

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

Gordon G. Cooper, Master-in-Equity

Case No. 2009-CP-42-6973

**RECEIVED**

APR 24 2012

**SC Court of Appeals**

LOP Capital, LLC,


Appellant

v.

COSIMO, LLC, Capital Investment  
Funding, LLC, and CIF Property  
Holdings, LLC,

Respondents.

**APPELLANT'S MOTION TO STRIKE RESPONDENTS' "ADDITIONAL MATTERS  
TO BE INCLUDED" FROM THE RECORD ON APPEAL**

  
Nelson S. Chase, Esq.  
SC Bar No. 12528  
1950 Cherokee Rose Drive  
Mt. Pleasant, SC 29466  
Telephone: (843) 971-5250  
Email: chase@chasecompanies.com  
*Attorney for Appellant*

April 19, 2012

**APPELLANT'S MOTION TO STRIKE RESPONDENTS' "ADDITIONAL  
MATTERS TO BE INCLUDED" FROM THE RECORD ON APPEAL**

Appellant LOP Capital, LLC moves, pursuant to Rules 209(b) and 210©), SCACR for an order striking the Respondents' "additional matters to be included in the record on appeal," with the exception of the "Transcript of Motions hearing held on September 21, 2011" (#7 requested addition to record on appeal) from the record on appeal and states as follows:

- A. Respondent filed his initial brief on March 30, 2012 and attached to that Respondents' Designation of Additional Matters to be included in the Record of Appeal and set forth 9 items to be included in the record on appeal.
- B. Appellant objects and requests to be stricken items #1, #2, #3, #4, #5, #6, #8 and #9.
- C. This appeal is not from a trial on the merits but is rather limited to the lower courts' sua ponte dismissal and the appeal is limited because, specifically, none of the Respondents' additional matters aid this Court in determining (i) whether the lower court erred in dismissing the action for a failure to answer a "counterclaim"; and (ii) whether the lower court erred in failing to allow the Plaintiff ample time to add a necessary party before dismissing the action. Therefore, they should not be included in the Record on Appeal. Rules 209(b) & 210(c), SCACR.
- D. None of the additional matters requested by Respondant aid this court in determining those limited appellate issues.

**RESPONDENTS' REQUESTED ADDITIONS**

- 1) **Complaint of LOP Capital, LLC, filed on December 30, 2009:** Duplicative of Plaintiff's First Amended Complaint and not necessary to review for the issues addressed in this appeal.
- 2) **Answer and Counterclaim of COSIMO, LLC, Capital Investment Funding, LLC, and CIF Property Holdings, LLC, filed on February 19, 2010:** Duplicative of Defendants' Second Amended Answer and Counterclaim and not necessary to review for the issues addressed in this appeal.

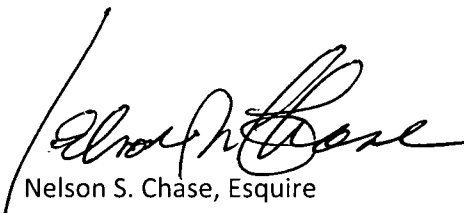
- 3) **Answer to Counterclaim to First Amended Complaint of LOP Capital, LLC, filed on April 25, 2011:** Duplicative of Defendants' Second Amended Answer and Counterclaim and not necessary to review for the issues addressed in this appeal
- 4) **Amended Answer and Counterclaim to First Amended Complaint of LOP Capital, LLC, dated September 6, 2011:** Duplicative of Defendants' Second Amended Answer and Counterclaim and not necessary to review for the issues addressed in this appeal
- 5) **Defendants Return to Plaintiff's Motion to Strike and For Other Relief, filed on September 21, 2011:** This matter is not mentioned in the Respondents' Initial Reply Brief
- 6) **Affidavit of Jerry Saad, with attachments, filed September 21, 2011:** this document was not included in the transcript, pleadings, orders, or exhibits presented to the lower court. This purported trial document has no bearing on the issues surrounding the lower court's dismissal currently before this Court.
- 7) **Transcript of Motions hearing held on September 21, 2011: Appellant has no objection to this request** as it will aid this court particularly as to Respondants' request for #6, Affidavit of Jerry Saad, with attachments, filed September 21, 2011, and attached to this motion.  
  
This affidavit with over 100 pages of attachments was never marked as an exhibit, never offered as an exhibit, never made part of the record and never accepted by the court as an exhibit. The Transcript of the hearing on September 21, 2011 which is attached with this motion and is requested as Respondants' exhibit of #7, clearly demonstrates that document #6 is not part of Record on Appeal.
- 8) **Complaint styled LOP Capital, LLC and Strategic Lending Solution, LLC, v. COSIMO, LLC, Capital Investment Funding, LLC and CIF Property Holdings, LLC, Case No. 2011-CP-42-4876, filed on November 8, 2011:** Not relevant to any issue presently before this court.
- 9) **Motion to Alter or Amend the Judgment filed by LOP Capital, LLC filed on November 18, 2011:** Duplicative of Plaintiff's Amended Motion to Alter or Amend and not relevant to any issue presently before this court.

E. Respondants' request to add to Record on Appeal as discussed *infra* is being requested only for purpose of obfuscation and goes well beyond the limited issues on appeal.

F. Appellant is prepared to file its final brief with the inclusion of the September 21, 2011 transcript and to have the court rule on this appeal on an expedited basis as requested in Appellant's earlier filing of its brief.

WHEREFORE, the Appellant prays the Court will issue an order striking the inclusion of the matters set forth above #1, #2, #3, #4, #5, #6, #8, and # 9, from the Record on Appeal except as to #7 and for such other relief as the Court deems just, prudent and proper.

RESPECTFULLY SUBMITTED,



Nelson S. Chase, Esquire

1950 Cherokee Rose Drive  
Mt. Pleasant, SC 29466  
(842) 971-5250  
Email: [chase@chasecompanies.com](mailto:chase@chasecompanies.com)  
Attorney for Appellant

Charleston, South Carolina

April 20, 2012

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**  
APR 24 2012  
**SC Court of Appeals**

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

Gordon G. Cooper, Master-in-Equity

Case No. 2009-CP-42-6973

LOP Capital, LLC,

Appellant

v.

COSIMO, LLC, Capital Investment  
Funding, LLC, and CIF Property  
Holdings, LLC,

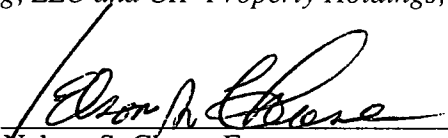
Respondent.

PROOF OF SERVICE

I certify that I have served the **APPELLANT'S MOTION TO STRIKE RESPONDENTS' "ADDITIONAL MATTERS TO BE INCLUDED" FROM THE RECORD ON APPEAL** on Respondents by depositing a copy of it in the United States Mail, postage prepaid, on April 19, 2012, addressed to their respective attorney of record:

George Brandt, Esq.  
360 East Henry Street, Suite 101  
Spartanburg, SC 29302  
*Attorney for Respondent Cosimo, LLC*

Stanley T. Case, Esq.  
P.O. Drawer 451  
Spartanburg, SC 29302  
*Attorney for Respondents Capital Investment  
Funding, LLC and CIF Property Holdings, LLC*

  
Nelson S. Chase, Esq.  
SC Bar No. 12528  
1950 Cherokee Rose Drive  
Mt. Pleasant, SC 29466  
Telephone: (843) 971-5250  
Email: chase@chasecompanies.com  
*Attorney for Appellant*

April 19, 2012

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**SC Court of Appeals**

1 STATE OF SOUTH CAROLINA

2 COUNTY OF SPARTANBURG

3 LOP CAPITAL, LLC,

4 PLAINTIFF,

5

6 VS.

7 COSIMO, LLC, CAPITAL INVESTMENT  
8 FUNDING, LLC, AND CIF PROPERTY  
9 HOLDINGS, LLC,

10 DEFENDANTS.

COURT OF COMMON PLEAS

TRANSCRIPT OF MOTIONS

(2009CP-42-6973)

Spartanburg, South Carolina

11 REFERENCE HELD:

SEPTEMBER 21, 2011.

12  
13 BEFORE:

HONORABLE GORDON G. COOPER,  
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

14  
15

BY: NELSON S. CHASE, ESQUIRE  
Attorney for the Plaintiff.

16  
17

BUTLER, MEANS, EVINS & BROWNE  
BY: STANLEY T. CASE, ESQUIRE  
Attorneys for the Defendants.

18  
19

MR. GEORGE BRANDT, III, WAS PRESENT.

20

MR. ROBERT POHL WAS PRESENT.

21

MR. TODD DARWIN WAS PRESENT.

22

23

Sarah Hollis, Court Reporter

24

25

1 THE COURT: We go on the record in the case 2009-6973, LOP Capital, LLC, versus Cosimo,  
2 LLC, Capital Investment Funding, LLC, and CIF Property Holdings, LLC. And pursuant to the  
3 conference call that we had last week the final hearing was reset and this time is being used to  
4 take care of number 1, the Plaintiff's Motion to Strike and other matters that Mr. Chase has  
5 mentioned during the telephone conversation. The Motion for Protection previously filed by  
6 Scott Pfeiffer became moot, correct?

7 MR. CASE: Yes sir, by the rescheduling of the hearing.

8 MR. CHASE: And I have also renotified him of the cancellation of the subpoena with today's  
9 date and it will be reissued—

10 THE COURT: All right.

11 MR. CHASE: With the dates of October 31 and November 1, 2011.

12 THE COURT: All right. And one housekeeping matter Mr. Chase. I was reviewing the file  
13 from the beginning, from the first Complaint that was filed and the Plaintiff's name at that time  
14 was LOP Capitol, C-a-p-i-t-o-l and it was listed as an Illinois corporation and then in the  
15 subsequent filings it was LOP Capital, LLC, and listed as a New Mexico corporation with its  
16 principal office in Illinois. Is that correct?

17 MR. CHASE: Yes, Your Honor.

18 THE COURT: Which is it?

19 MR. CHASE: It is Capital with an "a".

20 THE COURT: With an "a". And it is a corporation where? An LLC where?

21 MR. CHASE: It is an LLC in Illinois and I believe that they are authorized to do business also  
22 in Arizona or New Mexico. I am really not sure.

23 THE COURT: What I would like for you to do Mr. Chase is to file with the Court a copy of  
24 their Certificate of existence, the corporate status.

25 MR. CHASE: Yes, Your Honor.

1 THE COURT: Because as I was reviewing it the change came in the Amended Complaint and  
2 also that changed the spelling of the name?

3 MR. CHASE: I will do so.

4 THE COURT: All right. Then lets go ahead and proceed then with the Motion of the Plaintiff  
5 to strike the Defendant's Amended Answer and Counterclaim and for Sanctions for Contempt of  
6 Court, Mr. Chase.

7 MR. CHASE: Thank you, Your Honor. Does the Court prefer that I stand or may I continue to  
8 sit?

9 THE COURT: Well you can stand and be short or sit and be long. I guess that is -- if you don't  
10 stand up then I have got a good hint that it is going to be -- no, go ahead. That is fine. You may  
11 remain seated.

12 MR. CHASE: Yes sir. I will try and be brief, Your Honor.

13 THE COURT: All right.

14 MR. CHASE: Your Honor, this is a motion to strike the amended Answer and counterclaim and  
15 for sanctions. And I am not in the habit of requesting -- and I have been practicing a long time  
16 and I am not in the habit of requesting sanctions easily. I thought about this for a while and  
17 determined that if there was any case that deserved sanctions this was it. This has been a case  
18 that has been pending for almost two years. I have been given nothing but activities that are  
19 designed to obfuscate or make this more confusing than it is. And then you know I understand  
20 that kind of strategy. What I don't understand is the contempt which Mr. Case has shown this  
21 Court and the disrespect both for the practice of law and for his fellow counsel. Regarding  
22 matters that were clear, unambiguous and very forthright in your April 25<sup>th</sup> ruling. The matters  
23 that come to mind are, the first one is the continuing of allegations in the Answer and  
24 Counterclaim where he again brings up the issue of wanting to look behind the Georgia judgment  
25 which this Court is very clear on Page 14 of the transcript that was given full faith and credit to

1 in its attempted collateral attack. Now if this had been just an isolated incident I don't know if I  
2 would have, well I may still have been inclined to request sanctions but this is obviously a pattern  
3 of Mr. Case's. We were in court for the first meeting of creditors in the bankruptcy and at that  
4 time it came up and I am not sure in what context but it came up that the Court had already made  
5 some ruling and this was kind of a prelude to my filing my 362 request for lifting of the stay.  
6 And I mentioned that one of those ruling was that the Court had already ruled on the issue of the  
7 Georgia judgment being entitled to full faith and credit. Mr. Case got up and told the Court that  
8 basically that I was making a misrepresentation. That the Court made no such ruling. And I  
9 was really taken back by that. When we left the courtroom I told Mr. Case that I was going to  
10 order a copy of the Transcript and send it to him. I did so. And I itemized in that letter to him  
11 the Court's is making that specific reference and that specific ruling not on one occasion but on  
12 several places in this transcript. And I said and I will expect an apology from you and no  
13 apology was forthcoming and instead I get an Answer to the second amended Complaint which  
14 again raising the issue of attacking the Georgia judgment. Now I don't understand whether Mr.  
15 Case is having trouble reading or understanding the clear language of the Court or whether he  
16 just thinks that the Court is going to you know had forgotten about this important issue and so he  
17 brings it up again which requires me then to file a response. So I think that if the Court looks up  
18 the definition of contempt, I think that this fits on all four categories. One feels that there is an  
19 order of the Court that this is communicated that the individual disregarded that order and did  
20 something in contempt of that order. And this fits on a four. If we were in Federal Court this  
21 would be a Rule 11 motion for sanctions because there is no factual basis, legal basis for him  
22 bringing this issue up again but yet he insists on doing that. The concurrent Rule in South  
23 Carolina is 3.1 which is basically I am stating a Rule 11 under the Federal rules. So I want Mr.  
24 Case to be sanction for having brought up a matter which was settled by this Court. By the way  
25 this motion is being made to strike under Rule 12(f). Now leaning to the second part of that, the

1 motion to strike there is the issue of unclean hands. Mr. Case brings up the issue of unclean  
2 hands as being an equitable defense in this case and I would call the Court's attention to apart of  
3 the April 25<sup>th</sup> hearing in which I raised the issue on page 15 that he has used conclusory language  
4 and there are no facts set forth as to what I am supposed to defend on the issue of unclean hands.  
5 And actually on Page 16, Your Honor, of that Transcript at Line 5, Mr. Case said, well at the  
6 bottom it says -- I don't know what he is talking about. It says under the circumstances and all I  
7 am asking this Court to do is to order him to provide me, before the trial date with facts that I can  
8 -- that I will understand -- in an understandable way that I can understand what it is I have to  
9 defend against on this Counterclaim. I think that's fair. The Court said okay, Mr. Case. And  
10 Mr. Case answered -- yes Your Honor, I agree that we will put in facts. And then he says on the  
11 bottom of page 18, starting at line 17, he says, this is Mr. Case speaking, but at any rate, if he  
12 wants a more definite pleading, you know, I could give him a more definite pleading. And then  
13 you said Your Honor, will that is what I would like. And Mr. Case said yes sir, a more definite  
14 pleading. A more definite pleading as to what supports the allegations. And Mr. Case said yes  
15 sir. And then you even gave him a time period in which to do that which he did not adhere to.  
16 Now I understand that there was an intervening bankruptcy that stayed the proceedings. So what  
17 I did was in terms of the things that you asked him to produce on May 4<sup>th</sup> or May 5<sup>th</sup> you asked  
18 him to produce various things and one of them was a more definite statement on allegations  
19 supporting his defense of unclean hands. What I did was there was a hearing in the bankruptcy  
20 court on the 362 motion which was on August 12<sup>th</sup>. And the Order was not entered until the 29<sup>th</sup>.  
21 So I know the Court speaks through its orders and so the August 29<sup>th</sup> date is the operative date  
22 and what I did is I added the same number of days to the August 29<sup>th</sup> date when the Court enter  
23 an order lifting the stay as to the number of days that the Court gave Mr. Case to produce this  
24 between our April 25<sup>th</sup> hearing and the May 4<sup>th</sup> production of these documents. And I added that  
25 to it and it came to September 9<sup>th</sup>. That is giving him an extra day. So I got this and I looked at

1 the Answer and sure enough Mr. Case states unconvincing language, oh by the way, I should tell  
2 the Court that I was handed the term or basically I got the Answer to my Motion to Strike and I  
3 was handed it when Mr. Case walked in at 2:30 along with these documents. I had never -- I had  
4 seen some of these documents because they are apart of my discovery and part of information I  
5 already have in the file. But what I want to point out to the Court and I am going to look at the --  
6 referring the Court to his Answer. Give me one second, Your Honor. I am sorry, I can't put my  
7 fingers on it immediately Your Honor but I will find it before this hearing is concluded, oh here it  
8 is. It was attached to his Return and I didn't bring it separately. Again Mr. Case ignored the  
9 Court's ruling. Oh here it is. It would be on Page 9 of his Answer. And again Mr. Case being  
10 a man of habit does the same thing. He alleges and I am just going to pick out some words at  
11 the ending. I got a chance to look at this five minutes before the Court took the bench. He says  
12 in paragraph 46, it says that we acted together with the principals, he mentions a number of  
13 companies and obviously I recognize Rolling Hills because they are apart of this transaction.  
14 And he also mentions Gene Hopper and Chuck Pinion. And I know who they are because they  
15 are the principals of the company that was foreclosed on by Mr. Pfeiffer and foreclosed upon  
16 improperly and received a deed in lieu of foreclosure but they were the principals in D&D and  
17 they personally guaranteed the loan that was made to Capital Investment Funding. But here is  
18 what he says, acted in concert and used the words in the next line, the parties entered into certain  
19 complex financial transactions which were not arms length transactions, and then he adds  
20 something which makes no sense to me at all and the development projects were not feasible and  
21 were not capable of successful completion. That is speculative, I mean at the time that this was  
22 done who knew whether or not they were going to be feasible or not capable of successful  
23 completion. To me the only person who knew that was Mr. Pfeiffer and the principals of the  
24 Defendants Cosimo and Capital Investment Funding and they didn't say that because in fact it  
25 was two months after they made the assignment to the Plaintiff, in this case LOP Capital that

1 they started the foreclosure. And so they knew that D&D was in default and in fact I can point  
2 to one fact that shows that and that is that this security from D&D to Cosimo/CIF was dated  
3 2002, 2002 and the note from D&D was a one year note so it was already in default at the time  
4 that they gave the assignment to Capital Investment Funding and I find no wording in any  
5 documents of an extension or a renegotiation or documents to support that they weren't in  
6 default in 2002 when Mr. Pfeiffer gave us the assignment and then the filing, of course, of the  
7 foreclosure in two months later is pretty indicative of the fact that they were in default, bankrupt.  
8 And I want to get back to Mr. Case, I think again I think it is just ingenious, at best deceitful at  
9 worse, contemptible for certain when you asked him to make a more definite statement and he  
10 puts in language acted in concert without any supporting facts. It says entered into certain  
11 complex financial transactions. I don't know what those transactions are. This is the same  
12 game that Mr. Case has played with the Court when it filed its original response which resulted  
13 in my finding the Motion for a More Definite Statement. It is saying that it was not capable or  
14 feasible, not capable of successful completion. I don't even know what that means. But then he  
15 says further with regards to the transaction innocent investors were solicited by the above--  
16 referenced entities and parties and monies were obtained through misrepresentations by the  
17 above referenced entities and persons which were not properly applied to valid development  
18 costs for the development of the property or the repayment of valid obligations. I don't know  
19 what he is referring to. There are at least seven or eight, maybe more, entities at the beginning  
20 of that paragraph. I don't know what he is referring to. And I don't see the connection or any  
21 connective language which ties us to these conclusory allegations and therefore would result in  
22 an unclean hand documents defense being successful. Or even being admissible. I mean there  
23 is just no facts. This is not a discussion of my claims being amenable, they are not amenable to  
24 the evidence, they are not amenable to law, they are not amenable to logic. Mr. Case has  
25 continued to defend this case in bad faith. Disregarding your orders and misrepresentations to

1 other Courts what you have got in your order. I think first of all the motion to strike should be  
2 granted. We still don't have specific facts. And secondly he brings up the issue of attacking  
3 collateral, attacking the Georgia judgment. The Defendants had knowledge of and didn't go to  
4 the sale. Never appealed the ruling. Never did anything. And so for those reasons, Your  
5 Honor, I believe the Court should strike the affirmative defense of attacking the Georgia  
6 judgment on the grounds of accounting. Asking for an accounting and secondly to strike his  
7 allegations as they relate to unclean hands and I am also asking the Court and I know it doesn't  
8 have this come before it very often I mean I can't remember - I mean I haven't appeared in this  
9 Court before. I don't know whether you have ever granted sanctions or not. I know judges  
10 generally are reluctant to. And I understand and I respect that. But in this case with the fluctuate  
11 of bad acts, bad faith, misrepresentations to two courts, filing pleadings in complete disregard  
12 and disrespect for this Court, I believe that sanctions are appropriate in the amounts that I have  
13 requested. I will address the motion that Mr. Case has styled which I have never seen. Thank  
14 you.

15 THE COURT: Mr. Case.

16 MR. CASE: May it please the Court. I would introduce the parties to the Court.

17 THE COURT: All right.

18 MR. CASE: This is Jerry Saad and he is the Receiver. He was appointed by Judge Edward  
19 Miller as the Receiver for Capital Investment Funding and he is also the manager of Cosimo,  
20 LLC, which is the Defendant in this action and which filed bankruptcy proceeding which  
21 involved this property and other properties. Mr. George Brandt is with us. He is here because  
22 he has an application in the bankruptcy court to be approved as counsel for Cosimo to address the  
23 issues of the title, the issues involved with this particular piece of property. Mr. Robert Pohl is in  
24 the Court. He is the attorney for the Receiver along with Curtis Stodghill. Mr. Pohl also acted as  
25 counsel for entities that are in bankruptcy that are mentioned in our pleadings. I was appointed

1 class co-counsel by Judge Edward Miller at the same time that Jerry was appointed in order that  
2 there would be an attorney in Upstate South Carolina that could assist Jerry in the marshaling of  
3 assets in the case of *Tomz v. Capital Investment Funding, LLC*. The property in question is one  
4 of the  
5 assets that is involved in that proceeding. The termination with Judge Miller in that case is that  
6 \$38,000,000.00 was received from incident investors in South Carolina and that money was used  
7 for various real estate development projects in Upstate South Carolina. These are the real estate  
8 development projects that are listed in the Complaint and first I would like to point out to the  
9 Court that I am acting as an officer of the Court in the class action proceeding as class co-  
10 counsel. Jerry is acting as an officer of the Court. He reports to Judge Edward Miller all of its  
11 activities. The bankruptcy filings they were all things that Jerry did as the appointed Receiver  
12 acting for the Court in Greenville trying to obtain a marshaling of assets and a recovery of  
13 monies in connection with the various real estate development properties in South Carolina.  
14 Cosimo was the agency that Capital Investment Funding, LLC, used to make loans in South  
15 Carolina. I would like to state that I am offended by this proceeding. I was granted leave by the  
16 Court to amend our pleading to set forth our defense of unclean hands and the Court had also  
17 stated that you wanted me, Mr. Case, to file a document which with specificity sets out the  
18 grounds from which the allegations are made that the present Plaintiff and other parties had prior  
19 dealings or dealings and were in the same boat together, to use your phrase, speaking to Mr. X.  
20 But I don't want to deal with issues that are unrelated to this case. And so Your Honor in the  
21 status conference that we had before the Court you granted us leave to amend to set forth specific  
22 allegations of unclean hands. Now you also stated that you wanted a document that would set  
23 forth with specificity what we were dealing with. That is what we have done in connection with  
24 our filings. What had happened in the case is that Jerry, as manager, of various entities that are  
25 mentioned in the pleading, our Third Defense and Counterclaim. This FD Trust, LLC, the

1 Rolling Hills Land Company, the WE3 Company, the property that is in issue here basically  
2 these properties are all properties that have some value and the efforts of Mr. Saad has been to  
3 obtain a sale of these properties and to see that monies can be received out of the sale of these  
4 properties which will go to the class. And so this is one of those properties. As it turns out, the  
5 entities that were involved with this property here in Spartanburg County were also involved with  
6 property in Georgia. And so the allegation in the Complaint was that there was an action in  
7 Georgia that this conditional assignment that is in issue in this case was given by Cosimo and it  
8 was a conditional assignment that would sort of sure up the financial transactions that were going  
9 on in Georgia. So what we were talking about at the hearing is that we didn't know and we were  
10 going to be allowed to argue what is the meaning of the judgment in Georgia. What is the  
11 meaning of it. What does it mean to say that judgment is entitled to full faith and credit. Is that  
12 judgment something that is tainted because the Plaintiff has unclean hands. And so what we  
13 have done is we have set forth with specificity what the scheme was. And it is all set forth and  
14 all of this comes out of Your Honor the discovery that was had in the Bankruptcy Court in  
15 connection with the SD Trust, LLC, property in connection with the WE3 Company, Inc.,  
16 property and also information that we have been able to obtain in connection with the property  
17 that is involved here in South Carolina. Depositions have been taken of the principals involved.  
18 Partial depositions have been taken of the attorneys involved. One of which is Mr. Pfeiffer. In  
19 Mr. Pfeiffer's deposition he set forth an objection to the effect that he couldn't answer questions  
20 because he had an attorney - client privilege with regards to Capital Investment Funding and with  
21 regards to Cosimo, LLC. We had a hearing that is pending on Thursday of next week before  
22 Judge Miller in which we are requesting that Mr. Pfeiffer be required to testify fully because  
23 Jerry as the receiver has the authority to waive the attorney - client privilege in order to let that  
24 information come forward. We, Jerry and I, neither one of us had any understanding about  
25 Cosimo or Capital Investment Funding or CIF Property Holdings, LLC, except when we were

1 able to receive the documents following our appointment by the Court. So what we have done is  
2 we have tried to set forth in this paragraph 46 the ultimate facts and we are a notice pleading  
3 state, the ultimate facts about why the principals of LOP Capital, Inc., did act in concert with  
4 regard to the development of these properties in Georgia and South Carolina. The properties  
5 that each named had a – they were major specific projects. This specific transaction relates to  
6 property here in Spartanburg County but the allegation of the Plaintiff is that they received a  
7 conditional assignment because money was owed down in Georgia. And we have filed with our  
8 Return to the Plaintiff's Motion to Strike and Return to his Request for Sanctions and Return to  
9 his Request to Strike our Pleading we have filed a factual Affidavit with documents that back up  
10 and all we are required to do in South Carolina is to allege the ultimate fact of unclean hands  
11 because of the notice pleadings rules. But we have in addition to that because the Court was  
12 talking about having leave to file documents showing it, we have filed a lengthy Affidavit with  
13 the Court or filing a lengthy Affidavit with the Court which I will hand up at this time which  
14 contains the background material. Now that information was developed through discovery  
15 conducted. The investigation done by Jerry Saad and the investigation done in bankruptcy  
16 proceedings by Robert Pohl. Basically, as a result of the bankruptcy proceedings there was an  
17 order directing this matter to be returned to Your Honor to determine whether there was a valid  
18 lien and if so to determine whether that lien would have a priority on this property in Spartanburg  
19 County. The situation is that in the bankruptcy proceedings and we have filed a Motion for  
20 Substitution of George Brandt as counsel for Cosimo, LLC. There was a determination made  
21 that there were conflicts of interest and they needed independent counsel, both as to the  
22 individual counsel to represent Cosimo, LLC in the bankruptcy and also Mr. Brandt was  
23 appointed to represent Cosimo, LLC in an effort to straighten out the title in this action. Mr.  
24 Brandt has consented to become substitute counsel for Cosimo, LLC, in this action. He is in the  
25 Court with us today and basically what we have tried to do in spite of the fact that Cosimo

1 presently doesn't have counsel is that I have tried to follow the Court's instructions, your  
2 instructions in filing the Amended Complaint. Following your instructions and filing a  
3 document that sets forth with specificity what is engaged here. I believe what is shaping up here  
4 is that because of the pleadings of LOP Capital, LLC, and as against Cosimo, LLC, and because  
5 of the way that the bankruptcy procedure has worked that these issues as to the common scheme  
6 between the parties that developed these properties is Georgia and South Carolina, because of  
7 that the issue as to unclean hands of the parties and the issue as to what amounts to and there was  
8 some confusion on the part of Mr. Chase, what amounts to the scheme to have transactions that  
9 were not capable of completion. This is what is set out in Mr. Saad's affidavit, Your Honor.  
10 The matters were so involved and were so complex that there was not a possibility of success.  
11 The parties that are in a certain complex financial transaction pertaining to proposed land  
12 development projects which were not arm lengths transactions. The development projects were  
13 not feasible. They were not capable of successful completion. The transactions were designed  
14 as a means to attempt to obtain a first lien on various properties with the object of obtaining title  
15 to the properties through the foreclosure actions with regards to the transactions innocent  
16 investors were solicited by the above referenced entities and parties and monies were obtained  
17 through misrepresentations by the above representatives and persons which were not properly --  
18 which were not properly applied to valid development cost for the development of the property  
19 and the repayment of valid obligations. So when you examine Mr. Saad's affidavit he points out  
20 what happened in the various transactions. He refers to SD Trust, he refers to the Georgia  
21 property, he refers to the fact that interest in excess of one hundred (100) percent was being  
22 charged on this things and that basically this is the evidence, I mean the specific evidence that  
23 these development projects would work and so the long and short of it is what we have got in this  
24 case is a big property sitting out on I-85, 221, that is worth about a half a million dollars and  
25 what we have got is a situation where this Plaintiff, LOP Capital, LLC, our investigation shows

1 that they are not entitled to their lien on that property. And that it came as a result of  
2 transactions that basically were irregular, that basically money was taken from innocent investors  
3 here in Spartanburg County and used for these projects and that they come into this Court with  
4 unclean hands. So as opposed to being subjected to a Motion to Dismiss or a Motion for  
5 Sanctions Mr. Saad and I have been trying to conduct the business of the Receivership and we  
6 are strangers to these transactions. We have only been able to get this information through  
7 investigations in the Bankruptcy Court, through investigations in the State Court, through  
8 depositions that we have taken. So basically depositions have been taken in this case. We have  
9 got the deposition of Mr. Pfeiffer, we have got a deposition of Mr. Loprieno, we have gotten the  
10 deposition – well Jerry has given a deposition and given document which we would hand up to  
11 the Court but in order to complete this matter and to complete it in an orderly fashion Cosimo,  
12 LLC, needs a substitution of counsel. Mr. Brandt has done the title. He stands ready to come in  
13 and represent Cosimo. So Cosimo will have counsel. Presently I am just acting as attorney of  
14 record because Your Honor ordered me to And so I am filing pleadings and I am putting in  
15 documents because I was ordered to do so. So what we would ask is that the Motion to Strike  
16 our pleading be rejected. We would ask that you grant our motion to allow Mr. Brandt to come  
17 in and to do the things necessary to clean up this title. We do need to take a deposition of a  
18 closing attorney in Georgia and we do need to understand what exactly did happen in that  
19 Georgia proceedings. Now in so far as our discussion at the status conference it was my  
20 understanding that if you have unclean hands we were going to be allowed to plead unclean  
21 hands and we were going to be allowed to argue what is the meaning of that Georgia statute.  
22 And I believe, Your Honor, with regard to your allowing us to go into and to plead our defense of  
23 unclean hands that basically and to argue the meaning of that Georgia statute that is what we  
24 were talking about at the hearing that is what we are here to do. We talked about reading from  
25 your Transcript back in April we were talking about the Georgia judgment and you were saying

1 well I am going to grant it full faith and credit and I said well it is what it is. And you said it is  
2 what it is and if it and I said well we can argue about what it means. And you said yes if you  
3 want to argue what it means that is another issue. And so that is what we are here about, Your  
4 Honor. We are arguing that there were unclean hands on part of LOP Capital, LLC. Mr. Saad  
5 and I believe that it is our duty as Court appointed Receiver and as Court appointed Counsel to  
6 set forth this defense because this is what the evidence indicates. And I am not really down to  
7 the bottom of all of the things that went wrong in Oconee County and Spartanburg County and  
8 Georgia. But Mr. Saad has set forth the specific facts that Your Honor was looking for at the  
9 last hearing. We have pled the ultimate facts of unclean hands. We deny that LOP Capital has  
10 a valid lien and we are doing the best that we can as officer of the Court and as the Court  
11 appointed Receiver to get these issues resolved and if it looks like some of these issues which are  
12 issues that we had hoped would be resolved in the bankruptcy court are now going to be resolved  
13 by Your Honor here in the Master-In-Equity's Court in Spartanburg County. And so that is  
14 basically my presentation. Mr. Saad is here to answer any questions that you might have about  
15 his reporting to Judge Miller or his activities with other counsels. Mr. Pohl who is representing  
16 the various entities in bankruptcy is here. Mr. Bucko Brandt is here to talk about his  
17 examination of the title but I think Your Honor if our pleading is stricken or if sanctions are  
18 entered it basically aborts the intent of the Receivership and it aborts the appointment of Jerry  
19 Saad by Judge Miller and it aborts my activities as co-counsel to assist in the marshaling of these  
20 assets in South Carolina. Cosimo has the South Carolina assets, Your Honor. And this is one  
21 of the South Carolina assets that we had hoped to recover for the Class. Thank you.

22 THE COURT: The Class action that is presently in front of Judge Miller in Greenville that is  
23 CIF Properties Holding?

24 MR. CASE: It is Capital Investment Funding, LLC. It is called *Tomz v. Capital Investment*  
25 *Funding*.

1 THE COURT: Not CIF?  
2 MR. CASE: Right. It is Capital Investment Funding, LLC.  
3 THE COURT: All right.  
4 MR. CASE: Et al. And it is William F. Tomz, Francis W. Tomz, individually as class  
5 representatives against Capital Investment Funding, LLC, is the entity in Receivership, Your  
6 Honor.  
7 MR. CHASE: Is that the only name of the Defendant in the caption, per the caption, the original  
8 caption.  
9 MR. CASE: No there were other Defendants. Arthur Fields —  
10 THE COURT: But it is not Capital Investment Funding it is CIF Property Holdings?  
11 MR. CASE: It is actually Capital Investment Funding, LLC, that is in the Receivership, Your  
12 Honor. Capital Investment Funding, LLC.  
13 THE COURT: But CIF Property Holdings is not the Defendant subject to the class action in  
14 Greenville is that correct?  
15 MR. CASE: I don't remember that, Your Honor.  
16 MR. SAAD: Your Honor, Jerry Saad. My recollection is that CIF Property Holdings was a  
17 named Defendant. They were a wholly owned subsidiary of Capital Investment Funding.  
18 THE COURT: All right.  
19 MR. CASE: The case caption, Your Honor, that you can take judicial notice of is *Tomz, et al. V.*  
20 *Capital Investment Funding, LLC, et al.*, Case Number 2008-CP-23-3665. And so basically as a  
21 result of being an appointed Receiver of Capital Investment Funding, LLC, they are saying  
22 Capital Investment Funding, LLC, and by virtue of that he has taken certain actions which make  
23 him the manager of Cosimo, LLC, and also CIF Property Holdings, LLC. So because and these  
24 actions are set out in his Affidavit which we have filed with the Court and so Your Honor again,  
25 we don't have this information except as we are able to get it through discovery. I will say for

1 the record that Mr. Saad has done an excellent job in trying to marshal the assets. Mr. Pohl has  
2 done an excellent job in taking the depositions for the Bankruptcy Court and basically Your  
3 Honor, I think that it would be a serious injustice to strike the pleadings of the Defendants in this  
4 matter because we are trying to carry out the business of the Court. Thank you, Your Honor.

5 THE COURT: All right. Mr. Chase.

6 MR. CHASE: Your Honor, we have a very – I will try to make this a brief rebuttal. I think that  
7 Mr. Saad has been exposed. Mr. Saad you asked him a question and he ducked it. You said is  
8 CIF Holding a party that is here, you asked, and he said that he didn't know and he had to talk to  
9 Mr. Saad who then confirmed that yes it is. Is CIF a party? Yes. Is Cosimo a party? Yes. In  
10 the pleadings you will notice that Mr. Case said that Capital Investment Funding or Cosimo is  
11 wholly owned by CIF. So you know this attempt at dancing around the Court's questions again  
12 he was completely vague in saying that there is all of these other matter pending in Bankruptcy  
13 Court. First of all, there are other cases that are going on in the Bankruptcy Court involving  
14 various properties and various Plaintiffs and various creditors. First of all, we are not a party to  
15 that kind of lawsuit. We have never been a party. We are not a party. And we don't intend to  
16 become a party. Then he says Mr. Brandt?

17 MR. BRANDT: Yes sir.

18 MR. CHASE: Mr. Brandt were you appointed by the Bankruptcy Court to do an investigation  
19 regarding the title issues? Were you, yes or no?

20 MR. BRANDT: If it please the Court, Your Honor. I had been informed that is the case but I  
21 have not received an Order so indicating.

22 THE COURT: All right.

23 MR. BRANDT: That is all I can say. I have been informed that is the case.

24 MR. CHASE: Well let me clarify it for Mr. Brandt. By the way, I have had several  
25 conversations with him and he is an extremely nice gentleman. He is very cooperative with me.

1 Mr. Saad continues to misrepresent to this Court. I don't know what it is with him. He ought to  
2 be ashamed. In fact, an application was filed to hire Mr. Brandt and that application was denied  
3 on August 12<sup>th</sup>.  
4 MR. BRANDT: If it please the Court, Your Honor. I have just been shown a copy of an Order  
5 authorizing. I have not seen it until this very second.  
6 MR. CHASE: Authorizing what?  
7 MR. BRANDT: Me as the substitute attorney.  
8 THE COURT: Show that to Mr. Chase.  
9 MR. DARWIN: This was signed July 29<sup>th</sup> authorizing Mr. Brandt —  
10 MR. CHASE: To do what?  
11 MR. DARWIN: To clear up the title issues. There was another lawyer that was not allowed.  
12 That was not authorized by Judge Harris.  
13 MR. BRANDT: And I have not seen the Order until this very second.  
14 THE COURT: All right.  
15 MR. CHASE: Let me indicate to the Court, one other thing. Whatever the Court does here and  
16 I would like Mr. Darwin to speak to this issue. Whatever the Court does here is not the  
17 disposition entirely of this merit because under the Order that was entered, that was heard on  
18 April 12, and decided, I am sorry I am saying April, it was August 12<sup>th</sup> and was entered on  
19 August 29<sup>th</sup>. The matter is retained by the Bankruptcy Court for further proceedings. In other  
20 words, the final disposition of this matter may be subject to the bankruptcy judge's determination  
21 which she has asked this Court to do is to make a determination of the rights and priorities as  
22 between the Plaintiff and the named Defendants. Mr. Darwin am I speaking correctly in that  
23 regard?  
24 THE COURT: I am looking at the Order.  
25 MR. CHASE: Yes sir.

1 THE COURT: And the Order is very clear that the scope of my involvement is to determine the  
2 validity, priority and amount of LOP's lien on the real property, identify the motion, which I take  
3 it to mean this subject property here.

4 MR. CASE: Yes sir.

5 THE COURT: So that is the limit.

6 MR. CASE: Yes sir. Definitely.

7 THE COURT: And it does back once that determination is made for further action by the  
8 Bankruptcy Court.

9 MR. CHASE: That is correct, Your Honor.

10 THE COURT: I am very clear as to that part of it.

11 MR. CHASE: And I would like to -- well you know there has been a lot of things that Mr. Case  
12 has said and I think my pointing out to the Court that he even ducked a very clear question that  
13 you asked him. In order to make this more complicated he says and I even noted it and I don't  
14 see it right handy but he said that there are a lot of people who lost money. What does that have  
15 to do with this case. Zero. Nothing. He again uses conclusory language by saying well they  
16 were involved in the scheme of things that were going on in Georgia and he still hasn't told me  
17 and hasn't told you what the specific facts, facts are. He says it is very complicated. Well you  
18 know I went to law school. I have been practicing for a long time. I understand the English  
19 language. If he can tell me what my client's activities were in relationship to these various  
20 parties that he just list without identification as to the property, as to what my client's  
21 involvement is with them. I told you again and in all candor that my client knows the Pinions  
22 because they were the guarantors on the D&D loan. We know them. Strategic Lending  
23 Solutions was one of the parties who put up money for my client to be able to make the loan to  
24 Rolling Hills in Georgia. But I don't see the connective tissue that is required on a factual basis  
25 that give me an opportunity to intelligently and reasonably determine what facts I have to defend

1 against. And again Mr. Case in his very clever way and I don't know what he said specific but  
2 he presents words that what I said —  
3 MR. CASE: Took offense at.  
4 MR. CHASE: Took offense. And I have every right to take offense. Not because it is untrue  
5 but because you determined that the Georgia judgment is entitled to full faith and credit. They  
6 sit on their hands. They didn't do anything. They never appealed. They never appeared. We  
7 are talking about the statute. I think Mr. Case misspoke. I think he meant the judgment. But  
8 the judgment has already been entered. The Court has already seen it. I want the allegations of  
9 full faith and credit stricken. I want the allegations relating to unclean hands stricken. He ought  
10 not to be given a second bite at the apple when he was given the first bite. He has already shown  
11 contempt by failing to file with this Court a clear, clear Order. And I don't know how else to  
12 present this to the Court in a more clear way. All of the things that Mr. — I am sure he would be  
13 very happy to get out of this case at this point and let Mr. Brandt take over, if that is what his  
14 desire is. But I don't want it to be an excuse for delaying this case any further and I can say this  
15 to the Court. Mr. Brandt is going to want to bring in issues relating to clearing the title, but there  
16 are other people who may have an interest in this property. That is not for this Court to  
17 determine. This Court is given a clear mandate by the Federal judge to determine the priorities  
18 between the named Plaintiff and the named Defendants. She will then decide and they can bring  
19 up that issue but if he is trying to do that sideways by now going to attempt to amend to add other  
20 parties I am going to resist that. This case has been going on for two (2) years. If they wanted  
21 to do that all of the facts that they knew of when this case was started they knew then and it has  
22 been two years and they haven't done it, they are too late. I want sanctions. I want my Motion  
23 to Strike on both of those issues granted. Thank you, Your Honor.  
24 MR. CASE: Your Honor, we have put in with specificity in the factual Affidavit what is  
25 involved here. We have loans that were being made by this Plaintiff with effective interest rates

1 of over a hundred (100) percent. That is what is in issue right here. These were transactions  
2 that were not feasible and they were transactions that caused or should cause once we have had  
3 an evidentiary hearing a finding that the Plaintiff in this action has unclean hands and he has an  
4 invalid lien. And so we were allowed to bring in the allegations. We were allowed to amend  
5 our Complaint. We do not have any information again except what we are able to obtain through  
6 discovery. We are Court appointed Receiver. Court appointed Counsel. Unless we try to get  
7 to the bottom of this and try to ascertain the validity of this lien then this property is going to be  
8 lost. And so what we are trying to do is to properly plead and to properly submit documents  
9 which the Court has requested and that is what we have done.

10 MR. CHASE: Your Honor —

11 THE COURT: Let me while I have got my train of thought.

12 MR. CHASE: Okay.

13 THE COURT: Gentlemen I am obviously missing something. When I looked at the judgment  
14 out of Georgia the caption is LOP Capital, versus Rolling Hills Land Company, LLC, Eugene  
15 Hopper, individually and Charles Pinion, individually. That is the caption.

16 MR. CASE: Yes sir.

17 THE COURT: Nobody else unless the caption has left somebody off, right?

18 MR. CHASE: That is correct, Your Honor.

19 THE COURT: And you handed this up.

20 MR. CHASE: I did.

21 THE COURT: All right. Now as far as I am concerned any matters that could have, should  
22 have, might have -- may have been available in that proceeding should have been brought up by  
23 those Defendants in that action. They were not. And I think it was a default judgment or  
24 whatever. But anyway it is a judgment entered in Georgia.

25 MR. CHASE: That is correct, Your Honor.

1 THE COURT: It was not appealed. Now Mr. Case what gives you now the right to attack  
2 when you are not a party to this action. To attack this judgment here. The sole purpose that I  
3 see for me to determine is number one, not whether this is a good judgment. It is whether this  
4 judgment somehow can be translated into a lien against this property in South Carolina.

5 MR. CASE: Yes sir.

6 THE COURT: And the amount has been predetermined by the amount here. The question is it  
7 may or may not at the end of the day constitute a lien because it can't be converted into a lien  
8 because even though recorded it does not transmute or whatever you want to call it into a lien  
9 from Rolling Hills to the present Defendants or to Cosimo who is the owner of that property.  
10 Am I missing something?

11 MR. CASE: Cosimo is the owner.

12 THE COURT: That is what I am asking.

13 MR. CASE: Robert could you help us with that question—

14 THE COURT: I mean this is a certified copy of the judgment.

15 MR. CASE: —as to why Cosimo wasn't listed and what the situation you have determined in  
16 the investigation as to the Georgia judgment?

17 MR. POHL: Absolutely. Given the information that I have, that I have been able to acquire.

18 LOP Capital filed a foreclosure Complaint against as it is captioned there.

19 THE COURT: Right.

20 MR. POHL: They failed to give notice to Cosimo or any other parties other than Rolling Hills.  
21 Even the notice that they provided to Rolling Hills, I would state was insufficient and improper.  
22 So no defense was ever, as far as I know we have never received a copy of the Complaint, the  
23 initial foreclosure Complaint. So no defense was ever made. There was a default judgment and  
24 it was based upon facts and circumstances that I don't think that can be substantiated and it is my  
25 hope that we will bring a claim to challenge that judgment in Georgia here shortly. With that

1 being said, Cosimo still has property holdings that are not a party to that foreclosure and to the  
2 best of my knowledge they never received a benefit from LOP Capital in any way, shape or form.  
3 And the assignment that he is basing his interest on is a conditional assignment of mortgage that  
4 has multiple issues involved.  
5 THE COURT: Well I am not getting to – the point that I am trying to narrow this issue is this  
6 caption does not include Cosimo.  
7 MR. POHL: Yes sir.  
8 MR. CASE: Yes sir.  
9 MR. CHASE: That is correct.  
10 THE COURT: And I don't know if it ever did.  
11 MR. CHASE: It never did.  
12 MR. POHL: It never had to —  
13 THE COURT: Wait a minute gentlemen. Everybody – let me resolve in my mind what I am  
14 trying to say and that is, this judgment, duly entered in Georgia in 2009 is entitled to full faith  
15 and credit as to Rolling Hills Land Company, LLC, the Defendant in this case. So if you took  
16 that on out did Rolling Hills Land or any of those individuals have any property in their names by  
17 South Carolina Law, Mr. Brandt would pick up these as liens against or judgments against these  
18 three (3) parties. Does everybody agree to that line of thought?  
19 MR. CHASE: I think that is correct. But I want to point out to the Court —  
20 THE COURT: Wait a minute. Wait a minute. Let me continue with my —  
21 MR. CHASE: Okay.  
22 THE COURT: Because if I don't say it I will lose it. All right. So we don't have that. What  
23 we have got is a judgment that I have already ruled is entitled to full faith and credit on its face,  
24 what it is. It is what it is and I said that.  
25 MR. CASE: Yes sir.

1 THE COURT: It is a judgment, a deficiency judgment growing out of the foreclosure in  
2 Georgia against Rolling Hills Land Company, LLC, Eugene Hopper and Charles Pinion,  
3 individually, right?

4 MR. CASE: Correct.

5 THE COURT: It is what it is. I have already ruled that it is entitled to be recognized here in  
6 South Carolina. So that again brings up back to the fact that it is or is not a judgment – it is a  
7 judgment entitled to full faith and credit. I have ruled on that. And there is no question about  
8 the issues relating to that judgment. Cosimo is not a party. How is Cosimo going to  
9 collaterally attack this judgment here when they are not a party there?

10 MR. CASE: Your Honor, the Complaint which is filed in this action going through the entry of  
11 the Georgia judgment.

12 THE COURT: Right.

13 MR. CASE: And states that is the reason why they are seeking collateral here. Cosimo was not  
14 a party, I mean Cosimo—

15 THE COURT: But that is what I am here for.

16 MR. CASE: Yes sir.

17 THE COURT: To determine if based on the conditional assignment and all of the other  
18 documents and all of the thing that went on entitled Mr. Chase to transmute, I am using that word  
19 and I don't even know if it fits, this judgment against Rolling Hills into a security interest against  
20 Cosimo's property. That is the issue. Not whether this judgment is or is not valid. It is a valid  
21 judgment in Georgia. It is a valid judgment in South Carolina. And it is a lien against the  
22 property owned by those Defendants.

23 MR. CASE: In Georgia?

24 THE COURT: Here. Because now I have recognized it in South Carolina against those named  
25 Defendants.

1 MR. CASE: Which Cosimo is not?  
2 THE COURT: Exactly.  
3 MR. CASE: Okay, Your Honor.  
4 THE COURT: That is what I am trying to say here.  
5 MR. CASE: Yes sir.  
6 MR. CHASE: Your Honor, may —  
7 THE COURT: So the question is whether now – the burden is on Mr. Chase to make this  
8 judgment because of the transactions, conditional assignments and everything that occurred now  
9 become a lien against this property owned by Cosimo.  
10 MR. CHASE: I think what you are missing, with all due respect.  
11 THE COURT: That is fine.  
12 MR. CHASE: First of all, Your Honor, I welcome —  
13 THE COURT: Number one, it is not a lien against Cosimo's property even though recorded in  
14 South Carolina.  
15 MR. CHASE: That is correct. That is correct.  
16 THE COURT: That is correct.  
17 MR. CHASE: There is no doubt about that. Our claim is not on the basis of it being a  
18 judgment lien.  
19 THE COURT: No. No, I understand that.  
20 MR. CHASE: What happened was we advanced after we had an original transaction of almost  
21 a million dollars loaning Rolling Hills some money we were requested by Rolling Hills and by  
22 Mr. Pfeiffer acting on behalf of Cosimo and CIF to loan them an additional Two hundred seventy  
23 five thousand & no/100 (\$275,000.00) dollars.  
24 THE COURT: What I am trying to get from you, Mr. Chase, is the amount is based on this  
25 amount.

1 MR. CHASE: That is correct.

2 THE COURT: That is what I am talking about. The amount is determined.

3 MR. CHASE: Right. The amount is determined. But we have a deficiency and it is the  
4 deficiency that we are seeking to foreclose against or you are right we have numerous counts in  
5 our Amended Complaint because that was given as secondary collateral not, this is not on the  
6 basis of a judgment lien. It is based on --

7 THE COURT: But the amount -- what I am saying is the amount is here in this judgment.

8 MR. CHASE: Yes.

9 THE COURT: That is the amount that you are seeking to foreclose ---

10 MR. CHASE: No. We were the bidder, the successful bidder at the sale.

11 THE COURT: Well what amount are you seeking, if this is not ---

12 MR. CHASE: A shortfall of about a quarter of a million to three hundred thousand dollars.

13 THE COURT: Well this amount is One hundred and ---

14 MR. CHASE: One million ---

15 THE COURT: One million -- what is the total. Well whatever the deficiency is.

16 MR. CHASE: Yes sir. No it doesn't have the deficiency on it.

17 THE COURT: Okay. Whatever the amount is.

18 MR. CHASE: Right.

19 THE COURT: But those are --

20 MR. CHASE: Yes sir. And we have given them credit for the amount of the successful bid  
21 because we are charged with having received that being the successful bidder. There is a  
22 shortfall between the amount of the judgment---

23 THE COURT: Right.

24 MR. CHASE: And the amount that we have bid. That is a deficiency judgment. What we have  
25 before Your Honor when we gave that additional money which is incorporated in ---

1 THE COURT: You took the conditional assignment.

2 MR. CHASE: We took a conditional assignment and that was eventually recorded by Mr.  
3 Pfeiffer some year later.

4 THE COURT: Right.

5 MR. CHASE: But we took a secondary collateral. We are seeking to foreclose on that  
6 secondary collateral to cover the deficiency. That was the reason for —

7 THE COURT: But it grows out of this- - -

8 MR. CHASE: That is correct.

9 THE COURT: My point is this is a red herring, there is nothing here.

10 MR. CHASE: Exactly. It has always been a red herring. It has always been a red herring.  
11 And I will tell you one more thing Your Honor, so we can clear this up. South Carolina, I am  
12 very familiar with the foreclosure laws here in South Carolina. You have to name all parties  
13 who may be affected by a foreclosure action to give them notice to come in and protect their  
14 interest. However, in Georgia you don't have to do that. We have followed all of the rules and  
15 regulations of Georgia. I don't want to open the door on this. I just want to tell the Court.  
16 Georgia's laws are different. We didn't have to name Cosimo. We didn't have to name CIF.  
17 We don't have to name the local plumber or whoever it was that may have a judgment lien or has  
18 a mechanic's lien or some other kind of lien because in Georgia the publication of the notice,  
19 the constructed notice for the world. In addition to that, they had actual notice and I will be able  
20 to see that —

21 THE COURT: But —

22 MR. CHASE: You are right, Your Honor.

23 THE COURT: The whole issue around this foreclosure or the amount grows out of this  
24 judgment.

25 MR. CHASE: That is correct.

1 THE COURT: And this judgment does not constitute now or at any time the way that it is  
2 captioned a lien on the property owned by Cosimo.  
3 MR. CHASE: That is why we filed ---  
4 THE COURT: I understand. But what I am saying is these issues are non-issues.  
5 MR. CHASE: They have always been ---  
6 THE COURT: I understand that. And I thought that I was clear before that it is what it is and it  
7 is a judgment against these people that is entitled to be recorded in South Carolina based on that  
8 but it does not at this point, like it is, constitute a lien against Cosimo's property. And that is the  
9 issue that I am here to determine.  
10 MR. CHASE: Right.  
11 THE COURT: Number one, is it a lien against the property. If it is, what is the priority of it.  
12 And number three, what is the amount of it. I think that is pretty clear.  
13 MR. CHASE: Yes, I don't know if you are using the word lien in the sense that our claim is  
14 based upon a security agreement not ---  
15 THE COURT: But you would have to have some sort of document that entitled you to a lien  
16 against the property for it to be an encumbrance against the Cosimo property.  
17 MR. CHASE: And we did. There was an assignment ---  
18 THE COURT: I understand. There was a conditional assignment which was subject to the first  
19 assignment.  
20 MR. CHASE: That is correct.  
21 THE COURT: But those are all issues for the final hearing.  
22 MR. CHASE: That is correct.  
23 THE COURT: Okay. So going back to the main point of this and that is that the attacking, the  
24 allegations relating to the Georgia judgment as far as the attacking of it and the accountings due,  
25 whatever the Georgia judgment is and the amount of principal and that is what it is. So I am

1 going to strike the defense or counterclaim as to the Georgia judgment. That is paragraph 48  
2 through 50 of the Answer well Counterclaim. And the third Defense and Counterclaim, I am  
3 going to leave it and Mr. Case will be burden or Mr. Brandt will be burden with that proof at the  
4 final hearing. But again how that all relates to whether there is a lien or not that will be subject  
5 to proof at the final hearing. At this point I am as far as the sanctions against Mr. Case, I am  
6 going to take that under advisement and I will rule on that at the final hearing.

7 MR. CHASE: Just so I am unclear about this, Your Honor. He has to provide me nothing more  
8 than just names without any connection between my client as they pass to unclean hands. How  
9 am I to defend something that he may bring up at trial which I have no notice of. He just list a  
10 bunch of people and there is no connective tissue. There are no facts to support it. Not one  
11 single fact. Not one.

12 THE COURT: Well the ---

13 MR. CHASE: And he was saying about you know we have some depositions that we still have  
14 to take. We have this that we have to do we have that we have to do. Your Honor this has been  
15 going on for two (2) years. At the deposition that I took of Mr. Pfeiffer which was a year ago, a  
16 year ago. He said that he turned over every single document to Mr. Saad. Every single  
17 document involving these transactions. So it is not as if he doesn't have the information. It is  
18 that he hasn't elicited it. What does I have to do with Crystal Lake Plantations. What is the  
19 clean hands involved in Avatar Income Fund, III, Parish Capital, LLC. I mean I just don't know.  
20 How am I supposed to defend it. I mean I certainly will do the best I can but you know when  
21 you allege something you have to set forth facts so that the other side has notice of what it going.  
22 We were supposed to be ready for trial you know on today's date and I didn't get this, by the way  
23 I didn't get this document until quite late and I was very clear with Mr. Case. I sent him a letter  
24 on April 29<sup>th</sup>, the date that was ordered and I said the stay was lifted---

25 MR. CASE: Again it is August.

1 MR. CHASE: I am sorry. Okay. I don't know what that is with me but I am sorry, August  
2 29<sup>th</sup>. And Mr. Case I have attempted to call you on several occasions but I have not been  
3 successful. In order to be clear and precise I have reviewed the Transcript from the April 25<sup>th</sup>  
4 hearing a copy of which you have and I said I want you to file an Amended Counterclaim with  
5 specific allegations supporting your claim that the Plaintiff has unclean hands. Two, you are  
6 required to provide me with all exhibits you intend to use at trial. A copy of the Service  
7 Agreement given by Capital Investment Funding to Cosimo. That was a part of your Order.  
8 Four, the date that D&D went into default on the CIF mortgage. A schedule of the payments  
9 made by D&D on the loan serviced by Cosimo. A list of all of your witnesses other than Robert  
10 Pohl, Bob Cooper and Scott Pfeiffer. And a list and copy of all documents you intend to use at  
11 trial other than the ones attached to Plaintiff's Amended Complaint including documents you  
12 intend to use through Pohl, Cooper and or Pfeiffer. I still have not received those. I still have  
13 not received them. I don't think that whether your are a Master-In-Equity or whether you are  
14 acting as a Common Pleas Court Judge or any other kind of tribunal that you would encourage a  
15 client, if he was a Defendant, to be able to defend you know mere conclusory allegations and  
16 these allegations are acted in concert, but with whom and how? He says certain complex  
17 financial transactions. This is all smoking mirrors by Mr. Case. Complete smoking mirrors by  
18 Mr. Case. Complete smoking mirrors. I would like to know what it is that Cosimo did that  
19 constitutes unclean hands with Avatar and by the way I really quickly ran through the  
20 information that he had attached in this voluminous document that I just got this morning. There  
21 is not one thing about those people, not one single thing about those companies. So I want to  
22 know what it is that we did. What is it that we did that constitutes unclean hands. I should be  
23 entitled to be able to defend against it. I talked to Mr. Pohl by phone because I was given  
24 authority do that and he had sent me a fax saying that he had information but he can't release it  
25 because he has to talk to Mr. Case first and as soon as he talks to him he will send it to me. Well

1 I still don't have it. I want this case to go forward. I want not only -- you have already granted  
2 my Motion to strike on the judgment and I want a more definite statement of what my connection  
3 is that constitutes, legally constitute unclean hands. I mean he doesn't have any more in this  
4 information that he gave me here in this Amended Answer than he had when he first filed his  
5 original Answer to my Amended Complaint. So I haven't gotten anything more. He hasn't  
6 complied with the Court's order. We still have some time, Your Honor, between now and  
7 October 31, 2011, I would like him to provide this information and Mr. Pohl indicated that he  
8 had it. I still haven't received it. And this is just beyond repel. This is just beyond  
9 reasonableness. Beyond fearless.

10 MR. CASE: If it please the Court.

11 THE COURT: Mr. Case.

12 MR. CASE: We filed an Affidavit. Mr. Saad today with the Court. It is 8 pages in length and  
13 it explains the situation. It has documents attached. And basically we will provide whatever  
14 other information comes to us. We may get some more after the hearing on the 28<sup>th</sup> with Judge  
15 Miller, but this is what we got today and I appreciate the Court's times today and I appreciate the  
16 ruling of the Court and we will do our best to get it together.

17 MR. CHASE: Your Honor --

18 THE COURT: Wait just a minute. The issues related to all of these other entities and whether  
19 or not the Plaintiff LOP is entitled to a lien or to foreclose a lien, if it has one, against Cosimo. I  
20 am trying to get to the -- if the amount of the deficiency judgment has been determined and it is  
21 readily available the sole issue is whether there is a lien, number one, if there is a lien by virtue of  
22 that conditional assignment.

23 MR. CHASE: Yes sir.

24 THE COURT: And if there is a lien what is the priority of it. So all of these other issues it  
25 seem to me to be cutoff.

1 MR. CASE: Well it goes directly to the initial consideration, Your Honor. Would you allow  
2 him to testify?

3 THE COURT: No, I don't want to take testimony. What I am saying to you is the amount is  
4 already there. So then again you are coming in as a collateral attack to a judgment that is already  
5 entered.

6 MR. CHASE: May it please the Court?

7 THE COURT: Yes sir.

8 MR. CHASE: With regards to that judgment, the Georgia judgment.

9 THE COURT: Right.

10 MR. CHASE: One thing that the Court should consider is that I believe that was for three loans,  
11 is that correct?

12 THE COURT: That was one, two and three.

13 MR. CHASE: One, two and three.

14 THE COURT: Right.

15 MR. CHASE: The first loan was nine hundred fifty supposedly?

16 THE COURT: Right.

17 MR. CHASE: The second loan was two seventy five?

18 THE COURT: Right.

19 MR. CHASE: And the third loan was One hundred twelve?

20 THE COURT: Right.

21 MR. POHL: There is no breakdown on how that credit was attributed to those three loans. So  
22 if you add nine hundred fifty to two seventy five that credit then covers those two loans, in their  
23 entirety. And his conditional signing of the mortgage is only associated with that amount. So  
24 therefore, there is no deficiency with respect to the second loan.

25 THE COURT: Then that --

1 MR. CHASE: That is the argument that they can make. I want to point out--  
2 THE COURT: That again is a final hearing issue. If that is the breakdown. The point is the  
3 judgments they are in the amounts there. That is the issue which I have already determined is  
4 not an issue. The question is, is there a lien by virtue of the conditional assignment and all of  
5 the transactions that went before and after. I mean I am trying to make it simple so I understand  
6 it.

7 MR. POHL: Sure.

8 THE COURT: But that is what it appears to me. It is not automatically -- he is not  
9 automatically entitled to a lien by virtue of that conditional assignment. That doesn't  
10 automatically convert. He has got to try to convert and the question is for me to consider after  
11 the evidence, is it. That issue is also if I find a conditional assignment was only related to part of  
12 that and bring it out and if it has already been taken care of then there is no -- but am I again  
13 gentlemen, you tell me, if I am trying to make it too simple for me.

14 MR. CASE: Well it is --

15 THE COURT: I mean I understand the transaction and I understand how everybody-- there is  
16 nobody that didn't know anybody else in these transactions. Everybody knew everybody from  
17 what I can see or the principals knew each other. This wasn't a Bank of America loan to Billy  
18 and Bob to buy their house.

19 MR. CHASE: We didn't know D&D.

20 THE COURT: Well I understand but it wasn't that this was -- I mean these were again complex  
21 legal complex mortgages and transactions and foreclosures and you have got a foreclosure in  
22 here of the D&D mortgage by Cosimo. So there are foreclosures throughout this thing.

23 MR. CASE: Yes sir.

24 THE COURT: But the whole issue of all of these transactions what is the point.

25 MR. CASE: I think what we are trying to stick to Your Honor-- and what we will intend to

1 stick to on the transactions in which LOP Capital, Inc., was involved and that relates to this land  
2 here in South Carolina, in Spartanburg County. And so we are attacking the validity of that  
3 obligation. Whether there was consideration. Whether there should be a lien. And we have  
4 raised the defense that it was a result of a scheme. And so--

5 THE COURT: Well now you have indicated that LOP was involved in other transactions in  
6 South Carolina?

7 MR. CASE: Yes sir. Isn't that true? LOP?

8 MR. SAAD: I don't believe so.

9 THE COURT: I don't --

10 MR. CASE: Well the transaction out here. They were involved with ----

11 MR. SAAD: I don't remember seeing that.

12 MR. CASE: Okay.

13 THE COURT: Yes. I have looked at everything here.

14 MR. CASE: Okay.

15 THE COURT: And I don't see their involvement or its involvement in any South Carolina  
16 transaction.

17 THE COURT: Okay.

18 MR. CASE: Well so we would just look to the allegations of the Complaint and look to the  
19 issues related to the Spartanburg County property.

20 THE COURT: But that would come up through the course of this whole thing without all of  
21 these other entities and the like allegations.

22 MR. CASE: And we wouldn't have to go into any properties in which LOP Capital was not  
23 involved, yes sir.

24 THE COURT: All right. Then what I will do is limit any Counterclaim and you provide that  
25 documentation to Mr. Chase within, well let me give you a date certain, on or before October 10,

1 2011.

2 MR. CASE: Yes sir.

3 THE COURT: So the Counterclaim will solely related to any transactions that LOP Capital and  
4 you are going to furnish me with the Certificate as far as the name it was involved with in South  
5 Carolina. All right.

6 MR. CHASE: Yes sir.

7 THE COURT: And if you don't do that within ten (10) days then that will be stricken. I am  
8 sorry by October 10<sup>th</sup>.

9 MR. CASE: And just so I can understand. I mean with regard to allegations in the Complaint  
10 and you know the Complaint does rely upon the Georgia transaction and so that the Georgia  
11 transaction is related to and forms the basis of the one in Spartanburg County. So what we want  
12 to do on October 10, 2011 is give all the documentation that relates to that, to the validity of this  
13 lien that he is alleging here.

14 THE COURT: Well there is not going to be any issues relating to the judgment debt.

15 MR. CASE: Okay.

16 THE COURT: Now what I am trying to carve out is if you have any counterclaims against LOP-

17 MR. CASE: Yes sir.

18 THE COURT: That grows out of any South Carolina transaction that is what I am talking about.

19 In other words, if you have some setoffs, you have something else that LOP would be  
20 responsible for as a counterclaim setoff or something else then I am going to limit it just to that.

21 Not as to anything related to before the Judgment except for the allocation of the amounts on 1,  
22 2, 3 mortgages.

23 MR. CASE: Okay.

24 THE COURT: That will be the limit of what you can do.

25 MR. CASE: Okay.

1 THE COURT: And I will allow you to argue the -- and I don't know if Mr. Chase has furnished  
2 you that as to how he arrived at his figures. And the allocation Mr. Chase by the same time,  
3 October 10<sup>th</sup>?  
4 MR. CHASE: I will give him a breakdown of the amount that we are claiming in this suit.  
5 THE COURT: Well I want the breakdown of the judgment that was entered in Georgia as far as  
6 the total. You have a total?  
7 MR. CHASE: I have a total.  
8 THE COURT: Of three notes.  
9 MR. CHASE: The agreement -- there was an agreement called a future advance mortgage  
10 agreement.  
11 THE COURT: Okay.  
12 MR. CHASE: That covered any monies that were loaned by LOP to Rolling Hills.  
13 THE COURT: All right.  
14 MR. CHASE: And that agreement and he has a copy of it because he attached it as an "H".  
15 Allows for all of these loans to merge together. We didn't have to allocate that the first dollar  
16 went to this and the second dollar went to that and the twelfth dollar went to this. It is all part of  
17 one mortgage based upon three different advancements that total the amount that is set forth in---  
18 THE COURT: That is the first that I have heard of the merger and that document I guess is  
19 apart of that ---  
20 MR. POHL: May it please the Court. There is not just one mortgage.  
21 MR. CHASE: I didn't say that.  
22 THE COURT: No, there are three. As I understand three note and three mortgages.  
23 MR. CHASE: That is correct.  
24 THE COURT: But what Mr. Chase is now saying is what merger document allowed --  
25 MR. CASE: I don't know about merger documents.

1 THE COURT: All right. I don't either and apparently that is apart of the documents just  
2 handed up but I will allow that to be argued and you go ahead and break it out and furnish it to  
3 Mr. Case prior to October 10<sup>th</sup> as far as what was due on each mortgage.  
4 MR. CHASE: What was due on each mortgage.  
5 THE COURT: Right.  
6 MR. CHASE: Okay.  
7 THE COURT: All right.  
8 MR. CHASE: If the Court please, I will do that but I am not conceding --  
9 THE COURT: I understand. I am ordering you to do it To break it out.  
10 MR. CHASE: I will. But I am not conceding.  
11 THE COURT: And I am not taking it as a concession that the merger does not exist. .  
12 MR. CHASE: Okay.  
13 THE COURT: I want that to be an issue that they can bring up at the final hearing.  
14 THE COURT: Okay.  
15 MR. POHL: Another issue that I would like to have addressed is verification that the funds were  
16 actually transferred. Consideration transferred in connection with the loan supposedly provided  
17 by LOP Capital.  
18 THE COURT: Well I am not going to get into that because the judgment speaks for itself,  
19 again. And if they were Rolling Hills should have brought that up there. The point is Mr.  
20 Chase is going to break out what constituted the amounts that were the total but that is not going  
21 to make his position that it was all merged into one total amount and we are going to be limited  
22 as far as any setoffs, counterclaims, etc., that are due from LOP to Cosimo or whoever to those  
23 that were here in South Carolina and subsequent to -- well that are due on the South Carolina  
24 properties or transactions that LOP allegedly was involved with. I don't know. I am just saying  
25 that you are going to furnish those to Mr. Chase by October 10<sup>th</sup>. Everything is going to be

1 exchanged before October 10<sup>th</sup>.  
2 MR. CASE: Okay.  
3 THE COURT: All right.  
4 MR. CHASE: To the extent that they do not reflect in his paragraph 46 that will be stricken  
5 because he will not be able to show me --  
6 THE COURT: I am limiting that 46 to just, not all of those other corporations, just what is due  
7 or what is alleged to be due from LOP to Cosimo or the other Defendants on the South Carolina  
8 transactions.  
9 MR. CASE: Okay. What is due on those transaction.  
10 THE COURT: Or a setoff or anything that you are alleging so that he knows what it is you are  
11 saying.  
12 MR. CASE: Okay.  
13 MR. CHASE: And the Court will take the request for sanctions --  
14 THE COURT: Under advisement.  
15 MR. CHASE: On that portion as well.  
16 THE COURT: Under advisement and I will rule on that depending on what we do at the final  
17 hearing.  
18 MR. CASE: Okay.  
19 THE COURT: But are we clear as to what my view of it is?  
20 MR. CASE: I hope so.  
21 THE COURT: And we are clear as to what the Bankruptcy Court has told me what my scope is.  
22 MR. CASE: Yes sir.  
23 THE COURT: So I don't think that there is any question as far as --  
24 MR. CASE: The only thing left is Mr. Brandt coming in as counsel for Cosimo.  
25 THE COURT: Okay. Well I don't want to extend this hearing.

1 MR. BRANDT: I am not asking that Your Honor. I would like just to inform the Court that I  
2 became initially involved in this case as a result of performing a title search on the property as a  
3 result of Mr. Saad signing a contract to sell a piece of property to a client of mine. There are  
4 numerous problems with the title to the property which I have outlined in a memo that I  
5 forwarded to my title insurance company. I have forwarded a copy of that to Mr. Chase and we  
6 have discussed it on the telephone. As he indicated his desire not to delay the hearing and to  
7 make other entities a party, I think my role is shifting here. I was appointed by the Bankruptcy  
8 court to help deal with the title issues and I intended to bring an action to quiet title. It now  
9 appears that if there is a determination that the foreclosure goes forward that there will be parties  
10 not named in the foreclosure action as Mr. Chase indicated by South Carolina Law should be  
11 made a party to the action because they might have a claim against the property. Now you know  
12 this is a very complex case. I have been in it two days or something like that. I have seen the  
13 Affidavit that has been proffered to the Court today. The Court is making rulings that Mr. Case  
14 is to comply with and if I step into the shoes as Cosimo's attorney, I too will cooperate with Mr.  
15 Chase, I mean with Mr. Case to get these documents to Mr. Chase but I just wanted to inform the  
16 Court that there are problems with the title to this property. There are entities that are not parties  
17 to this action -- I mean there is an outstanding contract for deed that is of record. You know, I  
18 am just telling the Court that. I mean the Court is going to rule on it and I realize that the Court  
19 has a mandate from the Bankruptcy Court to do certain things but that is a part of it. I think at  
20 the end of the day if we end up with a clear title to the property -- if the property goes to the  
21 foreclosure that whoever is bidding on the property at the foreclosure sale will be bidding on a  
22 piece of property that has a marketable title as opposed to -- I suppose that if in fact it goes that  
23 far and the Plaintiff in this action bids it in then the Plaintiff can deal with these issues and I have  
24 discussed that with Mr. Chase also but I just wanted to inform the Court that there are a lot of  
25 problems out there.

1 THE COURT: And I appreciate that but all of that is above my pay grade.  
2 MR. BRANDT: I know. I know. I just wanted to have my say Judge.  
3 THE COURT: I understand that you did. But what I am saying is again the only thing that I am  
4 to determine -- I am not to sell the property.  
5 MR. BRANDT: Yes sir.  
6 THE COURT: That is not -- mine is the validity.  
7 MR. CHASE: An amount.  
8 THE COURT: The amount and the priority. So it would be to the Bankruptcy -- back over  
9 there. If I establish priority and you have got you know a list of---  
10 MR. BRANDT: Things to deal with.  
11 THE COURT: That is her problem. It is not mine.  
12 MR. BRANDT: That is fine.  
13 THE COURT: Because I am not appointed to sell this problem. That is my three and I am  
14 going to make sure everybody understands. I am not to sell it. I am to determine the amount,  
15 the priority and the validity. That is it. Okay. And that is why I am carving, carving to make it  
16 very clear what we have got here.  
17 MR. CHASE: I am glad the Court said that because what I don't want this to become is a  
18 invitation to Mr. Brandt to try and add a bunch of parties because he thinks that they may have an  
19 interest --  
20 THE COURT: That will be --  
21 MR. BRANDT: That is fine. I just wanted clarification, Your Honor. I am not trying to do  
22 anything --  
23 THE COURT: And that may be the ruling. Number one, if I find that it is a lien that can be  
24 foreclosed and the priority is way down here then it is going to be -- the Bankruptcy Court says  
25 you have got to bring all these people in or let them or let all of you file your claims against the

1 property owned by Cosimo, but I am not going to venture into her venue.  
2 MR. BRANDT: That is fine. That is fine.  
3 MR. CHASE: Yes sir.  
4 THE COURT: I have got enough of my own. All right. Any other issues?  
5 MR. BRANDT: No sir.  
6 THE COURT: Mr. Chase would you prepare the Order if you can --  
7 MR. CHASE: I will do my best, Your Honor.  
8 THE COURT: All right. The most important date here is the October 10<sup>th</sup> date because if that  
9 date is not complied with then the remainder of the Counterclaims relating to any setoffs or any  
10 other claims would be stricken. So that is for Mr. Case, it is a very important date. And the  
11 other matters relating to the judgment have been stricken.  
12 MR. CHASE: Thank you, Your Honor. And the Order will contain language that the Court is  
13 taking under advisement for the determination at a later date the issue of sanctions on both of the  
14 issues that we have requested.  
15 THE COURT: Right.  
16 MR. BRANDT: And that I have been appointed to step in as the counsel for Cosimo.  
17 THE COURT: Right. And lets put it this way. The burden will be on Mr. Case to comply  
18 with the Order.  
19 MR. BRANDT: Okay. Put that in the Order and I don't know -- I have been involved with the  
20 case two days, Your Honor.  
21 THE COURT: I mean I don't want to--  
22 MR. BRANDT: But I don't want to be sanctioned.  
23 THE COURT: I am not going to hold your feet to the fire as far as his responsibilities to comply  
24 with what happened today.  
25 MR. BRANDT: Okay.

1 THE COURT: All right.

2 MR. BRANDT: Yes sir.

3 THE COURT: And the issues related to sanctions will again flow with Mr. Case.

4 MR. BRANDT: And I will be up to speed by the 31<sup>st</sup> and the 1<sup>st</sup>. Is it two days.

5 THE COURT: Two days.

6 MR. BRANDT: A two (2) day trial. And starting at 9:00 o'clock.

7 THE COURT: At 9:30.

8 MR. CHASE: Thank you, Your Honor.

9 THE COURT: All right.

10 MR. CASE: Thank you, Your Honor.

11 THE COURT: All right.

12 -----END OF MOTIONS-----

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1 STATE OF SOUTH CAROLINA

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COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

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CERTIFICATE

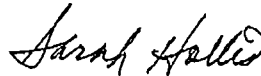
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7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County  
8 of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and  
9 accurate Transcript of Motions of the proceedings had at the motion hearing of the captioned  
10 case, before the Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South  
11 Carolina, on the 21st day of September, 2011.

12 I do further certify that I am neither of kin, counsel nor interest to any party hereto.

13

14



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Sarah Hollis  
Court Reporter

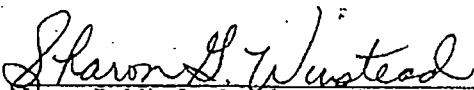
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18 SWORN to before me this  
19 6th day of October, 2011.

20 Spartanburg, South Carolina.

21



22

Notary Public for South Carolina  
My Commission Expires: September 7, 2016.

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