the sale of the property, pursuant to Rule 71(c) of the South Carolina Rules of Civil Procedure as they hold a valid security interest in the property superior to the interests of all other claimants.

On October 1, 2007, Movants herein loaned to Defendants Jacqueline and David Kroth, a/k/a Low-Country State Leasing, a/k/a McGuire's Irish Pub, the principal sum of \$100,000. The parties executed a Promissory Note, which Note was secured by a mortgage on the property that is the subject of the instant action. The Note and Mortgage were duly recorded in the RMC Office of Dorchester County on October 8, 2007, at Book 6301, Page 237. Subsequent to the recording, the RMC Office indexed the Note and Mortgage, but did so only under the names of the individual signatories who had executed it. It was not indexed so as to reference either Low-Country State Leasing or McGuire's Irish Pub.

Southcoast Community Bank filed the instant action on August 18, 2008, seeking foreclosure of its first mortgage on the real property in the principal sum of \$418,951.78, along with deficiencies, late fees, interest and costs. As a part of its foreclosure action, Southcoast Community Bank searched the records of the RMC Office of Dorchester County to identify all other persons or entities claiming an interest in the property. As a direct result of the failure of the RMC Office of Dorchester County to cross-index Movant's Note and Mortgage, Movants herein were not identified as being secured lien-holders in the property, were not served with the Summons and Complaint commencing this action, and were not given an opportunity to appear or plead.

Rule 24 of the Rules of Civil Procedure provides that a party may seek intervention as of right when it "claims an interest relating to the property or transaction which is the subject of the

action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." S.C.R.C.P. 24(a)(2). By virtue of their executed and recorded Note and Mortgage, Movants clearly have an interest in the property that is the subject matter of this action. Furthermore, if the property is sold and the funds received from the sale are disbursed to other parties, Movants' interest will not be merely impaired or impeded, it will be effectively destroyed. As all parties and other claimants express an interest in the same limited pool of available funds received as a result of the sale, no existing party will adequately represent the interests of Movants in receiving reimbursement of the sums secured by the Note. Although Movants bear the burden of proof of each of the elements of Rule 24, the burden is minimal, *Berkeley Electric Co-op, Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 394 S.E.2d 712 (1990), and Movants would respectfully submit that their claims herein are more than sufficient to rise to the level that would justify their intervention as of right.

In addition, Movants would respectfully request that the foreclosure sale itself be set aside and the Order of Sale vacated, as Movants have previously been afforded no opportunity to appear in this action. Because they were never served with the Summons and Complaint in this case, they have not been able to raise any defenses to the sale or to assert their interest in the property. As all of the parties claiming an interest in the property were not present prior to the sale, Movants would request that the earlier Foreclosure Order be vacated, the sale set aside, and Movants be afforded their right to answer to the Complaint.

In the alternative, should the Court decline to grant Movants' Motion to Intervene and to Set Aside the Sale, Movants herewith make claim to entitlement to surplus funds generated by the sale of the real property, in accordance with Rule 71(c) of the South Carolina Rules of Civil

Procedure. This claim is made by Charles R. Giles, Jr. and Albert Sheppard, identified as Lenders in a Promissory Note and Guaranty Agreement executed by and between Lenders and Jacqueline and David Kroth, as Borrowers, on or about October 1, 2007, and secured by a mortgage on certain real property located at 127 W. Richardson Avenue, Summerville, South Carolina, TMS # 1370707018. This property is the subject matter of the instant action.

Pursuant to the terms of the Note and Mortgage, Lenders loaned to Borrowers the principal sum of \$100,000.00, of which no portion has been repaid, and which sum was further to accrue interest at a rate so as to create a lump-sum obligation of \$136,000.00. Borrowers were, in addition and pursuant to the terms of the Note, to make interest-only payments during the period of the loan. Borrowers have failed to make such payments, and the principal sum presently due and owing to Lenders pursuant to the terms of the Note and Mortgage is One Hundred Forty-Five Thousand (\$145,000.00) Dollars. A copy of the Promissory Note and the Affidavit of Charles R. Giles, Jr. are attached hereto.

Movants would ask that the Court permit them to intervene as of right, vacate the Order of Foreclosure and set aside the sale of the subject property, or, in the alternative, award Movants' the surplus funds remaining after payment of the first mortgage on the subject property to Plaintiff Southcoast Community Bank.

SMITH & KOONTZ, PA



---

Steven L. Smith  
7455 Cross County Road, Suite 1  
Post Office Box 40578  
Charleston, SC 29423  
843-760-0220; 843-552-2678 (fax)  
Attorneys for Movants

Charleston, SC  
May 15, 2009  
09-287

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )  
 )  
 SOUTHCOAST COMMUNITY BANK, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 LOW-COUNTRY STATE LEASING, )  
 LLC a/k/a LOW-COUNTRY STATE )  
 LEASING, LLC d/b/a MCGUIRES )  
 IRISH PUB, LLC; MCGUIRES IRISH )  
 PUB, LLC; JACQUELINE KROTH; )  
 DAVID A. KROTH; THE UNITED )  
 STATES OF AMERICA; SOUTH )  
 CAROLINA DEPARTMENT OF )  
 REVENUE; SOUTH CAROLINA )  
 EMPLOYMENT SECURITY )  
 COMMISSION; TOWN OF )  
 SUMMERVILLE; CAROLINA WASTE )  
 SERVICES; OK GROCERY; and )  
 QUATTLEBAUM & MURPHY, LLP, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 CASE NO. 2008-CP-18-1996

*Charles R. Giles, Jr.*  
 2009 MAY 15 PM 2:34  
 CERTIFIED COPY  
 CLERK OF COURT  
 DORCHESTER COUNTY

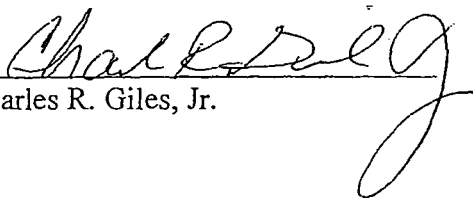
AFFIDAVIT OF CHARLES R. GILES, JR.

Charles R. Giles, Jr., being first duly sworn and cautioned, states as follows:

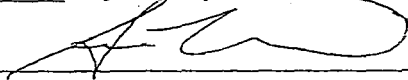
1. I make this Affidavit of my own free will and with personal knowledge of all of the facts contained herein.
2. On or about October 1, 2007, Albert Sheppard and I loaned the sum of One Hundred Thousand (\$100,000.00) Dollars to Jacqueline and David Kroth.
3. The Promissory Note executed by the Kroths was secured by certain real property, including property located at 127 W. Richardson Avenue, Summerville, South Carolina and identified by TMS # 1370707018.

4. The real property securing the Note was deeded in the name of Low-Country State Leasing, LLC d/b/a McGuire's Irish Pub.
5. The Promissory Note and security interest in the real property were duly recorded at the RMC Office of Dorchester County, Book 6301, Page 237, on October 8, 2007.
6. On May 15, 2009, I was informed that the real property securing the Note had been sold at foreclosure sale.
7. Upon information and belief, the foreclosure action was commenced on August 5, 2008, by Southcoast Community Bank.
8. Neither I nor Albert Sheppard were served with the Complaint in foreclosure and neither I nor Albert Sheppard is identified in the caption of the case as having an interest in the property, although the Promissory Note has been properly filed and recorded.
9. The principal of the Note remains unpaid, and it has accrued interest.
10. At this time, there is remaining a balance due and owing under the Promissory Note of One Hundred Forty-Five Thousand (\$145,000.00) Dollars.
11. I believe that Albert Sheppard and I are entitled to the surplus funds available as a result of the sale of the property securing the Promissory Note up to the sum of \$145,000.00.

FURTHER AFFIANT SAYETH NOT!

  
Charles R. Giles, Jr.

Sworn to and subscribed before me this  
15 day of May, 2009

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: 3-21-16

09-287



Recording Date: 10/08/2007

Instrument: 101

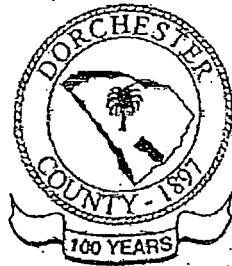
Book: 6301 Page: 237-242

FILED-RECORDED  
RMC / ROD

2007 Oct 08 PM 12:54:45

*Charles Giles*  
*209-2398*

DORCHESTER COUNTY  
SC Deed Rec Fee: .00  
Dor Co Deed Rec Fee: .00  
Filing Fee: 11.00  
Exemption #:  
MARGARET L. BAILEY  
Register of Deeds



THIS PAGE IS HEREBY ATTACHED AND MADE PART OF  
THE PERMANENT RECORD OF THIS DOCUMENT. IT IS  
NOT TO BE DETACHED OR REMOVED AND MUST BE  
CITED AS THE FIRST PAGE OF THE RECORDED  
DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR  
RECORDING PURPOSES AND IS NOT TO BE USED FOR  
ANY OTHER PURPOSE.

REGISTER OF DEEDS  
DORCHESTER COUNTY SOUTH CAROLINA  
MARGARET L. BAILEY, REGISTER  
POST OFFICE BOX 38  
ST. GEORGE, SC 29477  
843-563-0181 or 843-832-0181



starting on November 10, 2007. Payment must be received by no later than the 15<sup>th</sup> of the said month. Failure to receive payment by the 15<sup>th</sup> of the month will be considered delinquent and may be considered in default. It is the responsibility of the Borrower to notify the Lender of a late payment.

- Interest payments of \$ 3,000.00 will be paid to the Lender for a minimum of One (1) year and a maximum two (2) years. If the Borrower chooses to satisfy the outstanding debt of \$100,000.00 in a lump sum payment anytime within the first year, the settlement amount including interest will be calculated as follows:  

$$\begin{aligned} & \$ 3,000.00 \text{ (monthly interest)} \times 12 \text{ months} = \$ 36,000.00 + \\ & \$ 100,000.00 \text{ (total loan amount)} = \$ 136,000.00 \text{ payoff} \end{aligned}$$
- If the Borrower decides to continue its loan into the second year, monthly interest will continue at \$ 3,000.00 per month for 12 months. Early repayment of the loan by the Borrower at any time in the second year term will result in the same calculated payoff as in the previous year. Total due lump sum payment of \$ 136,000.00 to satisfy debt.
- First payment due November 10, 2007.
- One year minimum to expire on Friday, November 10, 2008.
- Two year maximum to expire on Saturday, November 10, 2009.
- Lenders must be notified within 45 days of the expiration date stating their intentions to either satisfy the loan or continue into the second term.
- If the repayment of the loan in its full amount including interest, cannot be satisfied by the November 10<sup>th</sup>, 2009 maturity date, notification by the Borrower must be given to the Lender 45 days prior to the expiration date. Remedies must take place to satisfy the outstanding debt. This will be determined by the Lender.
- Failure to make monthly interest payments and /or repayment of the loan at its due time will be considered in default of this agreement. Remedies of default will result in a call on the note backed by the title and deeds in lieu of the 407 Fairington Dr. Summerville, SC 29485 property and 127 W Richardson Ave Summerville, SC 29483 and protected by a dejan clause. A grace period of 30 days from the due date will be given only one time within a twelve month period.
- In the case of any financial difficulties within the business and demand for additional financial assistance is needed, it is the responsibility of the Borrower to notify the Lender to reassess its position. A determination will be made by the Lender contingent on the reasoning behind the shortfalls.
- Lenders are not responsible or liable for any pending or future lawsuits either criminal or domestic, federal or state liens, lawsuits, judgments, fines, etc. that may arise directly or indirectly as a result of the business known as McGuire's Irish Pub or its owners (Borrowers).
- Any disputes that may arise between the Borrower and Lender will be handled in a civil manner at an appropriate time and place. Reconciliation of any dispute that is not resolved by both parties will refer to legal counsel if necessary. The Negligent party will be responsible for the attorney fees incurred.
- If the Borrowers at any time during the terms of this agreement decide to sell any or all assets mentioned in this agreement, (home, business, commercial building) Lender must be notified immediately. Lender under this agreement reserves the first right of refusal to purchase any and/or all properties for fair market value. If first right of refusal is waived by the Lender, monthly interest payments will continue until closing of said property. At closing of said property, satisfaction of the outstanding debt owed to the Lender including interest must be paid in full.
- Certified Public Accountant Donald Smith is to be retained by the Borrower to insure

WITNESS our hand and seal this 1st day of October, 2007.

Signed, sealed and delivered in the presence of:

Stacy Zelensky  
(Witness 1)  
Melissa Hawae  
(Witness 2)

PROBATE:

STATE OF SOUTH CAROLINA            )  
COUNTY OF DORCHESTER            )                    PROBATE

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 1st day of October, 2007

Pennie Forden (Seal)

Stacy Zelensky

Notary Public for South Carolina  
My commission expires 1/24/2011



## EXHIBIT "A"

All that piece, parcel, or lot of land, with the buildings and improvements thereon, situate, lying and being on the Northeast side of Richardson Avenue formerly First South Street, in the Town of Summerville, County of Dorchester and State aforesaid; Butting and Bounding and Measuring and Containing, as follows, to wit: Northeast on the lands now or formerly of Grainger, Fifty-eight (58) feet; Southeast, on lands now or formerly of H.M. Guerin, Two Hundred and Eight (208) Feet; Southwest on Richardson Avenue, aforesaid, Fifty-eight (58) Feet; and Northwest in lands now or formerly of Arnold W. Komshrene, Sixty-One (61) Feet; be all of said dimensions more or less.

Subject to any and all easements, restrictions, and rights-of-way of record.

Being the same property conveyed to Low Country State Leasing, LLC D/B/A McGuire's Irish Pub by Deed of Michael Rabin and Elizabeth E. Rabin A/K/A Elizabeth D. Edelson and A/K/A Elizabeth E. Edelson dated October 8, 2004 and recorded in Book 4445 at Page 208 in the Dorchester County Register of Deeds Office.

TMS No.: 137-07-07-018

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )  
 )  
SOUTHCOAST COMMUNITY BANK, )  
 )  
Plaintiff, )  
 )

v. )

LOW-COUNTRY STATE LEASING, )  
 )  
LLC a/k/a LOW-COUNTRY STATE )  
 )  
LEASING, LLC d/b/a MCGUIRES )  
 )  
IRISH PUB, LLC; MCGUIRES IRISH )  
 )  
PUB, LLC; JACQUELINE KROTH; )  
 )  
DAVID A. KROTH; THE UNITED )  
 )  
STATES OF AMERICA; SOUTH )  
 )  
CAROLINA DEPARTMENT OF )  
 )  
REVENUE; SOUTH CAROLINA )  
 )  
EMPLOYMENT SECURITY )  
 )  
COMMISSION; TOWN OF )  
 )  
SUMMERVILLE; CAROLINA WASTE )  
 )  
SERVICES; OK GROCERY; and )  
 )  
QUATTLEBAUM & MURPHY, LLP, )  
 )  
Defendants. )

CHARLES R. GILES, JR. and ALBERT )  
 )  
SHEPPARD, )  
 )  
Intervenors/Claimants. )

IN THE COURT OF COMMON PLEAS  
CASE NO. 2008-CP-18-1996

CERTIFICATE OF SERVICE

*Charles R. Giles, Jr.*  
CLERK OF COURT  
DORCHESTER COUNTY  
2009 MAY 15 PM 2:34  
CERTIFIED COPY

I certify that on this date a copy of the foregoing Motion for Leave to Intervene and Set Aside Decree of Foreclosure and Sale, or, in the Alternative, for Excess Proceeds and Claim of Entitlement to Excess Proceeds were served by mailing or hand delivery on the following:

Samuel Altman, Esquire  
Derfner, Altman & Wilborn, LLC  
Southcoast Community Bank  
P.O. Box 600  
Charleston, SC 29402-0600

Low-Country State Leasing, LLC  
David Kroth, Registered Agent  
407 Fairington Drive  
Summerville, SC 29485

Jacqueline Kroth  
407 Fairington Drive  
Summerville, SC 29485

Ronald W. Urban  
Chief Counsel for Litigation South  
Carolina Department of Revenue  
P.O. Box 12265  
Columbia, SC 29211

George W. Fennell  
Registered Agent  
Carolina Waste Services, LLC  
5264-B International Blvd.  
North Charleston, SC 29418

McGuire's Irish Pub, LLC  
David Kroth Registered Agent  
407 Fairington Drive  
Summerville, SC 29485

D. Mark Stokes, Esquire  
Town of Summerville  
P.O. Box 60547  
N. Charleston, SC 29419

Charleston, South Carolina

May 15<sup>th</sup>, 2009  
09-287

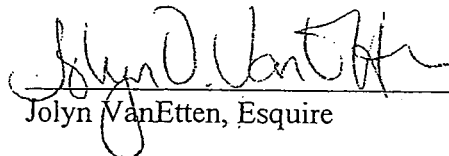
Lee E. Berlinsky  
Assistant U.S. Attorney  
151 Meeting Street, Suite 200  
Charleston, SC 29401

Romi Y. Robinson  
South Carolina Employment Security  
Commission  
P.O. Box 995  
Columbia, SC 29202

Beth Mickalis  
OK Grocery  
248 North Main Street  
Summerville, SC 29483

David A. Kroth  
407 Fairington Drive  
Summerville, SC 29485

Quattlebaum & Murphy, LLP  
Attorneys at Law  
136 West Richardson Avenue  
Summerville, SC 29483

  
Jolyn VanEtten, Esquire

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
CASE NO. 2008-CP-18-1996

SOUTHCOAST COMMUNITY BANK, )  
 )  
Plaintiff, )

v. )

CLAIM OF ENTITLEMENT TO  
EXCESS PROCEEDS

LOW-COUNTRY STATE LEASING, )  
LLC a/k/a LOW-COUNTRY STATE )  
LEASING, LLC d/b/a MCGUIRES )  
IRISH PUB, LLC; MCGUIRES IRISH )  
PUB, LLC; JACQUELINE KROTH; )  
DAVID A. KROTH; THE UNITED )  
STATES OF AMERICA; SOUTH )  
CAROLINA DEPARTMENT OF )  
REVENUE; SOUTH CAROLINA )  
EMPLOYMENT SECURITY )  
COMMISSION; TOWN OF )  
SUMMERVILLE; CAROLINA WASTE )  
SERVICES; OK GROCERY; and )  
QUATTLEBAUM & MURPHY, LLP, )  
 )  
Defendants. )

CHARLES R. GILES, JR. and ALBERT )  
SHEPPARD, )  
 )  
Intervenors/Claimants. )

CERTIFIED COPY  
2009 MAY 15 PM 2:36  
*Charles R. Giles, Jr.*  
CLERK OF COURT  
DORCHESTER COUNTY

Claimants Charles R. Giles, Jr. and Albert Sheppard, pursuant to Rule 71(c) of the South Carolina Rules of Civil Procedure, hereby make claim to the excess proceeds arising from the foreclosure and sale of the property in the instant action, and state as follows:

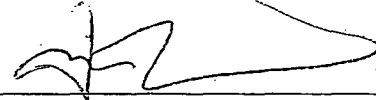
1. Claimants are Charles R. Giles, Jr. and Albert Sheppard, identified as "Lenders" in a Promissory Note executed October 1, 2007 and attached hereto.
2. The nature of the claim is a loan for payment of debts and personal or business purposes.

3. The claim arose on October 1, 2007, as evidenced by the attached Promissory Note executed by Claimants, as Lenders, and Jacqueline and David Kroth, as Borrowers, and filed and recorded in Book 6301, Page 237 of the RMC Office of Dorchester County, South Carolina.

4. The amount of the claim is One Hundred Forty-Five Thousand (\$145,000.00) Dollars, calculated as Principal of the loan in the sum of One Hundred Thousand (\$100,000.00) Dollars, plus interest at the rate of Three Thousand (\$3,000.00) Dollars per month commencing November, 2007, for a total of Twenty (20) months, less Five (5) payments of Three Thousand (\$3,000.00) made.

The Claimants hereby respectfully request that the Court protect their interests.

SMITH & KOONTZ, PA



---

Steven L. Smith  
7455 Cross County Road, Suite 1  
Post Office Box 40578  
Charleston, SC 29423  
843-760-0220; 843-552-2678 (fax)  
Attorneys for Movants

Charleston, SC  
May 15, 2009  
09-287

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )  
 )  
 SOUTHCOAST COMMUNITY BANK, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 LOW-COUNTRY STATE LEASING, )  
 )  
 LLC a/k/a LOW-COUNTRY STATE )  
 )  
 LEASING, LLC d/b/a MCGUIRES )  
 )  
 IRISH PUB, LLC; MCGUIRES IRISH )  
 )  
 PUB, LLC; JACQUELINE KROTH; )  
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 DAVID A. KROTH; THE UNITED )  
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 STATES OF AMERICA; SOUTH )  
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 CAROLINA DEPARTMENT OF )  
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 REVENUE; SOUTH CAROLINA )  
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 COMMISSION; TOWN OF )  
 )  
 SUMMERVILLE; CAROLINA WASTE )  
 )  
 SERVICES; OK GROCERY; and )  
 )  
 QUATTLEBAUM & MURPHY, LLP, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
 CASE NO. 2008-CP-18-1996

CERTIFIED COPY  
 2009 MAY 15 PM 2:36  
 Charles R. Giles, Jr.  
 CLERK OF COURT  
 DORCHESTER COUNTY

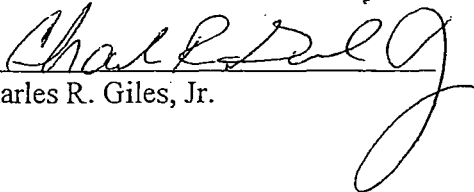
AFFIDAVIT OF CHARLES R. GILES, JR.

Charles R. Giles, Jr., being first duly sworn and cautioned, states as follows:

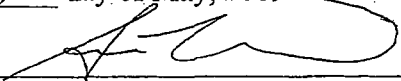
1. I make this Affidavit of my own free will and with personal knowledge of all of the facts contained herein.
2. On or about October 1, 2007, Albert Sheppard and I loaned the sum of One Hundred Thousand (\$100,000.00) Dollars to Jacqueline and David Kroth.
3. The Promissory Note executed by the Kroths was secured by certain real property, including property located at 127 W. Richardson Avenue, Summerville, South Carolina and identified by TMS # 1370707018.

4. The real property securing the Note was deeded in the name of Low-Country State Leasing, LLC d/b/a McGuire's Irish Pub.
5. The Promissory Note and security interest in the real property were duly recorded at the RMC Office of Dorchester County, Book 6301, Page 237, on October 8, 2007.
6. On May 15, 2009, I was informed that the real property securing the Note had been sold at foreclosure sale.
7. Upon information and belief, the foreclosure action was commenced on August 5, 2008, by Southcoast Community Bank.
8. Neither I nor Albert Sheppard were served with the Complaint in foreclosure and neither I nor Albert Sheppard is identified in the caption of the case as having an interest in the property, although the Promissory Note has been properly filed and recorded.
9. The principal of the Note remains unpaid, and it has accrued interest.
10. At this time, there is remaining a balance due and owing under the Promissory Note of One Hundred Forty-Five Thousand (\$145,000.00) Dollars.
11. I believe that Albert Sheppard and I are entitled to the surplus funds available as a result of the sale of the property securing the Promissory Note up to the sum of \$145,000.00.

FURTHER AFFIANT SAYETH NOT!

  
Charles R. Giles, Jr.

Sworn to and subscribed before me this  
15 day of May, 2009

  
Notary Public for South Carolina  
My Commission Expires: 3-21-16



starting on November 10, 2007. Payment must be received by no later than the 15<sup>th</sup> of the said month. Failure to receive payment by the 15<sup>th</sup> of the month will be considered delinquent and may be considered in default. It is the responsibility of the Borrower to notify the Lender of a late payment.


- Interest payments of \$ 3,000.00 will be paid to the Lender for a minimum of One (1) year and a maximum two (2) years. If the Borrower chooses to satisfy the outstanding debt of \$100,000.00 in a lump sum payment anytime within the first year, the settlement amount including interest will be calculated as follows:  
 $\$ 3,000.00 \text{ (monthly interest)} \times 12 \text{ months} = \$ 36,000.00 +$   
 $\$ 100,000.00 \text{ (total loan amount)} = \$ 136,000.00 \text{ payoff}$
- If the Borrower decides to continue its loan into the second year, monthly interest will continue at \$ 3,000.00 per month for 12 months. Early repayment of the loan by the Borrower at any time in the second year term will result in the same calculated payoff as in the previous year. Total due lump sum payment of \$ 136,000.00 to satisfy debt.
- ~~First payment due November 10, 2007.~~
- One year minimum to expire on Friday, November 10, 2008.
- Two year maximum to expire on Saturday, November 10, 2009.
- Lenders must be notified within 45 days of the expiration date stating their intentions to either satisfy the loan or continue into the second term.
- If the repayment of the loan in its full amount including interest, cannot be satisfied by the November 10<sup>th</sup>, 2009 maturity date, notification by the Borrower must be given to the Lender 45 days prior to the expiration date. Remedies must take place to satisfy the outstanding debt. This will be determined by the Lender.
- Failure to make monthly interest payments and /or repayment of the loan at its due time will be considered in default of this agreement. Remedies of default will result in a call on the note backed by the title and deeds in lieu of the 407 Fairington Dr. Summerville, SC 29485 property and 127 W Richardson Ave Summerville, SC 29483 and protected by a dejan clause. A grace period of 30 days from the due date will be given only one time within a twelve month period.
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- Lenders are not responsible or liable for any pending or future lawsuits either criminal or domestic, federal or state liens, lawsuits, judgments, fines, etc. that may arise directly or indirectly as a result of the business known as McGuire's Irish Pub or its owners (Borrowers).
- Any disputes that may arise between the Borrower and Lender will be handled in a civil manner at an appropriate time and place. Reconciliation of any dispute that is not resolved by both parties will refer to legal counsel if necessary. The Negligent party will be responsible for the attorney fees incurred.
- If the Borrowers at any time during the terms of this agreement decide to sell any or all assets mentioned in this agreement, (home, business, commercial building) Lender must be notified immediately. Lender under this agreement reserves the first right of refusal to purchase any and/or all properties for fair market value. If first right of refusal is waived by the Lender, monthly interest payments will continue until closing of said property. At closing of said property, satisfaction of the outstanding debt owed to the Lender including interest must be paid in full.
- Certified Public Accountant Donald Smith is to be retained by the Borrower to insure


adequate record keeping of all financial transactions and expenses for a minimum of 6 months. Accurate bookkeeping and accounting, along with a business plan, value purchasing and spending discipline, will be the goal to a successful return in the future.

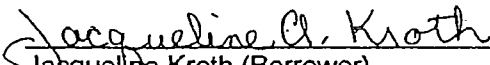
- Managerial authority, procedures, financial statements, etc., must be allocated by the Lender to insure quality control of the investment. Lenders will have the authority to request any and all aspects of the business operations. Daily operations will be conducted by the Borrowers.
- Representation of the Lenders and Borrowers will be delegated to Kelly Sheppard, currently a trusted employee of the Borrowers and family member of the Lender. She will oversee quality control of employees, inventory, customer service, operations, etc. All information obtained will be reported and discussed with her immediate supervisors will be David and Jacqueline Kroth.
- Contact information of all vendors, creditors, distributors etc. related to the business must be compiled for record keeping by the Lender.

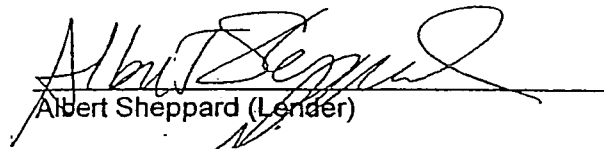
The terms and negotiations of this contract were discussed in length by the Borrower and the Lender. Legal representation has been utilized by both parties and will continue to be used in the structuring of the Operating Agreement as well as future counsel. Both contributing parties are in full, clear and complete understanding on the terms of this Agreement.

The terms and conditions contained in this Contract are confidential and shall not be made public to any other person or entity other than the legal representatives of the parties.

  
\_\_\_\_\_  
David Kroth (Borrower)

  
\_\_\_\_\_  
Charles R. Giles (Lender)

  
\_\_\_\_\_  
Jacqueline Kroth (Borrower)

  
\_\_\_\_\_  
Albert Sheppard (Lender)

WITNESS our hand and seal this 1st day of October, 2007.

Signed, sealed and delivered in the presence of:

Stacy Zelensky  
(Witness 1)  
Melissa Hawae  
(Witness 2)

PROBATE:

STATE OF SOUTH CAROLINA            )  
COUNTY OF DORCHESTER            )            PROBATE

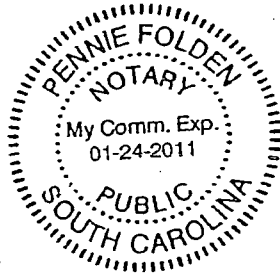
Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 1st day of October, 2007

Pennie Folden (Seal)

Stacy Zelensky

Notary Public for South Carolina  
My commission expires 1/24/2011



## EXHIBIT "A"

All that piece, parcel, or lot of land, with the buildings and improvements thereon, situate, lying and being on the Northeast side of Richardson Avenue formerly First South Street, in the Town of Summerville, County of Dorchester and State aforesaid; Butting and Bounding and Measuring and Containing, as follows, to wit: Northeast on the lands now or formerly of Grainger, Fifty-eight (58) feet; Southeast, on lands now or formerly of H.M. Guerin, Two Hundred and Eight (208) Feet; Southwest on Richardson Avenue, aforesaid, Fifty-eight (58) Feet; and Northwest in lands now or formerly of Arnold W. Komshrene, Sixty-One (61) Feet; be all of said dimensions more or less.

Subject to any and all easements, restrictions, and rights-of-way of record.

Being the same property conveyed to Low Country State Leasing, LLC D/B/A McGuire's Irish Pub by Deed of Michael Rabin and Elizabeth E. Rabin A/K/A Elizabeth D. Edelson and A/K/A Elizabeth E. Edelson dated October 8, 2004 and recorded in Book 4445 at Page 208 in the Dorchester County Register of Deeds Office.

TMS No.: 137-07-07-018

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
CASE NO. 2008-CP-18-1996

SOUTHCOAST COMMUNITY BANK, )  
 )  
Plaintiff, )

v. )

CERTIFICATE OF SERVICE

LOW-COUNTRY STATE LEASING, )  
 )  
LLC a/k/a LOW-COUNTRY STATE )  
 )  
LEASING, LLC d/b/a MCGUIRES )  
 )  
IRISH PUB, LLC; MCGUIRES IRISH )  
 )  
PUB, LLC; JACQUELINE KROTH; )  
 )  
DAVID A. KROTH; THE UNITED )  
 )  
STATES OF AMERICA; SOUTH )  
 )  
CAROLINA DEPARTMENT OF )  
 )  
REVENUE; SOUTH CAROLINA )  
 )  
EMPLOYMENT SECURITY )  
 )  
COMMISSION; TOWN OF )  
 )  
SUMMERVILLE; CAROLINA WASTE )  
 )  
SERVICES; OK GROCERY; and )  
 )  
QUATTLEBAUM & MURPHY, LLP, )  
 )  
Defendants. )

CHARLES R. GILES, JR. and ALBERT )  
 )  
SHEPPARD, )  
 )  
Intervenors/Claimants. )

*Charles R. Giles, Jr.*  
CLERK OF COURT  
DORCHESTER COUNTY  
2009 MAY 15 PM 2:36  
CERTIFIED COPY

I certify that on this date a copy of the foregoing Motion for Leave to Intervene and Set Aside Decree of Foreclosure and Sale, or, in the Alternative, for Excess Proceeds and Claim of Entitlement to Excess Proceeds were served by mailing or hand delivery on the following:

Samuel Altman, Esquire  
Derfner, Altman & Wilborn, LLC  
Southcoast Community Bank  
P.O. Box 600  
Charleston, SC 29402-0600

Low-Country State Leasing, LLC  
David Kroth, Registered Agent  
407 Fairington Drive  
Summerville, SC 29485

Jacqueline Kroth  
407 Fairington Drive  
Summerville, SC 29485

Ronald W. Urban  
Chief Counsel for Litigation South  
Carolina Department of Revenue  
P.O. Box 12265  
Columbia, SC 29211

George W. Fennell  
Registered Agent  
Carolina Waste Services, LLC  
5264-B International Blvd.  
North Charleston, SC 29418

McGuire's Irish Pub, LLC  
David Kroth Registered Agent  
407 Fairington Drive  
Summerville, SC 29485

D. Mark Stokes, Esquire  
Town of Summerville  
P.O. Box 60547  
N. Charleston, SC 29419


Lee E. Berlinsky  
Assistant U.S. Attorney  
151 Meeting Street, Suite 200  
Charleston, SC 29401

Romi Y. Robinson  
South Carolina Employment Security  
Commission  
P.O. Box 995  
Columbia, SC 29202

Beth Mickalis  
OK Grocery  
248 North Main Street  
Summerville, SC 29483

David A. Kroth  
407 Fairington Drive  
Summerville, SC 29485

Quattlebaum & Murphy, LLP  
Attorneys at Law  
136 West Richardson Avenue  
Summerville, SC 29483

  
\_\_\_\_\_  
Jolyn VanEtten, Esquire

Charleston, South Carolina

May 15<sup>th</sup>, 2009  
09-287

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )  
 )  
 Southcoast Community Bank, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Low-Country State Leasing, LLC a/ka )  
 Low-Country State Leasing, LLC d/ba )  
 McGuires Irish Pub, LLC; McGuires Irish )  
 Pub, LLC; Jacqueline Kroth; David A. )  
 Kroth; The United States of America; )  
 South Carolina Department of Revenue; )  
 South Carolina Employment Security )  
 Commission; Town of Summerville; )  
 Carolina Waste Services; and OK Grocery; )  
 and Quattlebaum & Murphy, LLP, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )  
 Charles R. Giles, Jr. and Albert )  
 Sheppard, )  
 )  
 Intervenor/Claimants. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 CASE NO.: 2008-CP-18-1996  
  
**RETURN TO THE MOTION  
 OF CHARLES R. GILES, JR.  
 AND ALBERT SHEPPARD**

Southcoast Community Bank (“Southcoast”), the Plaintiff in the above captioned foreclosure would respond to the Motion filed as follows:

The document by which the Intervenor/Claimants claim an interest in the subject real estate that was sold at a foreclosure sale is entitled Promissory Note and Guaranty. In Article I of the Agreement, it is specifically noted in the second paragraph that the tax records show that the owner of record is Low Country State Leasing, LLC d/b/a McGuire’s Irish Pub. The recorded document however, was not executed by the property owner, but was signed and indexed under the names

David Kroth and Jacqueline Kroth. In examining the records of Dorchester County or any county in South Carolina, Southcoast, as any foreclosing plaintiff, has the right to rely on the indexed records of each County, which in this case did not reflect the owner of the property being the signatory who had executed the promissory note and guaranty in favor of Mssrs. Giles and Sheppard.

In this case it appears that the persons or entities involved in preparing the document on which Intervenor/Claimants rely failed to properly prepare said document and further to insure that a properly executed document was filed of record in Dorchester County:

The Intervenor/Claimants motion should be dismissed as there is no basis in fact or in law supporting a motion to set aside the Decree of Foreclosure and Sale in this case.<sup>1</sup>

Respectfully Submitted,

DERFNER, ALTMAN & WILBORN, LLC

BY: 

Samuel H. Altman

PO Box 600

Charleston, SC 29402-0600

Phone: (843) 723-9804

Fax: (843) 723-7446

Email: [saltman@dawlegal.com](mailto:saltman@dawlegal.com)

June 19, 2009  
Charleston, South Carolina

ATTORNEYS FOR PLAINTIFF

<sup>1</sup> It is important to note that Southcoast Community Bank's first mortgage position is unquestioned and any claim, if any, that the Intervenor/Claimants have would be limited to one for surplus funds only.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Hearing has been served on the following by depositing same in the United States mail, properly addressed and postage prepaid, this

19th day of June, 2009 as follows:

Low-Country State Leasing, LLC  
David Kroth, Registered Agent  
407 Fairington Drive  
Summerville, SC 29485

McGuire's Irish Pub, LLC  
David A. Kroth, Registered Agent  
407 Fairington Drive  
Summerville, SC 29485

David A. Kroth  
407 Fairington Drive  
Summerville, SC 29485

Jacqueline Kroth  
407 Fairington Drive  
Summerville, SC 29485

Beth Mickalis  
OK Grocery  
248 N. Main Street  
Summerville, SC 29483

Quattlebaum & Murphy, LLP  
Attn: Pennie Folden  
136 W. Richardson Ave.  
Summerville, SC 29483

Romi Y. Robinson, Esquire  
South Carolina Employment Security  
Commission  
P.O. Box 995  
Columbia, SC 29202

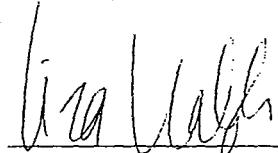
Ronald W. Urban, Esquire  
S.C. Department of Revenue & Taxation  
PO Box 12265  
Columbia, SC 29211

Lee E. Berlinsky, Esquire  
Assistant U.S. Attorney  
151 Meeting Street, Ste 200  
Charleston, SC 29401

D. Mark Stokes, Esquire  
Town of Summerville  
PO Box 60547  
North Charleston, SC 29419

George W. Fennell, Registered Agent  
Carolina Waste Services, LLC  
5264-B International Blvd  
North Charleston, SC 29418

Steven L. Smith, Esquire  
Smith & Koontz, PA  
P.O. Box 40578  
Charleston, SC 29423

  
\_\_\_\_\_  
Liza Walsh, Legal Assistant

U 1 1 1

JUN 18 2009

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT  
CASE NUMBER: 2008-CP-18-1996

Southcoast Community Bank, )  
 )  
Plaintiff, )

vs. )  
 )

Low-Country State Leasing, LLC )  
a/k/a Low-Country State Leasing, )  
LLC d/b/a McGuire's Irish Pub, LLC; )  
McGuire's Irish Pub, LLC; )  
Jacqueline Kroth; David A. Kroth; )  
The United States of America; )  
South Carolina Department of Revenue; )  
South Carolina Employment Security )  
Commission; Town of Summerville; )  
Carolina Waste Services; OK Grocery; )  
and Quattlebaum & Murphy, LLP, )  
 )  
Defendants. )

**NOTICE OF HEARING**

CERTIFIED COPY  
2009 JUN 16 PM 2:48  
Clerk of Court  
DORCHESTER COUNTY

TO: South Carolina Department of Revenue; Murphy Law Firm, LLC;  
United States of America; South Carolina Employment Security  
Commission; Town of Summerville; Charles R. Giles, Jr.; Albert  
Sheppard and their attorneys.

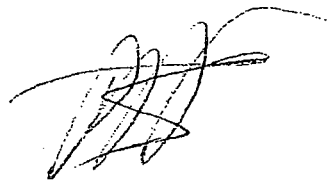
PLEASE TAKE NOTICE of the following hearing, time and place.

Nature of hearing: Motion For Leave To Intervene and Set Aside  
Decree of Foreclosure and Sale;  
Entitlement to Surplus Fund

Date and time: Tuesday, August 11, 2009 at 10:30 a.m.

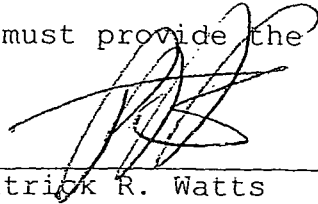
Place: Dorchester County Courthouse  
St. George, South Carolina

Presiding Judge: Patrick R. Watts, Master in Equity



Any party desiring a verbatim record must provide the reporter.

June 16, 2009



Patrick R. Watts  
Master in Equity

I hereby certify that as assistant to the Dorchester County Master in Equity I personally mailed a copy of the attached Notice of Hearing to the persons whose names and addresses appear below by depositing such, properly addressed with correct postage prepaid for first class delivery, in the United States mail at the United States Post Office for St. George, South Carolina, at 5:30 o'clock p.m. on June 16, 2009.

~~Ronald W. Urban~~  
Chief Counsel for Litigation  
South Carolina Dept. of Revenue  
P.O. Box 12265  
Columbia, SC 29211

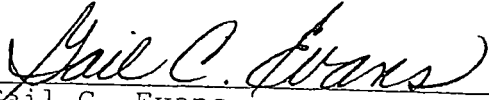
Christopher J. Murphy  
Attorney at Law  
136 W. Richardson Avenue  
Summerville, SC 29483

Lee E. Berlinsky  
Assistant U.S. Attorney  
151 Meeting Street; Ste 200  
Charleston, SC 29401

Romi Y. Robinson  
Attorney for SCESC  
P.O. Box 995  
Columbia, SC 29202

D. Mark Stokes  
Attorney at Law  
P.O. Box 60547  
N. Charleston, SC 29419

Steven L. Smith  
Attorney at Law  
P.O. Box 40578  
Charleston, SC 29423

  
Gail C. Evans





Recording Date: 10/08/2007 Instrument: 101 Book: 6301 Page: 237-242

FILED-RECORDED  
RMC / ROD

2007 Oct 08 PM 12:54:45

DORCHESTER COUNTY  
SC Deed Rec Fee: .00  
Dor Co Deed Rec Fee: .00  
Filing Fee: 11.00  
Exemption #:  
MARGARET L. BAILEY  
Register of Deeds



THIS PAGE IS HEREBY ATTACHED AND MADE PART OF  
THE PERMANENT RECORD OF THIS DOCUMENT. IT IS  
NOT TO BE DETACHED OR REMOVED AND MUST BE  
CITED AS THE FIRST PAGE OF THE RECORDED  
DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR  
RECORDING PURPOSES AND IS NOT TO BE USED FOR  
ANY OTHER PURPOSE.

REGISTER OF DEEDS  
DORCHESTER COUNTY SOUTH CAROLINA  
MARGARET L. BAILEY, REGISTER  
POST OFFICE BOX 38  
ST. GEORGE, SC 29477  
843-563-0181 or 843-832-0181

FILED/RECORDED  
October 8, 2007  
DORCHESTER COUNTY  
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER ) PROMISSORY / GUARANTY AGREEMENT

This Agreement is entered into as of the Effective Date of October 1, 2007 (as defined herein) between Albert Sheppard and Charles R. Giles Jr., having a principal address of P.O.Box 882 Summerville, SC 29484 (Lender) and David and Jacqueline Kroth, AKA Low country State Leasing, AKA McGuire's Irish Pub having its principal address of 407 Fairington Drive Summerville, SC 29485 and/or 127 W Richardson Ave. Summerville, SC 29483 (Borrower)

ARTICLE I

AGREEMENT OF TERMS

In consideration of the agreements, Lender hereby agrees to loan to the Borrower (as defined below) the amount of \$12,405.33 made payable to Rodgers, Townsend & Thomas, PC for the settlement purposes only regarding the foreclosure of their home at 407 Fairington Drive Summerville, SC 29485.

Furthermore, the Lender has agreed to include additional funds as a loan to David and Jacqueline Kroth, owners of the commercial building and business located at 127 W Richardson Ave. Summerville, SC 29483 known as McGuire's Irish Pub. Tax records show the owner of record as Low Country State Leasing, LLC DBA as McGuire's Irish Pub. This loan will represent the outstanding, delinquent taxes owed to the State of South Carolina by the Borrower as well as miscellaneous debts accrued in order to satisfy its debtors and reopen for business. Debts paid by Lender not to exceed \$100,000.00. These debts are to be secured by a Dejan clause with deeds in lieu, holding as collateral the title and deeds in lieu of the two properties stated in this agreement as Exhibit 1 and 2. The terms and conditions of this Agreement are defined below in Article II.

ARTICLE II

DEFINED TERMS AND CONDITIONS

FOR VALUE AND CONSIDERATION RECEIVED, David and Jacqueline Kroth (Borrower) personally guarantee to repay Albert Sheppard and Charles R. Giles Jr. (Lender) in full, the total amount borrowed. Repayment of funds in the amount of \$ 100,000.00 plus interest includes the satisfaction and settlement regarding the foreclosure of 407 Fairington Drive Summerville, SC 29485. This will be secured by holding title and deeds in lieu of the primary residence bearing TMS # 1710203015 and commercial building and business bearing TMS # 1370707018 located in Dorchester County, South Carolina.

Both parties are to amend existing operating agreement if one exists or create a new operating agreement between the Lender and the Borrower within 5 business days to include the following:

Repayment terms: As agreed, the repayment of the loan will be structured as follows:

- Interest only monthly payments in the amount of \$ 3,000.00 will be due every month

*pet:*  
PO BOX 882 Summerville SC 29484

starting on November 10, 2007. Payment must be received by no later than the 15<sup>th</sup> of the said month. Failure to receive payment by the 15<sup>th</sup> of the month will be considered delinquent and may be considered in default. It is the responsibility of the Borrower to notify the Lender of a late payment.


- Interest payments of \$ 3,000.00 will be paid to the Lender for a minimum of One (1) year and a maximum two (2) years. If the Borrower chooses to satisfy the outstanding debt of \$100,000.00 in a lump sum payment anytime within the first year, the settlement amount including interest will be calculated as follows:  
 $\$ 3,000.00 \text{ (monthly interest)} \times 12 \text{ months} = \$ 36,000.00 +$   
 $\$ 100,000.00 \text{ (total loan amount)} = \$ 136,000.00 \text{ payoff}$
- If the Borrower decides to continue its loan into the second year, monthly interest will continue at \$ 3,000.00 per month for 12 months. Early repayment of the loan by the Borrower at any time in the second year term will result in the same calculated payoff as in the previous year. Total due lump sum payment of \$ 136,000.00 to satisfy debt.
- First payment due November 10, 2007.
- One year minimum to expire on Friday, November 10, 2008.
- Two year maximum to expire on Saturday, November 10, 2009.
- Lenders must be notified within 45 days of the expiration date stating their intentions to either satisfy the loan or continue into the second term.
- If the repayment of the loan in its full amount including interest, cannot be satisfied by the November 10<sup>th</sup>, 2009 maturity date, notification by the Borrower must be given to the Lender 45 days prior to the expiration date. Remedies must take place to satisfy the outstanding debt. This will be determined by the Lender.
- Failure to make monthly interest payments and /or repayment of the loan at its due time will be considered in default of this agreement. Remedies of default will result in a call on the note backed by the title and deeds in lieu of the 407 Fairington Dr. Summerville, SC 29485 property and 127 W Richardson Ave Summerville, SC 29483 and protected by a dejan clause. A grace period of 30 days from the due date will be given only one time within a twelve month period.
- In the case of any financial difficulties within the business and demand for additional financial assistance is needed, it is the responsibility of the Borrower to notify the Lender to reassess its position. A determination will be made by the Lender contingent on the reasoning behind the shortfalls.
- Lenders are not responsible or liable for any pending or future lawsuits either criminal or domestic, federal or state liens, lawsuits, judgments, fines, etc. that may arise directly or indirectly as a result of the business known as McGuire's Irish Pub or its owners (Borrowers).
- Any disputes that may arise between the Borrower and Lender will be handled in a civil manner at an appropriate time and place. Reconciliation of any dispute that is not resolved by both parties will refer to legal counsel if necessary. The Negligent party will be responsible for the attorney fees incurred.
- If the Borrowers at any time during the terms of this agreement decide to sell any or all assets mentioned in this agreement, (home, business, commercial building) Lender must be notified immediately. Lender under this agreement reserves the first right of refusal to purchase any and/or all properties for fair market value. If first right of refusal is waived by the Lender, monthly interest payments will continue until closing of said property. At closing of said property, satisfaction of the outstanding debt owed to the Lender including interest must be paid in full.
- Certified Public Accountant Donald Smith is to be retained by the Borrower to insure


adequate record keeping of all financial transactions and expenses for a minimum of 6 months. Accurate bookkeeping and accounting, along with a business plan, value purchasing and spending discipline, will be the goal to a successful return in the future.

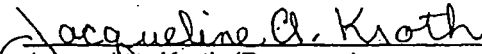
- Managerial authority, procedures, financial statements, etc., must be allocated by the Lender to insure quality control of the investment. Lenders will have the authority to request any and all aspects of the business operations. Daily operations will be conducted by the Borrowers.
- Representation of the Lenders and Borrowers will be delegated to Kelly Sheppard, currently a trusted employee of the Borrowers and family member of the Lender. She will oversee quality control of employees, inventory, customer service, operations, etc. All information obtained will be reported and discussed with her immediate supervisors will be David and Jacqueline Kroth.
- Contact information of all vendors, creditors, distributors etc. related to the business must be compiled for record keeping by the Lender.

The terms and negotiations of this contract were discussed in length by the Borrower and the Lender. Legal representation has been utilized by both parties and will continue to be used in the structuring of the Operating Agreement as well as future counsel. Both contributing parties are in full, clear and complete understanding on the terms of this Agreement.

The terms and conditions contained in this Contract are confidential and shall not be made public to any other person or entity other than the legal representatives of the parties.

  
\_\_\_\_\_  
David Kroth (Borrower)

  
\_\_\_\_\_  
Charles R. Giles (Lender)

  
\_\_\_\_\_  
Jacqueline Kroth (Borrower)

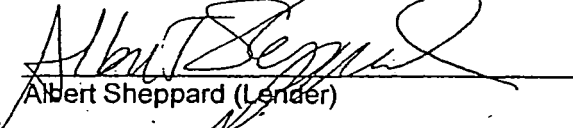
  
\_\_\_\_\_  
Albert Sheppard (Lender)



EXHIBIT "A"

All that piece, parcel, or lot of land, with the buildings and improvements thereon, situate, lying and being on the Northeast side of Richardson Avenue formerly First South Street, in the Town of Summerville, County of Dorchester and State aforesaid; Butting and Bounding and Measuring and Containing, as follows, to wit: Northeast on the lands now or formerly of Grainger, Fifty-eight (58) feet; Southeast, on lands now or formerly of H.M. Guerin, Two Hundred and Eight (208) Feet; Southwest on Richardson Avenue, aforesaid, Fifty-eight (58) Feet; and Northwest in lands now or formerly of Arnold W. Kornshrene, Sixty-One (61) Feet; be all of said dimensions more or less.

Subject to any and all easements, restrictions, and rights-of-way of record.

Being the same property conveyed to Low Country State Leasing, LLC D/B/A McGuire's Irish Pub by Deed of Michael Rabin and Elizabeth E. Rabin A/K/A Elizabeth D. Edelson and A/K/A Elizabeth E. Edelson dated October 8, 2004 and recorded in Book 4445 at Page 208 in the Dorchester County Register of Deeds Office.

TMS No.: 137-07-07-018

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



---

Steven L. Smith  
Smith and Koontz, P.A.  
P.O. Box 40578  
Charleston, SC 29423-0578  
(803) 760-0220  
Attorney for Appellant

January 12 2010