

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

LOP Capital, LLC,

Appellant

v.

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

Respondent.

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**SC Court of Appeals**

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

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April 30, 2012

The Respondents make this Return, pursuant to the South Carolina Rules of Appellate Procedure and request the Court to deny the Appellant's Motion to Strike Respondents' "Additional Matters to be Included" from the Record on Appeal.

The additional matters designated by the Respondents will enable the Court of Appeals to have a full record of the proceedings in order that it will have a complete and proper basis and understanding of the grounds for the Orders of the Honorable Gordon G. Cooper issued in this matter.

The Respondents' inclusion of all of the pleadings which were omitted from the Appellant's Designation (i.e., items 1 through 4 of Respondents' Designation) demonstrate the sequence of events in the litigation and support the Respondents' position, adopted by the Master In Equity, that the matter was not being prosecuted in the names of all of the real Party/Plaintiffs in interest. It appears from the sequence of events that the matter was not being prosecuted in the names of the real Party/Plaintiffs in interest in spite of the fact that LOP Capital, LLC, had assigned a one-half interest in its alleged lien involved in this matter to Strategic Lending Solutions, LLC, before it filed its First Amended Complaint on or about March 17, 2011.

The Defendants' Return to Plaintiff's Motion to Strike, filed on September 21, 2011, the supporting Affidavit of the Receiver, Jerry Saad, filed September 21, 2011, and the Transcript of the Hearing held on September 21, 2011 (Items 5, 6 and 7 of Respondents' Designation) are all relevant to the various Answers and Counterclaims of the Respondents, which ultimately included defenses and claims for affirmative relief based upon, among other things, a failure by the Plaintiff to

prosecute the action in the names of the real parties in interest, the invalidity of the documentation relied upon by the Plaintiff which violated the Statute of Frauds, the assertion of unencumbered ownership and priority in the subject property in favor of the Respondents, and the assertion of the Respondents that the Appellant's claims are barred by the doctrine of unclean hands.

The Affidavit of Court appointed Receiver, Jerry Saad, sets forth the pertinent sequence of events which serves as the basis of the above referenced defenses and the claims of the Respondents. The Affidavit demonstrates the very unusual chronology of events and documentation relating to the Appellant's asserted lien. The Affidavit demonstrated to the Master In Equity the basis for the Respondents' final Amended Answers and Counterclaims, both with reference to the various claims for affirmative relief, the defense of the doctrine of unclean hands, and the request for dismissal on the grounds that the case was not being prosecuted in the names of the appropriate real parties in interest.

The Court dismissed the Plaintiff's Complaint without prejudice on the day of trial on two grounds. The first ground was that the lengthy litigation had not been prosecuted in the names of all of the real Party/Plaintiffs in interest. The Court also ruled that the Respondents were entitled to judgment on the pleadings due to the matters alleged in the Respondents' Answers and Counterclaims, to which no reply had been made by the Appellant. The Respondents' Designations of Additional Matters 5, 6 and 7 are relevant to the Master In Equity's rulings in this regard.

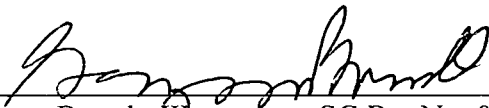
Finally, item 8 of Respondents' Designation, dealing with the Complaint filed on November 8, 2011, by LOP Capital, LLC, and Strategic Lending Solutions, LLC, is relevant because, among other things, the filing of this pleading demonstrates that the Appellant was fully aware that the Court's prior dismissal of the Complaint of LOP Capital, LLC, had been made without prejudice.

Item 9 of Respondents' Designation is relevant because the filing demonstrates that Appellant's only timely Motion for Reconsideration was related to a request by Appellant for a clarification that the Court's Order of Dismissal had been made without prejudice. The inclusion of Appellant's original Motion for Reconsideration on this limited ground is relevant to the Respondents' position that this Appeal is without merit, is moot and should be dismissed.

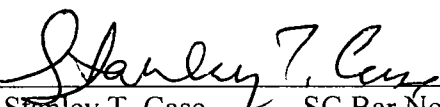
In conclusion, the Respondents do hereby assert and certify that all of the matters designated by the Respondents to be included in the record are relevant to the appeal and the matters which are argued in the briefs. The Court should, accordingly, deny the Motion made by the Appellant and should issue its appropriate Order directing the Appellant to file the required Record and Briefs for consideration by the Court as is customary and appropriate under the South Carolina Rules of Appellant Procedure.

Respectfully submitted,

Henderson, Brandt & Vieth, P.A.

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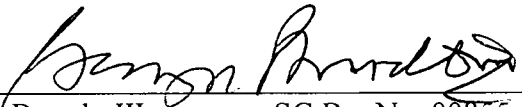
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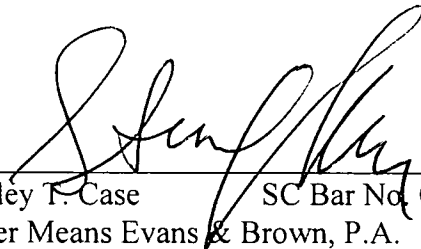
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PROOF OF SERVICE

I certify that I have served the Respondents' Return to Appellant's Motion to Strike Respondents' "Additional Matters to be Included" from the Record on Appeal, on the Appellant by depositing a copy of same in the United States Mail, postage prepaid, on April 30, 2012, addressed to its attorney of record, Nelson S. Chase, Esquire, 1950 Cherokee Rose Drive, Mt. Pleasant, SC 29466.

  
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April 30, 2012

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April 30, 2012

The Honorable Jenny Abbott Kitchings  
Clerk of the Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RE: LOP Capital, LLC vs. COSIMO, LLC, Captial Investment Funding, LLC and CIF Property Holdings, LLC, 2009-CP-42-6973  
Appeal from Spartanburg County Court of Common Pleas

Dear Sir or Madam:

In accordance with Rule 204(e) of the South Carolina Rules of Appellate Practice, we are herein filing one original and six copies of Respondents' Return to Appellant's Motion to Strike Respondents' "Additional Matters to be Included" from the Record on Appeal with the Court with Proof of Service. We are also serving one copy of this pleading on the Appellant's counsel, in accordance with the Rule. In addition, I am enclosing a seventh copy of the Return and Proof of Service to be clocked and returned to me in the attached return, postage prepaid, envelope.

Very truly yours,



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Enclosures

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