

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Hon. Robin B. Stilwell

Case No. 2014-CP-23-4097

First Citizens Bank and Trust
Company, Inc.

Respondent,

v.

Ronald D. Taylor and Ted D.
Smith,

Appellants.

RECORD ON APPEAL

First Citizens Bank and Trust

Randall S. Hiller
850 Wade Hampton Blvd
Greenville, South Carolina 29609
(864) 232-0026
Attorney for Appellants

Other Counsel of Record:
Joey R. Floyd
P.O. Box 61110
Columbia, SC 29260
Attorney for Respondent

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SC Court of Appeals

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Printed Tax

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Attorney for Appellants

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Attorney for Respondent

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First Citizens

COMMERCIAL NOTE

MAY 22, 2008

GREENVILLE, SC

LOAN PURPOSE

I agree that the primary use of the loan proceeds is SECURE COLLATERAL TO EXISTING LOAN
which is for Business or (if checked) ☐ Agriculture and not primarily personal, family, or household purposes.

CONDITION OF LOAN

You, First Citizens Bank and Trust Company, Inc. have loaned me \$ 52,526.07 (Principal) and I will comply with the provisions of this note which I have signed and I will comply with any other conditions to which we have agreed.

INTEREST

Interest is computed daily on the entire unpaid Principal balance and the scheduled payments are due precisely on the due dates. To the extent that payments are late or early, greater or less interest may be due over the life of the loan. Interest will be calculated on the basis of a 360 day year for the actual number of days elapsed. The per annum interest rate used in the calculation will be: ☐ _____ % Fixed ☒ First Citizens Prime + 1.500 %

☐ Wall Street Journal Prime + _____ % ☐ One (1) Month LIBOR + _____ % ☐ Three (3) Month LIBOR + _____ %

☐ If checked, my variable rate loan will have a minimum interest rate of _____ % and a maximum interest rate of _____ %.

Variable rate interest adjustments will be made based on the applicable rate index chosen. I recognize and acknowledge that you could make loans in certain situations below the applicable rate index. See additional variable rate provisions on reverse side of this Note. My rate will change as checked below:

First Citizens Prime changes will take effect ☒ daily or ☐ monthly on the first calendar day of the month following First Citizens Prime change. First Citizens Prime is an index used to price loans and is established by you at your discretion.

Wall Street Journal Prime changes will take effect ☐ daily based on the Prime Rate effective date as quoted in the "Money Rates" section of the Wall Street Journal or ☐ monthly on the first calendar day of the month based on the Prime Rate quoted in the "Money Rates" section of the Wall Street Journal, which section is dated for the last publishing day of the month prior to each interest rate change.

☐ One (1) Month and Three (3) Month LIBOR changes will take effect on the first calendar day of the month. The One (1) Month and Three (3) Month LIBOR indexes are the London Interbank Offered Rates quoted in the "Money Rates" section of the The Wall Street Journal, which section is dated for the last publishing day of the month prior to each interest rate change.

PAYMENT SCHEDULE

Principal due **NOVEMBER 22, 2008** with interest payable in consecutive **MONTHLY** payments beginning **JUNE 22, 2008**.

LATE CHARGES

A late charge of the higher of \$50 or 0.5% will be assessed for any single payment loan not paid, renewed, modified or extended within 10 days of its due date. Loans having more than one payment will be assessed a late charge of the higher of \$50 or 5% of the unpaid balance of any payment not paid, renewed, or modified or extended within 10 days of the due date of the payment.

OTHER CHARGES

I agree to pay the following Prepaid Finance Charges and Other Charges: Origination Fee: N/A Processing Fee: \$150.00 Other Charges: \$1,361.00. At my request, Prepaid Finance Charges and Other Charges totaling \$1,511.00 have been added to the Principal Amount listed above.

PLEDGE OF COLLATERAL

I am giving you a security interest in collateral described in the additional security section on the reverse side and to any collateral described below:

3RD REAL ESTATE MORTGAGE ON A LOT ON ELMESHORN DRIVE, GREER, SC

TAX MAP # 0534010101202 (3.773 ACRES).

3RD REAL ESTATE MORTGAGE ON A LOT ON ELMESHORN DRIVE, GREER, SC

TAX MAP # 0534010100920 (3.6 ACRES).

FUTURE ADVANCES

☐ If checked, this is a future advance loan subject to the terms and conditions set forth in a Loan Agreement dated _____ which terms and conditions are incorporated herein by reference.

PROMISE

To repay my loan, I promise to pay to the order of First Citizens Bank and Trust Company, Inc. the Principal shown above plus interest accrued on the unpaid balance of the Principal for the actual number of days outstanding, at the interest rate described above, all according to the Payment Schedule shown above plus insurance and any other charges to which we may have agreed. If I have agreed to pay periodic interest payments or payments of equal principal plus interest, as shown in the Payment Schedule above, I understand that actual payments billed to me may vary from those shown in the Payment Schedule. Such differences may be due to more than one month to the first payment or due to difference in the number of days in each month, etc. This interest rate shall continue after default and/or judgment and shall remain in effect until all sums owing hereunder are paid.

PREPAYMENT

If the term of the loan exceeds one year, the following prepayment penalty will apply to all business purpose loans. If within five (5) years from the date of this note, I make any prepayment in any twelve (12) month period beginning with the date of this note or anniversary thereof ("Loan Year") I shall pay you a prepayment fee of three (3%) in year one or year two, two (2%) in year three, and one (1%) in years four and five of the amount by which the sum of the Loan Year for partial prepayments and due at the time of prepayment when the account is prepaid in full.

CO-BORROWER LIABLE

If I sign this agreement with another Borrower, I will individually be bound for the full amount owed and agree to the granting of one or more extensions without notice or demand of any kind. I also agree to the release or substitution of any collateral which secures this note.

REVERSE SIDE

Additional terms and conditions contained on reverse are a material part of this note and agreement.

ORGANIZATIONAL BORROWER - NAME AND ADDRESS

TAX I.D. NO. BORROWER(S)

S.S. NO.

Signature RONALD D. TAYLOR

251-72-3107

24 DEVONHALL WAY

TAYLORS, SC 29687

Address

Signature TED D. SMITH

250-82-8879

221 PELHAM ROAD

GREENVILLE, SC 29615

Address

☐ See Signature Addendum for additional signatures of Borrower(s).

I understand that the paragraph heading on both the front and reverse side of this agreement are for convenience only and that they will not limit any of the provisions of this agreement.

Additional Security (Collateral). The Security Interest includes all parts, insurance, accessories, and equipment I use with the Collateral, any proceeds and any products from the Collateral and return of unearned credit insurance premiums written in connection with this loan. Except for a Security Interest on my principal dwelling, The Security Interest under this agreement also secures the payment of any other existing or future debts of mine to you unless otherwise prohibited by law. I am not giving you a Security Interest in my principal dwelling, unless it is specifically listed as Collateral nor any household goods, unless they are being purchased with the proceeds of this contract and are also listed as Collateral on this contract. If my principal dwelling secures existing debt with you, I understand that it will not secure this loan unless my principal dwelling is specifically listed as Collateral on this contract. I am also giving you a Security Interest in any and all funds I have on deposit with you, except and excluding any funds which are in an Individual Retirement Account.

Ownership. I am the owner of the Collateral and if there is a certificate of title to the Collateral, I will promptly deliver the certificate to you upon your request. There are no Security Interest or liens on the collateral other than yours and those which I have told you about in writing. I will not permit any Security Interest or liens other than yours to be on the Collateral at any time without your prior written consent.

Sale. I will not sell, lease or otherwise dispose of the Collateral without your prior written consent.

Inspection. You may inspect the Collateral at any reasonable time. Upon your request, I will exhibit the Collateral to you or I will furnish you a written statement showing the whereabouts of the Collateral.

Location and Use. I will keep the Collateral in the state of my residence, but if the Collateral is a motor vehicle, boat, or an airplane, I may use it outside my state of residency in the course of my normal and customary use of the Collateral. I will not use the Collateral in violation of any law or in a manner inconsistent with any insurance policy.

Taxes. I will pay all taxes, inspections and other fees payable on the Collateral or payable for the use and operation of the Collateral when they are due and payable.

Financing Statements. I authorize you at any time and from time to time to file any financing statements, continuation statements, in lieu of continuation statements, or amendments in the jurisdictions that you may deem necessary to perfect your security interests in the collateral. I also agree to notify you 30 days in advance if I, or the party granting the security interest, should either change my name, my state of organization, or my location. I will pay all filing fees and other fees and costs when such statements are filed or prior to a statement release.

Maintenance. I will keep the Collateral in good condition and repair and I will not permit anything to be done to the Collateral which would impair its use.

Failure to Pay Taxes, Costs and to Maintain Collateral and Placement of Other Liens on Collateral. If I fail to keep the Collateral in good condition and repair or if I fail to pay any taxes, impositions or other fees on the Collateral or if I fail to pay any cost and taxes for filing, financing, continuation and Security Interest filing statements or if any Security Interest or lien other than yours attaches or is on the Collateral, you may pay the same for my account and I will immediately pay to you any amounts so paid by you and all of your cost and expenses for so doing. Such amount will be covered by the Security Interest I have granted for you and will accrue interest at the Annual Percentage Rate until paid.

Insurance. I will keep the Collateral insured against such risks and in such amounts as you may require from time to time. I will provide you proof of such insurance coverage at all times with you named as the party to be paid in event of loss. I may furnish this coverage through an agent or company of my choice. However, this coverage must be acceptable to you. I will pay all premiums for this insurance when they are due and payable. If I fail to obtain the insurance or if I fail to pay the insurance premiums, you may obtain the insurance or pay the premiums. If you do this, I will immediately pay to you an amount equal to all monies you have advanced to obtain insurance and to pay insurance premiums. Any amounts advanced by you will earn interest at the then prevailing interest rate in accordance with the terms of this Note. Such amounts shall be covered by the Security Interest and lien I have granted to you. However, if you decide not to obtain the insurance or pay the premiums, none of your rights and remedies against me will be prejudiced. All insurance proceeds under any insurance policy shall be payable to you to the extent of the monies I owe you. I will deliver to you the insurance policy or policies or a certificate of insurance. I assign you any returned or unearned insurance premiums which may be due upon cancellation of any insurance policy. I direct the insurance company policies pay to you at insurance proceeds and returned or unearned premiums. You are irrevocably appointed as my attorney-in-fact to endorse any draft or check which may be payable to me so as to collect any return or unearned premiums or insurance proceeds. All insurance proceeds and returned or unearned premiums received by you will be applied against the monies I owe you and any balance remaining will be paid to me.

Payments. Payments received by a teller in one of our branches on a business day before the close of business at that branch (generally 5:00 p.m.; 6:00 p.m. on Fridays at certain branches), will be considered received that day. Payments received after the close of business at that branch or anytime on a non-business day will be considered received on the next business day we are open. Please note that because we balance ATMs anytime between the hours of 12:00 noon and 2:00 p.m., a payment made through an ATM may be dated and credited one business day later than if the payment had been made in the lobby or at a drive-in window. If a payment is made through On-Line-Banking or Telephone Banking before 4:00 p.m. on a business day, we will consider that day to be the day of the payment. If a payment is to be mailed to a specific address furnished by the Bank, the payment will be considered received and credited to the account on the same business day received. If the payment is not mailed to the address furnished by the Bank, crediting of the payment may be delayed. Every day is a business day, except Saturdays, Sundays, and federal holidays. Some methods of payment may not be available on all products. You should check with a Bank representative if you have questions concerning available payment methods. If you make any payments on this Agreement by check, draft, or other item that is dishonored for any reason, you agree to pay the Bank's reasonable check charge as allowed by law. This charge will be in addition to any NSF or similar charge, which may be assessed against the account itself by the paying Bank.

Whole Balance Becomes Due (Default). If this note is payable on demand or has a Call Feature that has passed the specified calendar date, you may demand that this loan be paid in full immediately whether or not my payments are made on time. If I fail to make any scheduled payment when due, you may demand that this loan be paid in full immediately. If I, or any guarantor, should die, dissolve, terminate, fail, assign assets for benefit of creditors, file bankruptcy, become insolvent, change ownership (if organized entity) by more than 25% during the term of this Loan (without your prior written approval and to which I agree to provide you a 30 day advance notice), or default under any provision of this note or any separate agreement, you may declare the note in default and demand that this loan be paid in full immediately. In addition, if you, in your sole discretion, feel the prospect of payment, performance, or realization of Collateral is significantly impaired, or if you should deem yourself insecure for any reason, this loan will immediately become due and payable.

No Waiver. It is further agreed that the acceptance after maturity of any payment shall not constitute a waiver of your rights to demand payment in full of any unpaid balance.

Remedies. Upon default, the rate of interest on the unpaid principal balance, insurance and other charges that we have agreed to pay shall be increased an additional 800 basis points (8%) above the stated contract rate on the face of this note. If I, or any guarantor, default, you may take possession of the collateral and at your request I will assist you by making it available. Even though you take the collateral, I may be obligated for payment as provided by law. You may peacefully take possession of the Collateral for the reasons above at any time, even though you may not have done so previously, until I pay all amounts owing to you covered by the Security Interest. If you should take possession of the Collateral and the Collateral should contain any personal property, I agree to contact you and arrange to pick up the property within twenty-four (24) hours of your taking possession of the Collateral. If I do not pick up the property within this time period I understand that you may keep it for me, at reasonable storage expense or dispose of as it as you see fit. Your failure to enforce or assert any of your rights under this agreement at any point in time shall not be considered waiver of the right to enforce those terms and conditions at any time in the future.

Financial Statements. I agree to provide signed financial statements and other financial information at such frequencies and in such detail as you may reasonably request.

Attorney's Fees. If you hire a lawyer to help collect this loan, I also agree to pay collection costs to include reasonable fees not to be less than 15% of the amount to be collected (unless otherwise prohibited by law).

Variable Rate Loans. If my loan has a variable rate feature, I agree to make no other inferences relating to any rate index that you may use. If my variable rate loan has a fixed or amortized payment amount, I understand and agree that if the selected variable rate index should exceed the fixed rate used for payment calculation purposes, you may, at your discretion, (a) increase the amount of periodic payments to have the loan fully amortize at the scheduled maturity, (b) extend the maturity and require additional periodic payments, (c) require the resulting increase to be paid at maturity, or (d) select or designate any combination of the foregoing.

Legal Matters. Any questions about this loan, Note or other agreements I make with you will be decided under South Carolina law. You and I agree that we will comply with all applicable laws, rulings and regulations and the terms of this contract will be interpreted in such manner as will comply with such laws, rulings and regulations.

R-C
DMS

COUNTY OF GREENVILLE

First Citizens Bank and Trust Company, Inc.

FILED CLERK OF COURT
GREENVILLE CO. S.C.
Plaintiff(s)
PAUL B. WICKENSIMER

CIVIL ACTION COVERSHEET

2014-CP - 23-4097

vs.

2014 JUL 28 PM 4 21

Ronald D. Taylor and Ted D. Smith

Defendant(s)

Submitted By: Joey R. Floyd

Address: Post Office Box 61110, Columbia, SC 29260-1110

SC Bar #:

68491

Telephone #:

803-252-7693

Fax #:

888-945-9333

Other:

E-mail:

jfloyd@brunerpowell.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

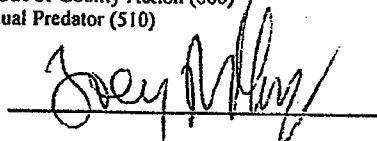
*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☒ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | | | |
| ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | | |

Submitting Party Signature:



Date: July 23, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

COPY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

CIVIL ACTION NO.: 2014-CP-23- 4097

First Citizens Bank and Trust Company,
Inc.,)

Plaintiff,)

v.)

Ronald D. Taylor and Ted D. Smith,)

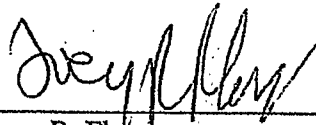
Defendants.)

SUMMONS
(Non-Jury)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 JUL 28 PM 4 21

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Verified Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Verified Complaint upon the undersigned subscriber at his offices at 1735 St. Julian Place, Suite 200, Columbia, South Carolina 29204, within thirty (30) days after service upon you, exclusive of the day of such service; and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Verified Complaint.



Joey R. Floyd
Bruner Powell Wall & Mullins, LLC
Post Office Box 61110
1735 St. Julian Place, Suite 200 (29204)
Columbia, South Carolina 29260-1110
(803)252-7693
Attorneys for Plaintiff
First Citizens Bank and Trust Company, Inc.

July 23, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 First Citizens Bank and Trust Company,)
 Inc.,)
)
 Plaintiff,)
)
 v.)
)
 Ronald D. Taylor and Ted D. Smith,)
)
 Defendants.)
)
 _____)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-23-4097

VERIFIED COMPLAINT
 (Non-Jury)

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
 2014 JUL 28 PM 4 21

The Plaintiff, complaining of the above-named Defendants, would respectfully show unto the Court:

1. First Citizens Bank and Trust Company, Inc. ("FCB" or "Plaintiff") is a South Carolina corporation duly authorized to conduct business in South Carolina.
2. Defendant Ronald D. Taylor is, upon information and belief, a resident of Greenville County, South Carolina.
3. Defendant Ted D. Smith is, upon information and belief, a resident of Greenville County, South Carolina.
4. Jurisdiction and venue in this court are proper.
5. On, or about, May 22, 2008, Defendants executed a Promissory Note in favor of FCB in the amount of \$52,526.07. A copy of the Promissory Note is attached hereto as **Exhibit A.**

6. In accordance with the terms of the Promissory Note, Defendants were scheduled to make monthly interest only payments beginning June 22, 2008, with the principal being due November 22, 2008.

7. The Defendants made some payments towards the debt; however, the Defendants failed to make all payments in accordance with the terms of the promissory note.

FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANTS

(Breach of Contract – Promissory Note)

8. Plaintiff incorporates the foregoing allegations herein to the extent required by, but not inconsistent with, the following allegations.

9. Defendants executed the Promissory Note and agreed to pay Plaintiff in accordance with the terms of the Note.

10. Defendants defaulted on the Note and have failed to pay FCB the amount due in accordance with the terms and conditions of the Promissory Note.

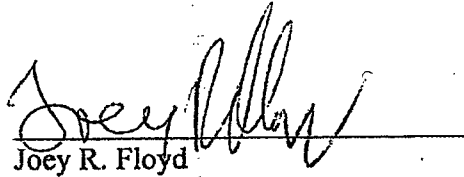
11. Defendants breached contractual duties owed to Plaintiff by failing to pay FCB in accordance with the terms of the Promissory Note.

12. FCB has been damaged and is entitled to recover from the Defendants the principal sum of \$66,263.49, plus interest thereon at the rate of 4.75% per annum, in accordance with the terms of the Note, costs, and attorneys' fees. A Verified Statement of Account is attached hereto as **Exhibit B**.

WHEREFORE, Plaintiff prays for judgment as follows:

A. As to the First Cause of Action against the Defendants, for judgment against the Defendants, in the amount of \$66,263.49, together with interest, plus accruing interest, attorneys' fees of not less than 15% of the amount owing on the Promissory Note and costs;

B. Plaintiff prays for such other and further relief as the Court may deem just and proper.



Joey R. Floyd

Bruner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200 (29204)
P.O. Box 61110
Columbia, S.C. 29260
(803) 252-7693

Attorneys for the Plaintiff

First Citizens Bank and Trust Company, Inc.

Columbia, South Carolina
July 22, 2014

EXHIBIT A

First Citizens

COMMERCIAL NOTE

MAY 22, 2008

GREENVILLE, SC

LOAN PURPOSE

I agree that the primary use of the loan proceeds is SECURE COLLATERAL TO EXISTING LOAN
which is for Business or (if checked) ☐ Agriculture and not primarily personal, family, or household purposes.

CONDITION OF LOAN

You, First Citizens Bank and Trust Company, Inc. have loaned me \$ 52,526.07 (Principal) and I will comply with the provisions of this note which I have signed and I will comply with any other conditions to which we have agreed.

INTEREST

Interest is computed daily on the entire unpaid Principal balance and the scheduled payments are due precisely on the due dates. To the extent that payments are late or early, greater or less interest may be due over the life of the loan. Interest will be calculated on the basis of a 360 day year for the actual number of days elapsed. The per annum interest rate used in the calculation will be: ☐ _____ % Fixed ☒ First Citizens Prime + 1.500 %

☐ Wall Street Journal Prime + _____ % ☐ One (1) Month LIBOR + _____ % ☐ Three (3) Month LIBOR + _____ %

☐ If checked, my variable rate loan will have a minimum interest rate of _____ % and a maximum interest rate of _____ %.

Variable rate interest adjustments will be made based on the applicable rate index chosen. I recognize and acknowledge that you could make loans in certain situations below the applicable rate index. See additional variable rate provisions on reverse side of this Note. My rate will change as checked below:

First Citizens Prime changes will take effect ☒ daily or ☐ monthly on the first calendar day of the month following First Citizens Prime change. First Citizens Prime is an index used to price loans and is established by you at your discretion.

Wall Street Journal Prime changes will take effect ☐ daily based on the Prime Rate effective date as quoted in the "Money Rates" section of the Wall Street Journal or ☐ monthly on the first calendar day of the month based on the Prime Rate quoted in the "Money Rates" section of the Wall Street Journal, which section is dated for the last publishing day of the month prior to each interest rate change.

☐ One (1) Month and Three (3) Month LIBOR changes will take effect on the first calendar day of the month. The One (1) Month and Three (3) Month LIBOR indexes are the London Interbank Offered Rates quoted in the "Money Rates" section of the The Wall Street Journal, which section is dated for the last publishing day of the month prior to each interest rate change.

PAYMENT SCHEDULE

Principal due **NOVEMBER 22, 2008** with interest payable in consecutive **MONTHLY** payments beginning **JUNE 22, 2008**.

LATE CHARGES

A late charge of the higher of \$50 or 0.5% will be assessed for any single payment loan not paid, renewed, modified or extended within 10 days of its due date. Loans having more than one payment will be assessed a late charge of the higher of \$50 or 5% of the unpaid balance of any payment not paid, renewed, or modified or extended within 10 days of the due date of the payment.

OTHER CHARGES

I agree to pay the following Prepaid Finance Charges and Other Charges: Origination Fee: n/a Processing Fee: \$150.00 Other Charges: \$1,361.00. At my request, Prepaid Finance Charges and Other Charges totaling \$1,511.00 have been added to the Principal Amount listed above.

PLEDGE OF COLLATERAL

I am giving you a security interest in collateral described in the additional security section on the reverse side and to any collateral described below:

3RD REAL ESTATE MORTGAGE ON A LOT ON ELM SHORN DRIVE, GREER, SC
TAX MAP # 0534010101202 (3.773 ACRES).
3RD REAL ESTATE MORTGAGE ON A LOT ON ELM SHORN DRIVE, GREER, SC
TAX MAP # 0534010100920 (3.6 ACRES).

FUTURE ADVANCES

☐ If checked, this is a future advance loan subject to the terms and conditions set forth in a Loan Agreement dated _____ which terms and conditions are incorporated herein by reference.

PROMISE

To repay my loan, I promise to pay to the order of First Citizens Bank and Trust Company, Inc. the Principal shown above plus interest accrued on the unpaid balance of the Principal for the actual number of days outstanding, at the interest rate described above, all according to the Payment Schedule shown above plus insurance and any other charges to which we may have agreed. If I have agreed to pay periodic interest payments or payments of equal principal plus interest, as shown in the Payment Schedule above, I understand that actual payments billed to me may vary from those shown in the Payment Schedule. Such differences may be due to more than one month to the first payment or due to difference in the number of days in each month, etc. This interest rate shall continue after default and/or judgment and shall remain in effect until all sums owing hereunder are paid.

PREPAYMENT

If the term of the loan exceeds one year, the following prepayment penalty will apply to all business purpose loans. If within five (5) years from the date of this note, I make any prepayment in any twelve (12) month period beginning with the date of this note or anniversary thereof ("Loan Year") I shall pay you a prepayment fee of three (3%) in year one or year two, two (2%) in year three, and one (1%) in years four and five of the amount by which the sum of prepayments made in any Loan Year exceeds the scheduled payments under this note. Prepayment fees will be due and payable one month after the end of the Loan Year for partial prepayments and due at the time of prepayment when the account is prepaid in full.

CO-BORROWER LIABLE

If I sign this agreement with another Borrower, I will individually be bound for the full amount owed and agree to the granting of one or more extensions without notice or demand of any kind. I also agree to the release or substitution of any collateral which secures this note.

REVERSE SIDE

Additional terms and conditions contained on reverse are a material part of this note and agreement.

ORGANIZATIONAL BORROWER - NAME AND ADDRESS

TAX I.D. NO. BORROWER(S)

S.S. NO.

Signature RONALD D. TAYLOR
24 DEVONHALL WAY
TAYLORS, SC 29687

251-72-3107

BY

Address

Signature TED D. SMITH
221 PELHAM ROAD
GREENVILLE, SC 29615

250-82-8879

BY

Address

☐ See Signature Addendum for additional signatures of Borrower(s).

RENEWAL 536/22937

I understand that the paragraph heading on both the front and reverse side of this agreement are for convenience only and that they will not limit any of the provisions of this agreement.

Additional Security (Collateral). The Security Interest includes all parts, insurance, accessories, and equipment I use with the Collateral, any proceeds and any products from the Collateral and return of unearned credit insurance premiums written in connection with this loan. Except for a Security Interest on my principal dwelling, The Security Interest under this agreement also secures the payment of any other existing or future debts of mine to you unless otherwise prohibited by law. I am not giving you a Security Interest in my principal dwelling, unless it is specifically listed as Collateral nor any household goods, unless they are being purchased with the proceeds of this contract and are also listed as Collateral on this contract. If my principal dwelling secures existing debt with you, I understand that it will not secure this loan unless my principal dwelling is specifically listed as Collateral on this contract. I am also giving you a Security Interest in any and all funds I have on deposit with you, except and excluding any funds which are in an Individual Retirement Account.

Ownership. I am the owner of the Collateral and if there is a certificate of title to the Collateral, I will promptly deliver the certificate to you upon your request. There are no Security Interest or liens on the collateral other than yours and those which I have told you about in writing. I will not permit any Security Interest or liens other than yours to be on the Collateral at any time without your prior written consent.

Sale. I will not sell, lease or otherwise dispose of the Collateral without your prior written consent.

Inspection. You may inspect the Collateral at any reasonable time. Upon your request, I will exhibit the Collateral to you or I will furnish you a written statement showing the whereabouts of the Collateral.

Location and Use. I will keep the Collateral in the state of my residence, but if the Collateral is a motor vehicle, boat, or an airplane, I may use it outside my state of residency in the course of my normal and customary use of the Collateral. I will not use the Collateral in violation of any law or in a manner inconsistent with any insurance policy.

Taxes. I will pay all taxes, inspections and other fees payable on the Collateral or payable for the use and operation of the Collateral when they are due and payable.

Financing Statements. I authorize you at any time and from time to time to file any financing statements, continuation statements, in lieu of continuation statements, or amendments in the jurisdictions that you may deem necessary to perfect your security interests in the collateral. I also agree to notify you 30 days in advance if I, or the party granting the security interest, should either change my name, my state of organization, or my location. I will pay all filing fees and other fees and costs when such statements are filed or prior to a statement release.

Maintenance. I will keep the Collateral in good condition and repair and I will not permit anything to be done to the Collateral which would impair its use.

Failure to Pay Taxes, Costs and to Maintain Collateral and Placement of Other Liens on Collateral. If I fail to keep the Collateral in good condition and repair or if I fail to pay any taxes, impositions or other fees on the Collateral or if I fail to pay any cost and taxes for filing, financing, continuation and Security Interest filing statements or if any Security Interest or lien other than yours attaches or is on the Collateral, you may pay the same for my account and I will immediately pay to you any amounts so paid by you and all of your cost and expenses for so doing. Such amount will be covered by the Security Interest I have granted for you and will accrue interest at the Annual Percentage Rate until paid.

Insurance. I will keep the Collateral insured against such risks and in such amounts as you may require from time to time. I will provide you proof of such insurance coverage at all times with you named as the party to be paid in event of loss. I may furnish this coverage through an agent or company of my choice. However, this coverage must be acceptable to you. I will pay all premiums for this insurance when they are due and payable. If I fail to obtain the insurance or if I fail to pay the insurance premiums, you may obtain the insurance you or pay the premiums. If you do this, I will immediately pay to you an amount equal to all monies you have advanced to obtain insurance and to pay insurance premiums. Any amounts advanced by you will earn interest at the then prevailing interest rate in accordance with the terms of this Note. Such amounts shall be covered by the Security Interest and amounts I have granted to you. However, if you decide not to obtain the insurance or pay the premiums, none of your rights and remedies against me will be prejudiced. All insurance proceeds under any insurance policy shall be payable to you to the extent of the monies I owe you. I will deliver to you the insurance policy or policies or a certificate of insurance. I assign you any returned or unearned insurance premiums which may be due upon cancellation of any insurance policy. I direct the insurance company policies pay to you all insurance proceeds and returned or unearned premiums. You are irrevocably appointed as my attorney-in-fact to endorse any draft or check which may be payable to me so as to collect any return or unearned premiums or insurance proceeds. All insurance proceeds and returned or unearned premiums received by you will be applied against the monies I owe you and any balance remaining will be paid to me.

Payments. Payments received by a lender in one of our branches on a business day before the close of business at that branch (generally 5:00 p.m.; 6:00 p.m. on Fridays at certain branches), will be considered received that day. Payments received after the close of business at that branch or anytime on a non-business day will be considered received on the next business day we are open. Please note that because we balance ATMs anytime between the hours of 12:00 noon and 2:00 p.m., a payment made through an ATM may be dated and credited one business day later than if the payment had been made in the lobby or at a drive-in window. If a payment is made through On-Line-Banking or Telephone Banking before 4:00 p.m. on a business day, we will consider that day to be the day of the payment. If a payment is to be mailed to a specific address furnished by the Bank, crediting of payment will be considered received and credited to the account on the same business day received. If the payment is not mailed to the address furnished by the Bank, crediting of the payment may be delayed. Every day is a business day, except Saturdays, Sundays, and federal holidays. Some methods of payment may not be available on all products. You should check with a Bank representative if you have questions concerning available payment methods. If you make any payments on this Agreement by check, draft, or other item that is dishonored for any reason, you agree to pay the Bank's reasonable check charge as allowed by law. This charge will be in addition to any NSF or similar charge, which may be assessed against the account listed by the paying Bank.

Whole Balance Becomes Due (Default). If this note is payable on demand or has a Call Feature that has passed the specified calendar date, you may demand that this loan be paid in full immediately whether or not my payments are made on time. If I fail to make any scheduled payment when due, you may demand that this loan be paid in full immediately. If I, or any guarantor, should die, dissolve, terminate, fail, assign assets for benefit of creditors, file for bankruptcy, become insolvent, change ownership (if organized entity) by more than 25% during the term of this loan (without your prior written approval and to which I agree to provide you a 30 day advance notice), or default under any provision of this note or any separate agreement, you may declare the note in default and demand that this loan be paid in full immediately. In addition, if you, in your sole discretion, feel the prospect of payment, performance, or realization of Collateral is significantly impaired, or if you should deem yourself insecure for any reason, this loan will immediately become due and payable.

No Waiver. It is further agreed that the acceptance after maturity of any payment shall not constitute a waiver of your rights to demand payment in full of any unpaid balance.

Remedies. Upon default, the rate of interest on the unpaid principal balance, insurance and other charges that we have agreed to pay shall be increased an additional 600 basis points (6%) above the stated contract rate on the face of this note. If I, or any guarantor, default, you may take possession of the collateral and at your request I will assist you by making it available. Even though you take the collateral, I may be obligated for payment as provided by law. You may peacefully take possession of the Collateral for the reasons above at any time, even though you may not have done so previously, until I pay all amounts owing to you covered by the Security Interest. If you should take possession of the Collateral and the Collateral should contain any personal property, I agree to contact you and arrange to pick up the property within twenty-four (24) hours of your taking possession of the Collateral. If I do not pick up the property within this time period I understand that you may keep it for me, at reasonable storage expense or dispose of as it as you see fit. Your failure to enforce or assert any of your rights under this agreement at any point in time shall not be considered waiver of the right to enforce these terms and conditions at any time in the future.

Financial Statements. I agree to provide signed financial statements and other financial information at such frequencies and in such detail as you may reasonably request.

Attorney's Fees. If you hire a lawyer to help collect this loan, I also agree to pay collection costs to include reasonable fees not to be less than 15% of the amount to be collected (unless otherwise prohibited by law).

Variable Rate Loans. If my loan has a variable rate feature, I agree to make no other inferences relating to any rate index that you may use. If my variable rate loan has a fixed or amortized payment amount, I understand and agree that if the selected variable rate index should exceed the fixed rate used for payment calculation purposes, you may, at your discretion, (a) increase the amount of periodic payments to have the loan fully amortize at the scheduled maturity, (b) extend the maturity and require additional periodic payments, (c) require the resulting increase to be paid at maturity, or (d) select or designate any combination of the foregoing.

Legal Matters. Any questions about this loan, Note or other agreements I make with you will be decided under South Carolina law. You and I agree that we will comply with all applicable laws, rulings and regulations and the terms of this contract will be interpreted in such manner as will comply with such laws, rulings and regulations.

RK
JMS

EXHIBIT B

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

First Citizens Bank and Trust Company,)
Inc.,)

Plaintiff,)

v.)

Ronald D. Taylor and Ted D. Smith,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-23- 4097

VERIFIED STATEMENT

(Non-Jury)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2014 JUL 28 PM 4:21

PERSONALLY APPEARED BEFORE ME, Neekis Hammond, who being first duly sworn, deposes and says:

1. I am the Assistant Vice President for First Citizens Bank and Trust Company, Inc., the Plaintiff in the above-captioned case.

2. I have personal knowledge of the information contained in this verified statement.

3. The above-named Defendants are indebted to Plaintiff, as of June 26, 2014, in the amount of \$66,263.49, plus interest accruing subsequently thereon at the rate of \$6.93 per day (4.75% per annum, pursuant to the terms of the Promissory Note), attorneys' fees, expenses and costs.

4. Although duly demanded, no part of same has been paid by cash, discount, or otherwise, with all credits justly due having been given.

SWORN TO and subscribed before me
This 18 day of July, 2014

Neekis Hammond (S.)

Notary Public for South Carolina

My Commission Expires: 1/24/23

FIRST CITIZENS BANK AND TRUST
COMPANY, INC.

By: Neekis Hammond

Neekis Hammond
Its: Assistant Vice President

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2014-CP-23-4097

First Citizens Bank and Trust
Company, Inc.,)

Plaintiff)

v.)

Ronald D. Taylor and Ted D. Smith,)

Defendants)

ANSWER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 AUG 28 PM 12 28

The Defendants, Ronald Taylor and Ted Smith, answering the Complaint of the Plaintiff, would allege and show unto this Honorable Court as follows:

1. Each and every allegation of the Complaint, not hereinafter specifically admitted, is denied.
2. That the allegations of paragraphs 1, 2, 3, 4 and 5 are admitted.
3. That the allegations of paragraph 6 are admitted.
4. That the allegations of paragraph 7 are admitted.
5. That the allegations of paragraphs 8, 9 and 10 are admitted.
6. The allegations of paragraphs 11 and 12 are denied.

FOR A SECOND DEFENSE

7. Each and every allegation hereinabove, not inconsistent herewith, is herein realleged by reference.

8. That the Plaintiff's action is barred by the applicable statutes of limitations.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendants would pray that the action be dismissed, with costs.

RANDALL S. HILLER, P.A.


Randall S. Hiller (SCB# 2513)

P.O. Box 1716

Greenville, SC 29602

864-232-0026

864-242-4692 Fax

Attorney for Defendants

Greenville, South Carolina

August 21, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2014-CP-23-4097

First Citizens Bank and Trust)
Company, Inc.,)

Plaintiff)

v.)

Ronald D. Taylor and Ted D. Smith,)

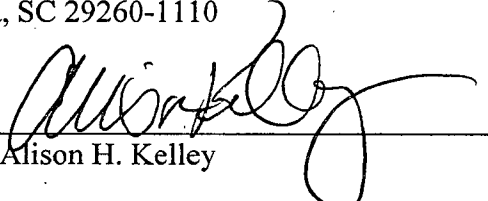
Defendants)

CERTIFICATE OF MAILING

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 AUG 28 PM 12 28

I hereby certify that I am an employee of the law firm RANDALL S. HILLER,
P.A., counsel for the above captioned Defendants, and I have, this date written below served the
within Plaintiff with Defendants' Answer relative to the above captioned by depositing a copy of
same in the United States Mail, postage prepaid and addressed as follows:

Joey R. Floyd, Esq.
P.O. Box 61110
Columbia, SC 29260-1110


Alison H. Kelley

August 27, 2014

Greenville, South Carolina

Received
5/15/15

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP2304097

FILED-COURT OF JUDICIAL
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 MAY 1 PM 09

First Citizens Bank And Trust Company Inc vs. Ronald D Taylor

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Robin B. Stilwell

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Joey Randell Floyd Bruner, Powell, Wall & Mullins,
LLC P.O. Box 61110 Columbia, SC 29260

ATTORNEY(S) FOR THE PLAINTIFF(S)

Randall Scott Hiller 850-B Wade Hampton Blvd.
Greenville, SC 29609

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

) CIVIL ACTION NO.: 2014-CP-23-4097

First Citizens Bank and Trust Company, Inc.,

Plaintiff,

v.

Ronald D. Taylor and Ted D. Smith,

Defendants.

**CONSENT ORDER TO DECIDE CASE
ON CROSS MOTIONS
FOR SUMMARY JUDGMENT AND
BRIEFING SCHEDULE**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 MAY 12 PM 3 09

The Plaintiff, First Citizens Bank and Trust Company, Inc., ("FCB") and Defendants Ronald D. Taylor and Ted D. Smith (Ronald D. Taylor and Ted D. Smith are referred to collectively herein as "Defendants"), by and through its/their Counsel, have agreed that the only issue in dispute in this case is a legal issue. The Defendants contend that the Statute of Limitations has expired on the Plaintiff's claim(s) against the Defendants. The Plaintiff disagrees with the Defendants' assertions that the Statute of Limitations has expired. The parties have reached an impasse regarding resolution and agree that a Mediation will not assist the parties in working out a resolution, given their respective position on the Statute of Limitations. In lieu of a trial in this matter, the parties hereto have agreed to file Cross-Motions for Summary Judgment and allow this Court to determine the outcome of this case based on the pleadings of record filed with the Greenville County Clerk of Court, Memoranda in Support of their respective positions and Affidavits, if any, filed by the Parties hereto.

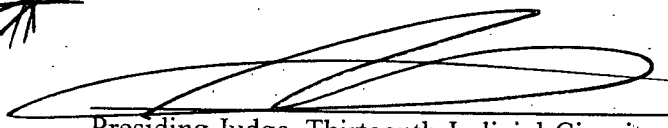
In the interest of justice and judicial economy, the parties have agreed that the Trial Court's Order on the Cross-Motions for Summary Judgment will be dispositive of the case. The prevailing party on the Cross-Motions for Summary Judgment will be the prevailing party at the trial level in this case. If the Plaintiff prevails, a Judgment will be entered against the Defendants in this case in accord with the remedy that Plaintiff is seeking in its Verified Complaint. If the Defendants prevail, no Judgment will be entered against the Defendants. The parties shall have the right to appeal the decision of the Trial Court accordingly.

RB

The timeline/briefing schedule for the disposition of this case shall be as follows:

- Cross-Motions for Summary Judgment shall be filed within 30 days after the parties hereto receive a signed/filed copy of this Order
- Defendants' Memorandum in Support of its Motion for Summary Judgment shall be filed and served on Counsel for the Plaintiff within 60 days after the parties hereto receive a signed/filed copy of this Order.
- Plaintiff's Memorandum in Support of its Motion for Summary Judgment and in Opposition to Defendants' Motion for Summary Judgment shall be filed and served on counsel for the Defendant within 30 days after the Defendants' Memorandum in Support of its Motion for Summary Judgment is filed and served upon Counsel for the Plaintiff.
- Defendants Reply Memorandum, if Defendants elect to file a Reply Memorandum, to Plaintiff's Memorandum in Support of its Motion for Summary Judgment and in Opposition to Defendants' Motion for Summary Judgment shall be filed and served on Counsel for the Plaintiff within 30 days after the Plaintiff's Memorandum in Support of its Motion for Summary Judgment and in Opposition to Defendants' Motion for Summary Judgment is filed and Served on Counsel for the Defendants.

AND IT IS SO ORDERED



Presiding Judge, Thirteenth Judicial Circuit

STILWELL/2158

Greenville, South Carolina

April 1, 2015

8/1/15

* JUDGE STILLWELL SHALL
ASSUME JURISDICTION OF
THIS MATTER ALL SUBMISSIONS
SHOULD BE FORWARDED TO J. STILLWELL
ATTENTION.

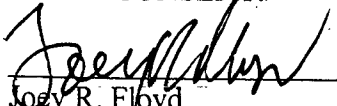
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**CONSENT ORDER TO DECIDE CASE ON CROSS MOTIONS FOR SUMMARY
JUDGMENT AND BRIEFING SCHEDULE**

19

C/A No.: 2014-CP-23-4097

WE SO CONSENT:



Joey R. Floyd

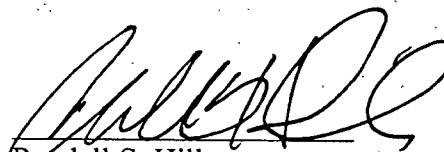
1735 St. Julian Place, Suite 200

P.O. Box 61110

Columbia, SC 29260-1110

(803) 252-7693

Attorney for Plaintiff



Randall S. Hiller

P.O. Box 1716

Greenville, SC 29602

864-232-0026

Attorney for Defendants

3

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
GREENVILLE CO. S.C.
CASE NO. 2014-CP-23-4097
PAUL B. WICKENS IMR

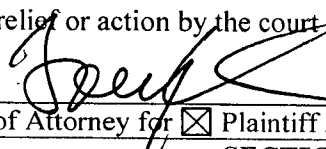
First Citizens Bank and Trust Company, Inc. as
Plaintiff,

vs.

Ronald D. Taylor and Ted D. Smith

Defendant.

1 AM 10 33
**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Joey R. Floyd, Bar No. 68491 Address: Post Office Box 61110, Columbia SC 29260-1110 Phone: 803-252-7693 Fax 803-254-5719 E-mail: jfloyd@brunerpowell.com Other: _____		Defendant's Attorney: Randall S. Hiller, Bar No. _____ Address: P.O. Box 1716, Greenville, SC 29602 Phone: 864-232-0026 Fax _____ E-mail: rsh@rshpa.org Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Consent Order to Decide Case on Cross Motions for Summary Judgment Estimated Time Needed: N/A Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant April 27, 2015 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by <u>mwo</u> Date Filed: _____ ☒ MOTION FEE COLLECTED: \$25.00 ☐ CONTESTED - AMOUNT DUE: \$ _____ CK# 43624 Bruner, Powell, Wall & McCallins 21			

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

1735 ST. JULIAN PLACE, SUITE 200

POST OFFICE BOX 61110

COLUMBIA, SOUTH CAROLINA 29260-1110

TELEPHONE 803-252-7693

FAX 803-254-5719

WWW.BRUNERPOWELL.COM

JAMES L. BRUNER, P.A.
WARREN C. POWELL, JR., P.A.*
HENRY P. WALL
E. WADE MULLINS, III, P.A.
BRIAN P. ROBINSON, P.A.
WESLEY D. PEEL, P.A.

JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

ANN ALLISON LEE
CAITLIN C. HEYWARD

AUTHOR'S E-MAIL: JFLOYD@brunerpowell.com

* Also Admitted in District of Columbia

May 26, 2015

Via U. S. Mail

The Honorable Paul B. Wickensimer
Greenville County Clerk of Court
305 E. North Street
Greenville, SC 29601

**Re: First Citizens Bank and Trust Company, Inc. v. Ronald D. Taylor
and Ted D. Smith
Civil Action No. 2014-CP-23-4097
Our File No.: 8-2545.119**

Dear Mr. Wickensimer:

Enclosed for filing, please find an original and two (2) copies of the following: *Plaintiff's Motion and Order Form Information Coversheet, Notice of Motion and Motion for Summary Judgment and the Affidavit of Michael O'Hare*. In addition, you will find a check in the amount of \$25.00 to cover the filing fee. I kindly ask that your staff file the original, clock in the copies and return the file stamped copies back to me in the envelope, postage prepaid, that I have enclosed herein. Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With my highest regards, I am,

Sincerely,



Joey R. Floyd

JRF/hos

Enclosures

cc: Randall S. Hiller, Esquire (Via U.S. Mail w/copy of Enclosures)
First Citizens Bank and Trust Company, Inc. (Via E-Mail w/copy of Enclosures)

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

First Citizens Bank and Trust Company, Inc.

☒ Plaintiff

v.

Ronald D. Taylor And Ted D. Smith

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2014-CP-23-4097

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Joey R. Floyd, Bar No. 68491

Address:

PO Box 61110, Columbia, SC 29204

phone: 803-252-7696 fax: 1.888.945.9333

e-mail: jfloyd@brunerpowell.com other:

Defendant's Attorney:

Randall S. Hiller, Bar No.

Address:

PO Box 1716, Greenville, SC 29602

phone: 864-232-0026 fax:

e-mail: other:

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

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment - *Per Consent Order to Decide Case on Cross Motions*

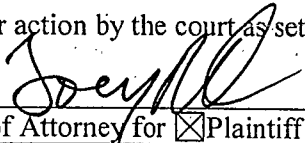
Estimated Time Needed: 30 Minutes (if a hearing is held) Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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


Signature of Attorney for ☒ Plaintiff / ☐ Defendant

5/26/15
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: 25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

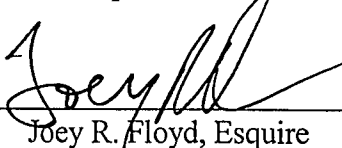
☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO.: 2014-CP-23-4097
	)	
First Citizens Bank and Trust Company,	)	
Inc.,	)	
	)	PLAINTIFF'S NOTICE OF MOTION
Plaintiff,	)	AND MOTION FOR SUMMARY
	)	JUDGMENT
v.	)	
	)	
Ronald D. Taylor and Ted D. Smith,	)	
	)	
Defendants.	)	
	)	

TO: RANDALL S. HILLER, ATTORNEY FOR DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that Plaintiff, First Citizens Bank and Trust Company, Inc. ("First Citizens"), by and through its undersigned counsel, hereby moves for an Order granting First Citizens Summary Judgment¹ against Defendants pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. This motion is further supported by the Affidavit of Michael O'Hare (attached hereto as Exhibit A), argument, memoranda, stipulations of fact and/or other materials as may be filed and served upon the parties in accordance with Rule 56 prior to the hearing on this motion.

By: 
 Joey R. Floyd, Esquire
 Bruner Powell Wall & Mullins, LLC
 1735 St. Julian Place, Suite 200
 Columbia, South Carolina 29204
 (803) 252-7693 (Telephone)
Attorneys for the Plaintiff

Columbia, South Carolina
 May 26, 2015

¹ Pursuant to the Consent Order to Decide Case on Cross Motions for Summary Judgment and Briefing Schedule that was filed with this Court on May 12, 2015.

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO.: 2014-CP-23-4097
First Citizens Bank and Trust Company, Inc.,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF MICHAEL O'HARE
	)	
v.	)	
	)	
Ronald D. Taylor and Ted D. Smith,	)	
	)	
Defendants.	)	
_____	)	

Personally appeared before me, Michael O'Hare, being first duly sworn, deposes and states as follows:

- (1) I am over the age of 18 and competent to make this affidavit.
- (2) I am a Vice President for the Plaintiff, First Citizens Bank and Trust Company, Inc. ("Plaintiff" or "First Citizens"), in the above-captioned civil action.
- (3) This affidavit is based on my personal knowledge and the business records of First Citizens.
- (4) The Defendants signed a Promissory Note in favor of First Citizens, as shown in Exhibit A to the Verified Complaint.
- (5) The Defendants failed to make its/their payments on the Promissory Note as they agreed to according to the terms of the Promissory Note.
- (6) The above-named Defendants are indebted to Plaintiff, as of June 26, 2014, in the amount of \$66,263.49, plus interest accruing subsequently thereon at the rate of \$6.93 per day (4.75% per annum, pursuant to the terms of the Promissory Note), attorneys' fees, expenses and costs.

(7) The last payment made by Defendants to First Citizens towards the debt being pursued in this lawsuit was received by First Citizens on September 18, 2008.

**FIRST CITIZENS BANK AND
TRUST COMPANY, INC.**



Michael O'Hare, Vice President

SWORN TO and subscribed before me

This 21 day of May, 2015



(L.S.)

Notary Public for North Carolina

My Commission Expires 8/8/2019

Michele C Smith
Notary Public - State of North Carolina
Qualified in Johnston County

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

First Citizens Bank and Trust Company,
Inc.,

Plaintiff,

v.

Ronald D. Taylor and Ted D. Smith,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-23-4097

CERTIFICATE OF SERVICE

I, Annie Rich, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Plaintiff, do hereby certify that on the 21st day of May, 2015, I served the pleadings/documents set forth below on the person(s) identified below, by depositing copies thereof in the U.S. Mail, postage-paid, in an envelope securely sealed, and addressed to the following.

Pleadings/Documents Served:

- (1) Motion and Order Information Form and Cover Sheet;
- (2) Notice of Motion and Motion for Cross Summary Judgment; and
- (3) Affidavit of Michael O'Hare (Exhibit A).

Person(s) Served:

Randall S. Hiller, Esquire
Post Office Box 1716
Greenville, SC 29602

Annie Holbrook

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
GREENVILLE CO. S.C.
PAUL B. WICKENS, JR. CASE NO.: 2014-CP-23-4097

First Citizens Bank and Trust Co., Inc. JUN 17 2015

Plaintiff,

vs.

Ronald D. Taylor and Ted S. Smith

Defendant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney: Joey Floyd, Bar No. _____ Address: _____ P.O. Box 61110, Columbia, SC Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Randall S. Hiller, Bar No. 2513 Address: _____ 850 Wade Hampton Blvd., Greenville, SC Phone: 232-0026 Fax 242-4692 E-mail: rsh@rshpa.org Other: ahk@rshpa.org
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Summary Judgment Estimated Time Needed: 15 min. Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☐ Plaintiff / ☒ Defendant	
June 12, 2015 Date submitted	
SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason)	
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2014-CP-23-4097

First Citizens Bank and Trust
Company, Inc.,)

Plaintiff)

v.)

Ronald D. Taylor and Ted D. Smith,)

Defendants)

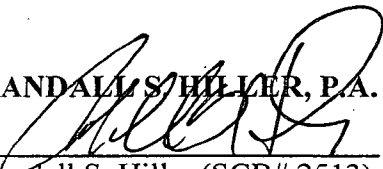
MOTION FOR SUMMARY JUDGMENT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2015 JUN 17 PM 3:11

TO: PLAINTIFFS AND THEIR ATTORNEY, JOEY RANDELL FLOYED, ESQ.:

Please take notice that the undersigned attorney for the Defendants will, as soon as this matter can be heard, move for an Order of this Court granting these Defendants Summary Judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, on the grounds that the Complaint of the Plaintiff is barred by the applicable statute of limitations in effect at the time the transaction and the default occurred.

RANDALL S. HILLER, P.A.


Randall S. Hiller (SCB# 2513)
P.O. Box 1716
Greenville, SC 29602
864-232-0026
864-242-4692 Fax
Attorney for Defendants

Greenville, South Carolina

June
May 12, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2014-CP-23-4097

First Citizens Bank and Trust
Company, Inc.,)

Plaintiff)

v.)

Ronald D. Taylor and Ted D. Smith,)

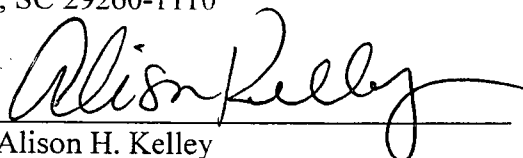
Defendants)

CERTIFICATE OF MAILING

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2015 JUN 17 AM 9 11

I hereby certify that I am an employee of the law firm RANDALL S. HILLER,
P.A., counsel for the above captioned Defendants, and I have, this date written below served the
within Plaintiff with Defendants' Motion for Summary Judgment relative to the above captioned
by depositing a copy of same in the United States Mail, postage prepaid and addressed as
follows:

Joey R. Floyd, Esq.
P.O. Box 61110
Columbia, SC 29260-1110


Alison H. Kelley

June 12, 2015

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2014-CP-23-4097

First Citizens Bank and Trust
Company, Inc.,

Plaintiff

v.

Ronald D. Taylor and Ted D. Smith,

Defendants

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT**

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL B. WICKES, CLERK
2015 JUL 13 AM 10:02

The Defendants, by and through their undersigned counsel, would show unto the Court that the Defendants are entitled to a grant of summary judgment on the issues raised by the Plaintiff's Complaint on the grounds that the applicable statute of limitations has expired.

FACTS

The undisputed facts are that the Defendants executed promissory note by the Defendants on May 22, 2008 in the original principal amount of \$52,526.07. The note was due and payable in full on November 22, 2008. No payments were made under the terms of the promissory note after September 18, 2008.

This action was commenced on July 28, 2014 by the filing of a Summons and Complaint in the Greenville County Court of Common Pleas. The Defendants answered affirmatively raising the defense that the action was barred by the applicable statute of limitations.

ARGUMENT

On May 28, 2008, when the promissory note was executed, the applicable statute of limitations then in effect was governed by Section 15-3-530, *South Carolina Code of Laws*, establishing a limitation of 3 years. Under Plaintiff's best case scenario it knew, or should have known, that a cause of action had accrued when it was not paid the entire principal balance at maturity on November 22, 2008. Thus, under the law that existed at the time of the execution of the promissory note the Plaintiff was required to institute its action on or before November 22, 2011. Having missed that deadline by some three and a half years the Defendants are entitled to judgment as a matter of law.

The Plaintiff is expected to argue Section 36-3-118(b), *South Carolina Code of Laws*, extended the statute of limitations for enforcing the obligation of a party to pay a note to 6 years. While Defendants would concur that that is the applicable statute of limitations as of the time of the filing of the action it was not the applicable statute of limitations at the time that the note was executed.

The legislature in amending the Uniform Commercial Code by 2008 SC Act Number 2004 specifically provided that the act was to take effect on July 1, 2008 and the Act contained a transition provision which states as follows:

SECTION 4.A. This Act applies to a transaction occurring on or after the effective date of this Act. This Act does not apply to a transaction or event, or obligation or duty arising out of or associated with a transaction or event, before the effective date of this Act.

B. A transaction occurring before the effective date of this Act and the rights, obligations, and interest flowing from that transaction are governed by any statute or other law amended or repealed by this Act as if repeal or amendment have not occurred and may be terminated, completed, consummated, or enforced under that statute or other law.

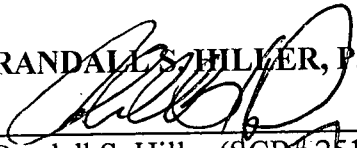
The presumption that remedial or procedural statutory enactments are to be given retroactive effect is inapplicable when the intent of the legislature determines whether a statute will have prospective or retroactive application. South Carolina National Bank v. South Carolina Tax Commission, 297 S.C. 279, 376 S.C.2nd 512 (1989) and Jenkins v. Mears, 302 S.C. 142, 394 S.C.2nd 317 (1990). This legislation creating a six year statute of limitations clearly and specifically mandates that the extension of the statute of limitations applied only prospectively to transactions occurring subsequent to July 1, 2008.

CONCLUSION

The transaction alleged in the Complaint occurred prior to July 1, 2008, the action was filed more than 3 years after the maturity of the promissory note and Act Number 2004 specifically provides for prospective application. Accordingly, Defendants are entitled to summary judgment on the claims brought by the Plaintiff.

(Signature on following page.)

Respectfully submitted,


RANDALL S. HILLER, P.A.

Randall S. Hiller (SCB# 2513)

P.O. Box 1716

Greenville, SC 29602

864-232-0026

864-242-4692 Fax

Attorney for Defendants

Greenville, South Carolina

July 8, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2014-CP-23-4097

First Citizens Bank and Trust
Company, Inc.,)

Plaintiff)

v.)

Ronald D. Taylor and Ted D. Smith,)

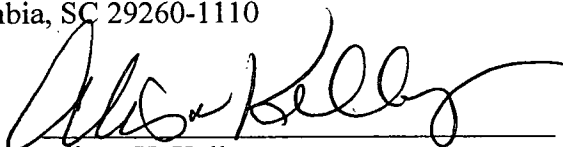
Defendants)

CERTIFICATE OF MAILING

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2015 JUL 13 AM 9 02

I hereby certify that I am an employee of the law firm RANDALL S. HILLER,
P.A., counsel for the above captioned Defendants, and I have, this date written below served the
within Plaintiff with Defendants' Memorandum in Support of Defendants' Motion for Summary
Judgment relative to the above captioned by depositing a copy of same in the United States Mail,
postage prepaid and addressed as follows:

Joey R. Floyd, Esq.
P.O. Box 61110
Columbia, SC 29260-1110


Alison H. Kelley

July 8, 2015

Greenville, South Carolina

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

1735 ST. JULIAN PLACE, SUITE 200

POST OFFICE BOX 61110

COLUMBIA, SOUTH CAROLINA 29260-1110

TELEPHONE 803-252-7693

FAX 803-254-5719

WWW.BRUNERPOWELL.COM

JAMES L. BRUNER, P.A.
WARREN C. POWELL, JR., P.A.*
HENRY P. WALL
E. WADE MULLINS, III, P.A.
BRIAN P. ROBINSON, P.A.
WESLEY D. PEEL, P.A.

JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

ANN ALLISON LEE
CAITLIN C. HEYWARD

AUTHOR'S E-MAIL: JFLOYD@brunerpowell.com

* Also Admitted in District of Columbia

August 5, 2015

Via U. S. Mail

The Honorable Paul B. Wickensimer
Greenville County Clerk of Court
305 E. North Street
Greenville, SC 29601

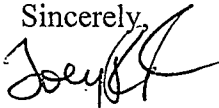
**Re: First Citizens Bank and Trust Company, Inc. v. Ronald D. Taylor
and Ted D. Smith
Civil Action No. 2014-CP-23-4097
Our File No.: 8-2545.119**

Dear Mr. Wickensimer:

Enclosed for filing, please find an original and two (2) copies of the *Plaintiff's Memorandum in Support of Its Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment*. I kindly ask that your staff file the original, clock in the copies and return the "filed" stamped copies back to me in the envelope, postage prepaid, that I have enclosed herein. Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With my highest regards, I am,

Sincerely,



Joey R. Floyd

JRF/hos

Enclosures

cc: Randall S. Hiller, Esquire (Via Email and U.S. Mail w/copy of Enclosures)
The Honorable Robin B. Stilwell (Via Email Only w/copy of Enclosures)
First Citizens Bank and Trust Company, Inc. (Via E-Mail Only w/copy of Enclosures)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-23-4097

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT AND IN
OPPOSITION TO DEFENDANTS'**

MOTION FOR SUMMARY JUDGMENT

V.

)

)

)

100

ards the Commercial Note was on September 18, 2008

three-year statute of limitations (S.C. Code § 15-3-31).

action was a third Mortgage on certain properties. Southern First closed on these properties in 2008 and a Decree of Foreclosure was entered on May 29, 2009. Notwithstanding that fact, the Promissory Note was in writing secured by real property.

the Defendants is governed by a twenty-year statute of limitations. As such, the Plaintiff filed this action well within the statute of limitations. Accordingly, the Plaintiff is entitled to a Judgment against these Defendants in the amount prayed for in its Complaint and itemized in the Affidavit of Michael O'Hare, which was filed contemporaneously with the Plaintiff's Motion for Summary Judgment.

ARGUMENT

Defendants contend that the three-year statute of limitations (S.C. Code § 15-3-530(1)) applies to the Plaintiff's claim against the Defendants for the breach of a Commercial Note. S.C. Code § 15-3-530(1) states that an action shall be brought: "[w]ithin three years: (1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520." (emphasis added). S.C. Code § 15-3-520 provides a twenty-year statute of limitations for "an action upon a bond or other contract in writing secured by a mortgage of real property." S.C. Code § 15-3-520(a) (1976). The Commercial Note signed by the Defendants on May 22, 2008, is a "contract in writing secured by a mortgage of real property." Therefore, the twenty-year limitations period applies in the instant case. A copy of S.C. Code §§ 15-3-520 and 530 are attached hereto as Exhibit C.

An earlier version of these statutes appeared as Sections 387 and 388 of the South Carolina Code of 1932, and the language remains virtually unchanged under the current statutes. Under the 1932 Code, Sections 387 and 388, corresponding to Section 15-3-520 and 15-3-530 of the 1976 Code, respectively, state in relevant part:

§ 387. Twenty Years.-Within twenty years:

(1) ***

(2) **An action upon a bond, or other contract in writing, secured by a mortgage of real property;** an action upon a sealed instrument other than a sealed note and personal bond for the payment of money only, whereof the period of limitation shall be the same as prescribed in the following section."

§ 388. Six Years.-Within six years:²

(1) An action upon a contract, obligation, or liability, express or implied, **excepting those provided for in section 387.** (emphasis added).

² Section 15-3-530 was amended in 1988 to reduce the limitations period from six years to three years for actions governed by this statute.

In *Scovill v. Johnson*, the South Carolina Supreme Court had to decide whether Section 387 or 388 of the 1932 Code applied to an action against the endorers of a promissory note that was secured by a mortgage of real property. *Scovill v. Johnson*, 190 S.C. 457, 3 S.E.2d 543 (1939). Where the instrument in question is a “contract in writing secured by a mortgage of real property,” the court placed the burden of demonstrating why the twenty-year limitations period does not apply on the party claiming the application of the shorter limitations period. *Id.* at 457. “[T]he respondents herein would have to first overcome the twenty-year statute (Section 387 [of the 1932 Code, or currently Section 15-3-520 of the 1976 Code]) before claiming the benefit of the six-year statute [or three-year statute of Section 15-3-530 of the 1976 Code].” *Id.* at 457. In *Scovill*, the endorers of the note did not plead any facts that would prove that “the endorers didn’t know that the note (“the contract in writing”) was secured by a mortgage of real property, or [that] it was not so secured at the time of the making and endorsement of the note as a part of the same transaction,” the twenty-year statute applied. *Id.* Furthermore, “[i]f there is any doubt as to which of two statutes applies, that doubt must be resolved in favor of the longest period.” *Id.* at 457.

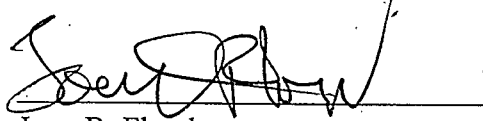
In the instant case, the Commercial Note was executed and secured contemporaneously with a mortgage. The note is thus “a contract in writing, secured by a mortgage of real property” and falls under the twenty-year statute of limitations, S.C. Code § 15-3-520. When the legislature reduced the limitations period of S.C. Code § 15-3-530 from six years to three years in 1988, it preserved the Section 15-3-520 exception: “Within three years: (1) an action upon a contract, obligation, or liability, express or implied, **excepting those provided for in Section 15-3-520.**” S.C. Code Ann. § 15-3-530. The South Carolina Supreme Court’s decision in *Scovill* expressly held that the twenty year statute of limitations applies in this case. Therefore, the Plaintiff in this civil action had twenty years to file suit against the Defendants and is entitled to Judgment, as a matter of law, against the Defendants in this civil action.

CONCLUSION

The three-year limitations period provided for in S.C. Code § 15-3-530 does not apply to this civil action. Because the Commercial Note of May 22, 2008, was a “contract in writing, secured by a mortgage of real property,” the twenty-year limitations period of S.C. Code § 15-3-520 applies. This civil action was commenced on July 28, 2014, well within the twenty-year limitations period. Therefore, the Plaintiff’s civil action is timely and is not barred by any statute

of limitations. The Plaintiff respectfully requests that this Court enter a Judgment against the Defendants in the amount of \$66,263.49, plus interest accruing thereon at the contract rate of 4.75% per annum pursuant to the terms of the Commercial Note (\$6.93/day from June 27, 2014).³ In accordance with the terms of the Commercial Note, the Plaintiff is also entitled to its attorneys fees ("not less than 15% of the amount to be collected") and the costs of this action.

Respectfully Submitted.



Joey R. Floyd

Bruner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200 (29204)
P.O. Box 61110
Columbia, S.C. 29260
(803) 252-7693

Attorneys for the Plaintiff

First Citizens Bank and Trust Company, Inc.

August 5, 2015

³ See Affidavit of Michael O'Hare filed simultaneously with the Plaintiff's Motion for Summary Judgment.

EXHIBIT A

First Citizens

COMMERCIAL NOTE

MAY 22, 2008

GREENVILLE, SC

LOAN PURPOSE

SECURE COLLATERAL TO EXISTING LOAN

I agree that the primary use of the loan proceeds is 577991-865949
which is for Business or (if checked) ☐ Agriculture and not primarily personal, family, or household purposes.

CONDITION OF LOAN

You, First Citizens Bank and Trust Company, Inc. have loaned me \$ 52,526.07 (Principal) and I will comply with the provisions of this note which I have signed and I will comply with any other conditions to which we have agreed.

INTEREST

Interest is computed daily on the entire unpaid Principal balance and the scheduled payments are due precisely on the due dates. To the extent that payments are late or early, greater or less interest may be due over the life of the loan. Interest will be calculated on the basis of a 360 day year for the actual number of days elapsed. The per annum interest rate used in the calculation will be:

☐ Wall Street Journal Prime + _____ % ☐ One (1) Month LIBOR + _____ % ☐ Three (3) Month LIBOR + _____ %

☐ If checked, my variable rate loan will have a minimum interest rate of _____ % and a maximum interest rate of _____ %.

Variable rate interest adjustments will be made based on the applicable rate index chosen. I recognize and acknowledge that you could make loans in certain situations below the applicable rate index. See additional variable rate provisions on reverse side of this Note. My rate will change as checked below:

First Citizens Prime changes will take effect ☒ daily or ☐ monthly on the first calendar day of the month following First Citizens Prime change. First Citizens Prime is an index used to price loans and is established by you at your discretion.

Wall Street Journal Prime changes will take effect ☐ daily based on the Prime Rate effective date as quoted in the "Money Rates" section of the Wall Street Journal or ☐ monthly on the first calendar day of the month based on the Prime Rate quoted in the "Money Rates" section of the Wall Street Journal, which section is dated for the last publishing day of the month prior to each interest rate change.

☐ One (1) Month and Three (3) Month LIBOR changes will take effect on the first calendar day of the month. The One (1) Month and Three (3) Month LIBOR indexes are the London Interbank Offered Rates quoted in the "Money Rates" section of the The Wall Street Journal, which section is dated for the last publishing day of the month prior to each interest rate change.

PAYMENT SCHEDULE

Principal due NOVEMBER 22, 2008 with interest payable in consecutive MONTHLY payments beginning JUNE 22, 2008.

LATE CHARGES

A late charge of the higher of \$50 or 0.5% will be assessed for any single payment loan not paid, renewed, modified or extended within 10 days of its due date. Loans having more than one payment will be assessed a late charge of the higher of \$50 or 5% of the unpaid balance of any payment not paid, renewed, or modified or extended within 10 days of the due date of the payment.

OTHER CHARGES

I agree to pay the following Prepaid Finance Charges and Other Charges: Origination Fee: n/a Processing Fee: \$150.00 Other Charges: \$1,361.00. At my request, Prepaid Finance Charges and Other Charges totaling \$1,511.00 have been added to the Principal Amount listed above.

PLEDGE OF COLLATERAL

I am giving you a security interest in collateral described in the additional security section on the reverse side and to any collateral described below:

3RD REAL ESTATE MORTGAGE ON A LOT ON ELMSHORN DRIVE, GREER, SC

TAX MAP # 0534010101202 (3.773 ACRES).

3RD REAL ESTATE MORTGAGE ON A LOT ON ELMSHORN DRIVE, GREER, SC

TAX MAP # 0534010100920 (3.6 ACRES).

FUTURE ADVANCES

☐ If checked, this is a future advance loan subject to the terms and conditions set forth in a Loan Agreement dated _____ which terms and conditions are incorporated herein by reference.

PROMISE

To repay my loan, I promise to pay to the order of First Citizens Bank and Trust Company, Inc. the Principal shown above plus interest accrued on the unpaid balance of the Principal for the actual number of days outstanding, at the interest rate described above, all according to the Payment Schedule shown above plus insurance and any other charges to which we may have agreed. If I have agreed to pay periodic interest payments or payments of equal principal plus interest, as shown in the Payment Schedule above, I understand that actual payments billed to me may vary from those shown in the Payment Schedule. Such differences may be due to more than one month to the first payment or due to difference in the number of days in each month, etc. This interest rate shall continue after default and/or judgment and shall remain in effect until all sums owing hereunder are paid.

PREPAYMENT

If the term of the loan exceeds one year, the following prepayment penalty will apply to all business purpose loans. If within five (5) years from the date of this note, I make any prepayment in any twelve (12) month period beginning with the date of this note or anniversary thereof ("Loan Year") I shall pay you a prepayment fee of three (3%) in year one or year two, two (2%) in year three, and one (1%) in years four and five of the amount by which the sum of prepayments made in any Loan Year exceeds the scheduled payments under this note. Prepayment fees will be due and payable one month after the end of the Loan Year for partial prepayments and due at the time of prepayment when the account is prepaid in full.

CO-BORROWER LIABLE

If I sign this agreement with another Borrower, I will individually be bound for the full amount owed and agree to the granting of one or more extensions without notice or demand of any kind. I also agree to the release or substitution of any collateral which secures this note.

REVERSE SIDE

Additional terms and conditions contained on reverse are a material part of this note and agreement.

ORGANIZATIONAL BORROWER -- NAME AND ADDRESS

TAX I.D. NO. BORROWER(S)

S.S. NO.

Signature RONALD D. TAYLOR

24 DEVONHALL WAY

TAYLORS, SC 29687

BY _____ Address _____

Signature TED D. SMITH

221 PHILHAM ROAD

GREENVILLE, SC 29615

BY _____ Address _____

☐ See Signature Addendum for additional signatures of Borrower(s).

RENEWAL 536/22937

I understand that the paragraph heading on both the front and reverse side of this agreement are for convenience only and that they will not limit any of the provisions of this agreement.

Additional Security (Collateral). The Security Interest includes all parts, insurance, accessories, and equipment I use with the Collateral, any proceeds and any products from the Collateral and return of unearned credit insurance premiums written in connection with this loan. Except for a Security Interest on my principal dwelling, The Security Interest under this agreement also secures the payment of any other existing or future debts of mine to you unless otherwise prohibited by law. I am not giving you a Security Interest in my principal dwelling, unless it is specifically listed as Collateral nor any household goods, unless they are being purchased with the proceeds of this contract and are also listed as Collateral on this contract. If my principal dwelling secures existing debt with you, I understand that it will not secure this loan unless my principal dwelling is specifically listed as Collateral on this contract. I am also giving you a Security Interest in any and all funds I have on deposit with you, except and excluding any funds which are in an Individual Retirement Account.

Ownership. I am the owner of the Collateral and if there is a certificate of title to the Collateral, I will promptly deliver the certificate to you upon your request. There are no Security Interest or liens on the collateral other than yours and those which I have told you about in writing. I will not permit any Security Interest or liens other than yours to be on the Collateral at any time without your prior written consent.

Sale. I will not sell, lease or otherwise dispose of the Collateral without your prior written consent.

Inspection. You may inspect the Collateral at any reasonable time. Upon your request, I will exhibit the Collateral to you or I will furnish you a written statement showing the whereabouts of the Collateral.

Location and Use. I will keep the Collateral in the state of my residence, but if the Collateral is a motor vehicle, boat, or an airplane, I may use it outside my state of residency in the course of my normal and customary use of the Collateral. I will not use the Collateral in violation of any law or in a manner inconsistent with any insurance policy.

Taxes. I will pay all taxes, inspections and other fees payable on the Collateral or payable for the use and operation of the Collateral when they are due and payable.

Financing Statements. I authorize you at any time and from time to time to file any financing statements, continuation statements, in lieu of continuation statements, or amendments in the jurisdictions that you may deem necessary to perfect your security interests in the collateral. I also agree to notify you 30 days in advance if I or the party granting the security interest, should either change my name, my state of organization, or my location. I will pay all filing fees and other fees and costs when such statements are filed or prior to a statement release.

Maintenance. I will keep the Collateral in good condition and repair and I will not permit anything to be done to the Collateral which would impair its use.

Failure to Pay Taxes, Costs and to Maintain Collateral and Placement of Other Liens on Collateral. If I fail to keep the Collateral in good condition and repair or if I fail to pay any taxes, impositions or other fees on the Collateral or if I fail to pay any cost and taxes for filing, financing, continuation and Security Interest filing statements or if any Security Interest or lien other than yours attaches or is on the Collateral, you may pay the same for my account and I will immediately pay to you any amounts so paid by you and all of your cost and expenses for so doing. Such amount will be covered by the Security Interest I have granted for you and will accrue interest at the Annual Percentage Rate until paid.

Insurance. I will keep the Collateral insured against such risks and in such amounts as you may require from time to time. I will provide you proof of such insurance coverage at all times with you named as the party to be paid in event of loss. I may furnish this coverage through an agent or company of my choice. However, this coverage must be acceptable to you. I will pay all premiums for this insurance when they are due and payable. If I fail to obtain the insurance or if I fail to pay the insurance premiums, you may obtain the insurance or pay the premiums. If you do this, I will immediately pay to you an amount equal to all monies you have advanced to obtain insurance and to pay insurance premiums. Any amounts advanced by you will earn interest at the then prevailing interest rate in accordance with the terms of this Note. Such amounts shall be covered by the Security Interest and I will have granted to you. However, if you decide not to obtain the insurance or pay the premiums, none of your rights and remedies against me will be prejudiced. All insurance proceeds under any insurance policy shall be payable to you to the extent of the monies I owe you. I will deliver to you the insurance policy or policies or a certificate of insurance. I assign you any returned or unearned insurance premiums which may be due upon cancellation of any insurance policy. I direct the insurance company policies pay to you all insurance proceeds and returned or unearned premiums. You are irrevocably appointed as my attorney-in-fact to endorse any draft or check which may be payable to me so as to collect any return or unearned premiums or insurance proceeds. All insurance proceeds and returned or unearned premiums received by you will be applied against the monies I owe you and any balance remaining will be paid to me.

Payments. Payments received by a teller in one of our branches on a business day before the close of business at that branch (generally 5:00 p.m.; 6:00 p.m. on Fridays at certain branches), will be considered received that day. Payments received after the close of business at that branch or anytime on a non-business day will be considered received on the next business day we are open. Please note that because we balance ATM's anytime between the hours of 12:00 noon and 2:00 p.m., a payment made through an ATM may be dated and credited one business day later than if the payment had been made in the lobby or at a drive-in window. If a payment is made through On-Line Banking or Telephone Banking before 4:00 p.m. on a business day, we will consider that day to be the day of the payment. If a payment is to be mailed to a specific address furnished by the Bank, the payment will be considered received and credited to the account on the same business day received. If the payment is not mailed to the address furnished by the Bank, crediting of the payment may be delayed. Every day is a business day, except Saturdays, Sundays, and federal holidays. Some methods of payment may not be available on all products. You should check with a Bank representative if you have questions concerning available payment methods. If you make any payments on this Agreement by check, draft or other item that is dishonored for any reason, you agree to pay the Bank's reasonable check charge as allowed by law. This charge will be in addition to any NSF or similar charge, which may be assessed against the account itself by the paying Bank.

Whole Balance Becomes Due (Default). If this note is payable on demand or has a Call Feature that has passed the specified calendar date, you may demand that this loan be paid in full immediately whether or not my payments are made on time. If I fail to make any scheduled payment when due, you may demand that this loan be paid in full immediately. If I, or any guarantor, should die, dissolve, terminate, fail, assign assets for benefit of creditors, file bankruptcy, become insolvent, change ownership (if organized entity) by more than 25% during the term of this loan (without your prior written approval and to which I agree to provide you a 30 day advance notice), or default under any provision of this note or any separate agreement, you may declare the note in default and demand that this loan be paid in full immediately. In addition, if you, in your sole discretion, feel the prospect of payment, performance, or realization of Collateral is significantly impaired, or if you should deem yourself insecure for any reason, this loan will immediately become due and payable.

No Waiver. It is further agreed that the acceptance after maturity of any payment shall not constitute a waiver of your rights to demand payment in full of any unpaid balance.

Remedies. Upon default, the rate of interest on the unpaid principal balance, insurance and other charges that we have agreed to pay shall be increased an additional 800 basis points (8%) above the stated contract rate on the face of this note. If I, or any guarantor, default, you may take possession of the collateral and at your request I will assist you by making it available. Even though you take the collateral, I may be obligated for payment as provided by law. You may peacefully take possession of the Collateral for the reasons above at any time, even though you may not have done so previously, until I pay all amounts owing to you covered by the Security Interest. If you should take possession of the Collateral and the Collateral should contain any personal property, I agree to contact you and arrange to pick up the property within twenty-four (24) hours of your taking possession of the Collateral. If I do not pick up the property within this time period I understand that you may keep it for me, at reasonable storage expense or dispose of as it as you see fit. Your failure to enforce or assert any of your rights under this agreement at any point in time shall not be considered waiver of the right to enforce those terms and conditions at any time in the future.

Financial Statements. I agree to provide signed financial statements and other financial information at such frequencies and in such detail as you may reasonably request.

Attorney's Fees. If you hire a lawyer to help collect this loan, I also agree to pay collection costs to include reasonable fees not to be less than 15% of the amount to be collected (unless otherwise prohibited by law).

Variable Rate Loans. If my loan has a variable rate feature, I agree to make no other inferences relating to any rate index that you may use. If my variable rate loan has a fixed or amortized payment amount, I understand and agree that if the selected variable rate index should exceed the fixed rate used for payment calculation purposes, you may, at your discretion, (a) increase the amount of periodic payments to have the loan fully amortize at the scheduled maturity, (b) extend the maturity and require additional periodic payments, (c) require the resulting interest to be paid at maturity, or (d) select or designate any combination of the foregoing.

Legal Matters. Any questions about this loan, Note or other agreements I make with you will be decided under South Carolina law. You and I agree that we will comply with all applicable laws, rulings and regulations and the terms of this contract will be interpreted in such manner as will comply with such laws, rulings and regulations.

R-C
JMS

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

MORTGAGE OF REAL ESTATE

THIS MORTGAGE is dated MAY 22, 2008

THE MORTGAGOR(S) as referred to in this Mortgage is (are) POINSETT HOLDINGS LLC and POINSETT HOLDINGS LLC

THE MORTGAGEE, First Citizens Bank and Trust Company, Inc. will be referred to herein as "Lender". Lender's address is PO Box 29, MC894033, Columbia, SC 29202

WHEREAS, Borrower(s) RONALD D. TAYLOR
TED D. SMITH

is (are) indebted to Lender in the principal amount of \$ 52,526.07 pursuant to the note, note agreement, loan agreement or revolving loan agreement (hereinafter referred to as the "Note") dated MAY 22, 2008. The Note includes all documents renewing, extending, or modifying it and/or evidencing future advances. The Note has a final maturity of NOVEMBER 22, 2008.

The amount of debt secured by this Mortgage, including the outstanding amount of the Note and all Future Advances under paragraph 13, shall at no time be more than double the principal amount of the Note or \$ 52,526.07, whichever is greater, plus interest, reasonable attorney's fees and court costs incurred in collection of amounts due hereunder and expenditures by Lender under Paragraph 5 below. Interest under the Note will be deferred, accrued, or capitalized, but Lender shall not be required to defer, accrue or capitalize any interest except as provided in the Note.

THIS MORTGAGE is given to secure the Lender the repayment of the following amounts, with interest: (A) the indebtedness evidenced by the Note, (B) any Future Advances made under Paragraph 13 below, (C) expenditures by Lender under Paragraph 5 below, and (D) attorney's fees, court costs and other amounts which may be due under the Note and the Mortgage. In consideration of the above indebtedness and for other valuable consideration which Mortgagor acknowledges receiving, Mortgagor does hereby mortgage, grant and convey to Lender, its successors and assigns the following described property (hereinafter sometimes referred to as the "Property")

SEE EXHIBIT A



2008049619

MTG
5 PGS

Book NO 4959 Page 2301-2305

May 28, 2008 10:15:08 AM

Rec \$11.00

Cnty Tax \$0.00

State Tax \$0.00

FILED IN GREENVILLE COUNTY, SC

Together with all singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto, all improvements, now or hereafter situated thereon, and all fixtures (including, but not limited to, appliances, additions, improvements, and all items and material attached to or used in connection with the described Property) now or hereafter attached thereto, all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights, and powers; and all estates, rights, titles, interests, privileges, liberties, and tenements, whatsoever and in any way belonging, relating or appertaining to any of the property herein above described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law as well as in equity of Mortgagor of, in and to the same, including but not limited to all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property or to any rights, appurtenant thereto; and all proceeds of any sales or other dispositions of the property or any part thereof (collectively hereafter referred to as the "Property", and all of the same being deemed part of the Property and included in the reference thereto).

TO HAVE AND TO HOLD all and singular the Property unto Lender and the successors and assigns of Lender forever,

MORTGAGOR covenants that Mortgagor is lawfully seized of the Property in fee simple absolute, that Mortgagor has good right and is lawfully authorized to sell, convey or encumber the same, and that the Property is free and clear of all encumbrances except as expressly provided in Paragraph 15 and otherwise herein. Mortgagor covenants to warrant and forever defend all and singular the Property unto Lender and the successors or assigns of Lender from and against Mortgagor and all persons whomsoever lawfully claiming the same or any part thereof.

PROVIDED ALWAYS, nevertheless, and it is the true intent and meaning of Mortgagor and Lender, that if Mortgagor pays or causes to be paid to Lender the debt secured hereby, the estate hereby granted shall cease, determine and be utterly null and void, otherwise said estate shall remain in full force and effect.

IT IS AGREED that Mortgagor shall be entitled to hold and enjoy the Property until a Default as herein defined has occurred.

MORTGAGOR further covenants and agrees with Lender as follows:

1. Assignment of Rents and Profits. As further security for all sums secured by this Mortgage, Mortgagor assigns to Lender all rents and profits arising from the Property, provided, however, that so long as no Default, as hereinafter defined, has occurred, Mortgagor shall be entitled to collect and retain all such rents and profits as the sole property of Mortgagor without accounting to Lender therefore.

2. **Care of Property.** Mortgagor will maintain the Property in good condition and repair and will neither permit nor allow waste thereof. Mortgagor will promptly repair or restore any portion of the Property which is damaged or destroyed by any cause whatsoever and will promptly pay when due all costs and expenses of such repair or restoration. Mortgagor will not remove or demolish any improvement or fixture which is now or hereafter part of the Property and will cut no timber on the Property without the express written consent of Lender. Lender shall be entitled to specific performance of the provisions of this paragraph.

3. **Insurance.** (A) Mortgagor shall at its sole expense obtain for, deliver to, and maintain for the benefit of Lender, during the life of the Mortgage, insurance policies in such amounts as Lender may require, in no event less than the full insurable value, insuring the Property against fire, extended coverage and such other insurable hazards, casualties and contingencies as Lender may require including flood damage, and shall pay promptly, when due, any premiums on such insurance policies and on any renewals thereof. The form of such policies, the companies issuing them and the coverages provided shall be acceptable to Lender and shall contain a noncontributory mortgage endorsement making losses payable to Lender. At least thirty (30) days prior to the expiration date of all such policies, renewals thereof satisfactory to Lender shall be delivered to Lender. Mortgagor shall deliver to Lender receipts evidencing the payment of all premiums of such insurance policies and renewals. In the event of loss, Mortgagor will give written notice to Lender, and Lender may make proof of loss if not made promptly by Mortgagor. In the event of foreclosure of this Mortgage or any other transfer of title to the Property in extinguishment of the indebtedness and other sums secured hereby, all rights title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the grantee. Upon the failure of Mortgagor to obtain and maintain insurance satisfactory to Lender, Lender may at its own discretion procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies in insurance, in such amount as Lender, acting in its sole discretion, may determine; all without prejudice to its right to foreclose hereunder should Mortgagor fail or refuse to keep said premises so insured.

(B) Mortgagor hereby assigns to Lender all proceeds from any insurance policies, and Lender is hereby authorized and empowered in its reasonable discretion, to adjust or compromise any loss under any insurance policies on the Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Lender alone and not to Mortgagor and Lender jointly. After deducting from such insurance proceeds any expenses incurred by Lender in the collection or handling of such funds, Lender, acting in its sole discretion, may apply the net proceeds (1) to the payment of any sum secured by this Mortgage in such order as Lender may determine, or (2) to the replacement, repair, or restoration of the portion of the Property damaged or destroyed in a manner determined by Lender, or may release said net proceeds to the Mortgagor upon such conditions as Lender shall determine, or may apply said net proceeds for any combination of the foregoing, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. If Lender elects to restore the improvements, any balance of such monies after restoration shall either be applied toward the reduction of indebtedness and any other sums secured hereby or shall be paid to Mortgagor. Lender shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(C) Mortgagor shall, at its sole expense, obtain for, deliver to, and maintain for the benefit of Lender, during the life of this Mortgage, liability insurance policies relating to the Property, in such amounts, with such companies and in such form as may be reasonably required by Lender. Lender may require such policies to contain an endorsement, in form satisfactory to Lender, naming Lender as an additional insured thereunder. Mortgagor shall pay promptly, when due, any premiums on such insurance policies and renewals thereof.

4. **Taxes and Assessments.** Mortgagor will pay all taxes, assessments and other charges which constitute or are secured by a lien upon the Property which is superior to the lien of this Mortgage and will deliver to Lender proof of payment of the same not less than ten (10) days prior to the date the same becomes delinquent, provided, however, that Mortgagor shall be entitled by appropriate proceedings to contest the amount or validity of such tax, assessment or charge so long as the collection of the same by foreclosure of the lien upon the Property is stayed during the pendency of such proceedings and Mortgagor deposits with the authority to which such tax, assessment or charge is payable or with Lender appropriate security for payment of the same together with any applicable interest and penalties, should the same be determined due and owing.

5. **Expenditures by Lender.** If Mortgagor fails to make payment for restoration or repair of the Property (including any improvements to bring the Property in compliance with federal, state or local laws, ordinances or regulations), for insurance premiums or for taxes, assessments or other charges as required in the Mortgage, Lender may, but shall not be obligated to, pay for the same. Any such payment by Lender will be secured by this Mortgage and have the same rank and priority as the principal debt secured hereby and bear interest from the date of payment at the rate payable from time to time to outstanding principal under the Note. Payments made for taxes by Lender shall be a first lien on the Property to the extent of the taxes so paid with interest from the date of payment, regardless of the rank and priority of this Mortgage. Mortgagor will pay to Lender in cash on demand an amount equal to any payment made by Lender pursuant to this paragraph plus interest thereon as herein provided.

6. **Condemnation.** Lender shall be entitled to be made a party to and to participate in any proceeding, whether formal or informal, for condemnation or acquisition pursuant to power of eminent domain of any portion of the Property. Mortgagor hereby assigns to Lender the right to collect and receive any payment or award to which Mortgagor would otherwise be entitled by reason of condemnation or acquisition pursuant to the power of eminent domain of any portion of the Property. Any such payment or award received by Lender may, at the option of Lender, (1) be applied to payment of any sums secured by this Mortgage in such order as Lender may determine, or (2) be applied in a manner determined by Lender to the replacement of the portion of the Property taken and to the repair or restoration of the remaining portion of the Property; or (3) be released to Mortgagor upon such conditions as Lender may determine, or (4) be used for any combination of the foregoing purposes. No portion of an indemnity payment which is applied to replacement, repair or restoration of any portion of the Property or which is released to Mortgagor shall be deemed a payment against any sums secured by this Mortgage.

7. **Due on Sale or Transfer of Property.** At the option of Lender, the indebtedness secured by this Mortgage shall become due and payable if, without the written consent of Lender, Mortgagor shall convey away the mortgaged premises, or if the title shall become vested in any other person in any manner whatsoever, (to include a Sales Contract) other than by death of Mortgagor. It is understood and agreed that in consideration for the consent of Lender to any transfer of title to the mortgaged premises, Lender, at its option, may charge a loan transfer fee and/or require changes in the rate of interest, term of loan, monthly payments of principal and interest and other terms and conditions of this Mortgage and/or the Note secured hereby.

8. **Default.** The occurrence of any of the following events shall be deemed a Default under this Mortgage:

- (A) any default by Mortgagor as described in the Note;
- (B) failure of Mortgagor to pay any other sum secured by this Mortgage when due;
- (C) failure of Mortgagor to observe or perform any covenant or agreement set forth in this Mortgage or any loan agreement entered into between Mortgagor and Lender with respect to the indebtedness hereby secured within ten (10) days following the giving of notice by Lender to Mortgagor to observe or perform the same.

9. **Rémedes.** Upon the occurrence of a Default as hereinabove defined, Lender may, without notice to Mortgagor unless otherwise required by laws, declare all sums secured by this Mortgage immediately due and payable and may commence proceedings to collect such sums, foreclose this Mortgage and sell the Property. At the foreclosure, Lender shall be entitled to bid and to purchase the Property and shall be entitled to apply the debt secured hereby, or any portion thereof, in payment for the Property. The remedies provided to Lender in this paragraph shall be in addition to and not in lieu of any other rights and remedies provided in this Mortgage or by law, all of which rights and remedies may be exercised by Lender simultaneously or consecutively in any order without being deemed to have waived any right or remedy previously or not yet exercised.

10. **Appointment of Receiver.** Upon the occurrence of a Default as hereinabove defined Lender shall be entitled to the appointment of a receiver to enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases; the making of repairs to the Property, and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Mortgage. The receiver shall be entitled to receive a reasonable fee for so managing the Property. All rents collected pursuant to this paragraph shall be applied first to the costs of taking control of and managing the Property and collecting the rents, including, but not limited to attorney's fees, receiver's fees, premiums on receiver's bonds, costs or repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation of liability of Mortgagor as lessor or landlord of the Property and then to the sums secured by this Mortgage. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Lender shall not be liable to Mortgagor, anyone claiming under or through Mortgagor, or anyone having an interest in the Property by reason of anything done or left undone by Mortgagor under this paragraph. If the rents of the Property are not sufficient to meet the cost of taking control and managing the Property and collecting the rents, Lender, at its sole option, may advance funds to meet the costs. Any funds expended by Lender for such purposes shall become indebtedness of Mortgagor to Lender secured by this Mortgage. Unless Lender and Mortgagor agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Mortgagor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note. The entering upon and taking and maintaining of control of the Property by Lender or the receiver and the application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender hereunder.

11. **Waiver by Lender.** Lender may, in its sole discretion, from time to time waive or forbear from endorsing any provision of this Mortgage, and no such waiver or forbearance shall be deemed a waiver by Lender of any right or remedy provided herein by law or be deemed a waiver of the right at any later time to enforce strictly all provisions of this Mortgage and to exercise any and all remedies provided herein and by law.

12. **Costs of Appraisals.** Mortgagor shall pay any and all costs of providing to Lender, as it may request from time to time, a current appraisal of the market value of the Property prepared by an appraiser acceptable to Lender, in its sole discretion. If Mortgagor fails to pay such costs, Lender may advance the cost on the Mortgagor's behalf and add the amount of such advance to the principal under the Note, which shall bear interest at the rate as provided in the Note, and shall be due and payable on demand. Mortgagor's failure to pay the cost of any such appraisal, plus all accrued interest, in full, within ten (10) days of the date of such demand shall constitute an event of default entitling the Lender to accelerate the maturity of all debts secured by the Mortgage, as allowed by law.

13. **Future Advances.** Lender, at its option, may make Future Advances to Mortgagor. Such Future Advances, with interest at the rate payable from time to time on the outstanding principal under the Note, shall be secured by this Mortgage when evidenced by the Note or by any other note stating that it is secured by this Mortgage or when advanced under the terms of this Mortgage. Lender may make but is not obligated to make such Future Advances (A) at the request of Mortgagor, whether or not there is an obligation to make Future Advances, (B) pursuant to advance of funds provided for herein, or (C) to pay, with or without the consent or request of Mortgagor, any amounts which may be due under any other mortgage or lien affecting the Property.

14. **Notices.** Any notice given by either party hereto to the other party shall be in writing and shall be signed by the party giving notice. Any notice or other document to be delivered to either party hereto by the other party shall be deemed delivered if mailed postage prepaid to the party to who directed at the latest address of such party that is known to the party sending the same. This paragraph shall not be deemed to prohibit any other manner of delivering a notice of other document.

15. **Miscellaneous.**

- (A) The agreements herein shall bind and inure to the benefit of the Mortgagor, Lender and their respective heirs, successors and assigns.
- (B) Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this Mortgage by or on behalf of Mortgagor or by or on behalf of Lender shall bind and inure to the benefit of their representatives, heirs, successors and assigns, whether so expressed or not.
- (C) The headings of the sections, paragraphs and subdivisions of this Mortgage are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.
- (D) If any provision of this Mortgage conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared severable.
- (E) Lender may make or cause to be made reasonable entries upon and inspections of the Property upon giving Mortgagor prior notice.
- (F) All covenants of Mortgage shall be joint and several.
- (G) This Mortgage shall be governed by, construed and enforced in accordance with the laws of South Carolina.
- (H) If this is not a first mortgage, Mortgagor has provided Lender with an attorney's opinion (or title insurance) setting out in detail any and all prior mortgages or liens including the date of the existing mortgage liens and the original amounts.
- (I) If the Mortgagor is not obligated on the debt which this Mortgage secures, the Mortgagor acknowledges that Note was made in consideration for this transaction and the owner of the Property agrees to be bound by all terms and conditions of the Note and the Mortgage.
- (J) Construction Mortgage. If this is a construction loan, this Mortgage is a "Construction Mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of South Carolina.

16. **Compliance with Environmental Laws.** Mortgagor agrees to indemnify, defend and save Lender and its successors and assigns harmless from and against all claims, actions, administrative proceedings, fines, costs, liabilities, attorney's fees and costs or the like that arise directly or indirectly from the presence or release of hazardous material, substances, waste or other environmentally regulated substances on the Property. Mortgagor shall also indemnify and hold Lender harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including cleanup costs), judgments and expenses (including attorney's, consultant's or expert's fees or expenses) of any kind and nature suffered by state or federal, which requires the elimination, removal, or transfer of any hazardous material, substances, waste or other environmentally regulated substances. Mortgagor's obligations hereunder to Lender shall not be limited to any extent by the term of the Note, as to any act or occurrence prior to payment in full and satisfaction of the Note which gives rise to the liability hereunder, shall continue to survive and remain in full force and effect notwithstanding

payment if full and satisfaction of the Note and Mortgage, or foreclosure under the Mortgage, or delivery of a deed in lieu of foreclosure. A default hereunder may, at the option of the Lender, be treated as a default under the documents evidencing and securing the loans. Hazardous materials, substances, waste or other environmentally regulated substances, as those terms are used herein, shall have the meanings specified in the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), as amended, the Resource Conservation Recovery Act, as amended, the Clean Air Act, the Clean Water Act, or any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree as may now or at any time hereafter be in effect.

17. **Environmental Assessments Costs.** The Mortgagor shall pay the cost of providing to Lender, at Lender's request, a current environmental site assessment, audit, or survey ("Assessment") of the Property, which Assessment shall be prepared by a person or company acceptable to Lender, in Lender's sole discretion. If Mortgagor fails to pay the costs of the Assessment, Lender may pay such cost and the same shall constitute an advance under the Note to be secured by the Property, and shall be due and payable on demand. Mortgagor's failure to pay such amount with all accrued interests in full within ten (10) days of date of such demand shall constitute an event of default and entitle Lender to accelerate the maturity of any and all debts secured by the Property, as allowed by law. The Mortgagor acknowledges that the Lender disclaims any duty or obligation to the Mortgagor or any third party in regard to these assessments and is acting solely in compliance with its lending practices. The Mortgagor is advised to seek technical and/or legal advice in regard to any environmental concerns associated with the Property.

18. **Waiver by Mortgagor.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty (30) days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. UNLESS PROHIBITED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage the day and year first above written

Signed, sealed and delivered
in the presence of
Witness
Witness
Mortgagor POINSETT HOLDINGS, LLC
Mortgagor
Mortgagor
Mortgagor

STATE OF SOUTH CAROLINA)
County of GREENVILLE)

Probate

Before me, the undersigned Notary Public, personally appeared the undersigned witness who, being duly sworn, deposed and said that (s)he saw Poinsett Holdings, LLC, Ronald D. Taylor + Terrell D. Smith sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness witnessed the execution thereof

SWORN to and subscribed
before me this 22nd day
of May, 2008
(SEAL)
Notary Public for South Carolina
My commission expires. 12-13-09

Witness

EXHIBIT A

PARCEL 1

TMS# 0534.01-01-009.20

All that certain piece, parcel or lot of land containing 3.665 acres, more or less, with all improvements thereon, situate, lying and being on the western side of Elmshorn Drive (Road Number J-978), as shown on boundary survey for Poinsett Holdings, LLC dated September 27, 1999, prepared by Wooten Surveying Co., recorded in the Office of the Greenville County Register of Deeds in Plat Book 40-U, page 80; Reference to said plat is hereby craved for a complete metes and bounds description.

DERIVATION: Deed of Operation Associates, Inc. fka OASC at Greenville, Inc., dated September 28, 1999, recorded September 28, 1999 in Deed Book 1869, page 52, Greenville County records.

AND ALSO

PARCEL 2

TMS# 0534.01-01 Part012.02

All that certain piece, parcel or lot of land, situate, lying and being on the northern side of Elmshorn Drive (Road Number J-978 and the eastern side of the Parkway (Road Number S-23-1025) and being designated as 4.585 acre tract (Tax Map No. 534.1-1-Part12.02) as shown on boundary survey for Poinsett Holdings, LLC dated September 27, 1999, prepared by Wooten Surveying Co., recorded in the Office of the Greenville County Register of Deeds in Plat Book 40-U, page 80; Reference to said plat is hereby craved for a complete metes and bounds description.

DERIVATION: A portion of the property conveyed by Deed of Thornblade Village Properties, Inc., dated September 23, 1999, recorded September 28, 1999 in Deed Book 1869, page 58, Greenville County records.

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2008049619 Book: MO 4959 Page: 2301-2305
May 28, 2008 10:16:08 AM

Timothy J. Conway

EXHIBIT C

SECTION 15-3-520. Within twenty years.

Within twenty years:

- (a) an action upon a bond or other contract in writing secured by a mortgage of real property;
- (b) an action upon a sealed instrument, other than a sealed note and personal bond for the payment of money only whereon the period of limitation is the same as prescribed in Section 15-3-530, except that a sealed contract for sale or an offer to buy or sell goods whereon the period of limitation is the same as prescribed in Section 36-2-725.

HISTORY: 1962 Code Section 10-142; 1952 Code Section 10-142; 1942 Code Section 387; 1932 Code Section 387; Civ. P. '22 Section 330; Civ. P. '12 Section 136; Civ. P. '02 Section 111; 1870 (14) 447 Section 113; 1880 (17) 415; 1946 (44) 1436; 1988 Act No. 494, Section 8(1).

SECTION 15-3-530. Three years.

Within three years:

- (1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520;
- (2) an action upon a liability created by statute other than a penalty or forfeiture;
- (3) an action for trespass upon or damage to real property;
- (4) an action for taking, detaining, or injuring any goods or chattels including an action for the specific recovery of personal property;
- (5) an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law, and those provided for in Section 15-3-545;
- (6) an action under Sections 15-51-10 to 15-51-60 for death by wrongful act, the period to begin to run upon the death of the person on account of whose death the action is brought;
- (7) any action for relief on the ground of fraud in cases which prior to the adoption of the Code of Civil Procedure in 1870 were solely cognizable by the court of chancery, the cause of action in the case not considered to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

(8) an action on any policy of insurance, either fire or life, whereby any person or property, resident or situate in this State, may be or may have been insured, or for or on account of any loss arising under the policy, any clause, condition, or limitation contained in the policy to the contrary notwithstanding; and

(9) an action against directors or stockholders of a monied corporation or a banking association to recover a penalty or forfeiture imposed or to enforce a liability created by law, the cause of action in the case not considered to have accrued until the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached or the liability was created, unless otherwise provided in the law under which the corporation is organized.

HISTORY: 1962 Code Section 10-143; 1952 Code Section 10-143; 1942 Code Sections 367, 388, 413; 1932 Code Sections 367, 388, 413; Civ. P. '22 Sections 331, 350, 369; Civ. C. '12 Section 3957; Civ. P. '12 Sections 137, 156; Civ. C. '02 Section 2853; Civ. P. '02 Sections 112, 130; 1870 (14) 447 Section 114, 450 Section 132; 1891 (20) 1042; 1903 (24) 96; 1977 Act No. 182, Section 1; 1988 Act No. 391, Section 2; 1988 Act No. 432, Section 1; 2001 Act No. 102, Section 1.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

First Citizens Bank and Trust Company,
Inc.,

Plaintiff,

v.

Ronald D. Taylor and Ted D. Smith,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-23-4097

CERTIFICATE OF SERVICE

I, Kim Warnick, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Plaintiff, do hereby certify that on the 5 day of August, 2015, I served the pleadings/documents set forth below on the person(s) identified below, by depositing copies thereof in the U.S. Mail, postage-paid, in an envelope securely sealed, and addressed to the following.

Pleadings/Documents Served:

Plaintiff's Memorandum in Support of Its Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment, including Exhibits A, B and C.

Person(s) Served:

Randall S. Hiller, Esquire
Post Office Box 1716
Greenville, SC 29602

Kim Warnick

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2014-CP-23-4097

First Citizens Bank and Trust
Company, Inc.,

Plaintiff

v.

Ronald D. Taylor and Ted D. Smith,

Defendants

**DEFENDANTS' MEMORANDUM IN REPLY
TO PLAINTIFF'S MEMORANDUM
IN SUPPORT OF ITS MOTION
FOR SUMMARY JUDGMENT**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 AUG 14 AM 9 09

FACTS

On May 8, 2015 the parties consented to file cross motions for summary judgment and allow this Court to determine the outcome of the case based "on the pleadings of record".

ARGUMENT

The Plaintiff's Complaint alleges in paragraph 5, "On or about, May 22, 2008, Defendants executed a promissory note in favor of FCB in the amount of \$52,526.07. A copy of the promissory note is attached hereto as exhibit A". Defendants stated only one cause of action for breach of contract alleging that the Defendants executed the promissory note and agreed to pay Plaintiff in accordance with the terms of the note and thereafter breached their contractual duties owed to the Plaintiff by failing to pay FCB in accordance with the terms of the promissory note.

Nowhere in the Complaint is it alleged that the note was secured by a mortgage nor was it alleged that the Plaintiff sought to foreclose the mortgage.

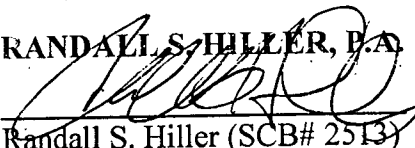
Notwithstanding the fact that Plaintiff's argument in support of its motion for summary judgment is not supported by the pleadings, had it been alleged that this promissory note was secured by a mortgage or was attempted to be foreclosed then the Defendant would have raised additional defenses including the fact that this action would be prohibited pursuant to S.C.R.C.P. Rule 13 as any attempt to foreclose or obtain a deficiency judgment by this Plaintiff would have been compulsory when the Plaintiff and the Defendant were named as parties in the foreclosure

of the underlying first mortgage commenced on November 7, 2008 in case number 2008-CP-23-08396.

The Plaintiff brought an action on a note. The note is not secured by a mortgage, that having been cancelled by the earlier foreclosure. The action as submitted and as answered is outside the applicable statute of limitations as set forth in Defendants' memorandum in support of its motion for summary judgment.

Respectfully submitted,

RANDALL S. HILLER, P.A.


Randall S. Hiller (SCB# 2513)

P.O. Box 1716

Greenville, SC 29602

864-232-0026

864-242-4692 Fax

Attorney for Defendants

Greenville, South Carolina

August 11, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2014-CP-23-4097

First Citizens Bank and Trust)
Company, Inc.,)

Plaintiff)

v.)

Ronald D. Taylor and Ted D. Smith,)

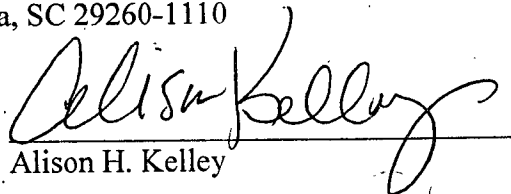
Defendants)

CERTIFICATE OF MAILING

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2015 AUG 14 AM 9:09

I hereby certify that I am an employee of the law firm RANDALL S. HILLER,
P.A., counsel for the above captioned Defendants, and I have, this date written below served the
within Plaintiff with Defendants' Memorandum in Reply to Plaintiff's Memorandum in Support
of its Motion for Summary Judgment relative to the above captioned by depositing a copy of
same in the United States Mail, postage prepaid and addressed as follows:

Joey R. Floyd, Esq.
P.O. Box 61110
Columbia, SC 29260-1110


Alison H. Kelley

August 11, 2015

Greenville, South Carolina

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

1735 ST. JULIAN PLACE, SUITE 200

POST OFFICE BOX 61110

COLUMBIA, SOUTH CAROLINA 29260-1110

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FAX 803-254-5719

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JAMES L. BRUNER, P.A.*
WARREN C. POWELL, JR., P.A.**
HENRY P. WALL
E. WADE MULLINS III, P.A.

BRIAN P. ROBINSON, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

* Of Counsel
** Also Admitted in District of Columbia

ANN F. ALLISON
CAITLIN C. HEYWARD
ROBERT C. OSBORNE III

AUTHOR'S E-MAIL: JFLOYD@BRUNERPOWELL.COM

September 14, 2015

Via U.S. Mail

The Honorable Paul B. Wickensimer
Greenville County Clerk of Court
305 E. North Street
Greenville, SC 29601

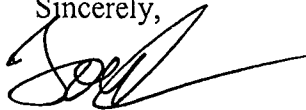
**Re: First Citizens Bank and Trust Company, Inc. v. Ronald D. Taylor
and Ted D. Smith
Civil Action No. 2014-CP-23-4097
Our File No.: 8-2545.119**

Dear Mr. Wickensimer:

Enclosed for filing, please find an original and one (1) copy of an *Affidavit of Attorneys' Fees and Costs*. I kindly ask that your staff file the original, clock in the copies and return the "filed" stamped copies back to me in the envelope, postage prepaid, that I have enclosed herein. Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With my highest regards, I am,

Sincerely,



Joey R. Floyd

JRF/hos

Enclosures

cc: Randall S. Hiller, Esquire (Via Email and U.S. Mail w/copy of Enclosures)
First Citizens Bank and Trust Company, Inc. (Via E-Mail Only w/copy of Enclosures)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

CIVIL ACTION NO.: 2014-CP-23-4097

First Citizens Bank and Trust Company,
Inc.;

Plaintiff,

v.

Ronald D. Taylor and Ted D. Smith,

Defendants.

**AFFIDAVIT OF ATTORNEYS' FEES
AND COSTS**

PERSONALLY APPEARED BEFORE ME, Joey R. Floyd, Esquire, attorney for the above-named Plaintiff, First Citizens Bank and Trust Company, Inc. ("First Citizens"), being first duly sworn, deposes and states as follows:

1. I am a member of the firm Bruner, Powell, Wall & Mullins, LLC, in Columbia, South Carolina, and this firm represents the Plaintiff, First Citizens, in the above-captioned matter.

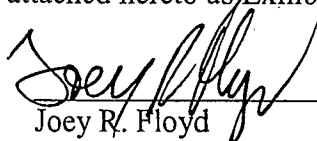
2. This firm was retained by First Citizens to collect money owed to First Citizens by the above-named Defendants.

3. Defendants executed a Commercial Note in favor of First Citizens, which provides for First Citizens to recover attorneys' fees in an amount "not to be less than 15% of the amount to be collected."

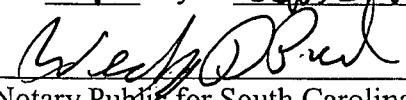
4. In accordance with the terms of the Commercial Note, First Citizens is also entitled to its costs incurred in this action.

5. First Citizens has incurred costs in the amount of \$495.89 in this action. A summary of the costs incurred by First Citizens is attached hereto as Exhibit A.

FURTHER AFFIANT SAYETH NOT.


Joey R. Floyd

SWORN TO BEFORE ME
this 14th day of September, 2015


(L.S.)
Notary Public for South Carolina

My Commission Expires 10/10/2017 (SEAL)

EXHIBIT A

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Amount	Ref #
ent ID 82545.119 FIRST CITIZENS BANK AND TRUST COMPANY, INC.							
82545.119	07/03/2014	35	A	20		150.00 FILING FEE TO GREENVILLE COUNTY CLERK OF COURT FOR SUMMONS & COMPLAINT	ARCH
82545.119	07/31/2014	35	A	21		4.27 POSTAGE FOR JULY	ARCH
82545.119	07/31/2014	35	A	27	0.100	3.50 PHOTOCOPIES FOR JULY	ARCH
82545.119	08/03/2014	35	A	31		60.00 PROCESS SERVICE ON RONALD D. TAYLOR BY A WOMAN'S TOUCH, LLC	ARCH
82545.119	08/04/2014	8	A	31		110.00 PROCESS SERVICE ON TED D. SMITH BY A WOMAN'S TOUCH, LLC	ARCH
82545.119	08/31/2014	35	A	27	0.100	0.70 PHOTOCOPIES FOR AUGUST	ARCH
82545.119	08/31/2014	35	A	21		1.17 POSTAGE FOR AUGUST	ARCH
82545.119	09/16/2014	8	A	34		45.60 ASSET SEARCH/REPORTS FOR AUGUST	ARCH
82545.119	04/01/2015	8	A	34		356.19 WESTLAW RESEARCH FOR MARCH	ARCH
82545.119	04/15/2015	8	A	20		84.00 RESEARCH FEE TO SOUTHERN TITLES & PROPERTIES RELATING TO PROPERTY OWNED BY THE TOWNES AT THORNBLADE LLC	ARCH
82545.119	04/28/2015	8	A	20		25.00 FILING FEE TO GREENVILLE COUNTY CLERK OF COURT FOR CONSENT ORDER	ARCH
82545.119	04/30/2015	8	A	21		1.17 POSTAGE FOR APRIL	ARCH
82545.119	08/31/2015	8	A	27	0.100	5.00 PHOTOCOPIES FOR AUGUST	ARCH
82545.119	08/31/2015	8	A	21		5.48 POSTAGE FOR AUGUST	ARCH
Total for Client ID 82545.119						Billable 495.89 FIRST CITIZENS BANK AND TRUST COMPANY, INC.	
						Non-billable 356.19 RONALD D TAYLOR; TED SMITH	
						Total 852.08	
GRAND TOTALS							
						Billable 495.89	
						Non-billable 356.19	
						Total 852.08	

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2014CP2304097

First Citizens Bank And Trust Company Inc vs. Ronald D Taylor

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 6th Day of October 2015 .

Court Reporter: _____

PRESIDING JUDGE -

This judgment was entered on the 1st Day of October 2015 , and a copy mailed first class this , 6th Day of October 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Joey Randell Floyd Bruner, Powell, Wall & Mullins,
LLC P.O. Box 61110 Columbia, SC 29260

ATTORNEY(S) FOR THE PLAINTIFF(S)

Randall Scott Hiller 850 Wade Hampton Blvd.
Greenville, SC 29609

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

First Citizens Bank and Trust Company,
Inc.,

Plaintiff,

v.

Ronald D. Taylor and Ted D. Smith,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-23-4097

ORDER

2015 OCT 1 PM 3:43

PAUL E. HARRIS

FILED-CLERK OF COURT

WLB

PROCEDURAL HISTORY AND FACTS

The Plaintiff, First Citizens Bank and Trust Company, Inc. (referred to herein as "Plaintiff" or "First Citizens"), filed this lawsuit on July 28, 2014 against the above-named Defendants alleging a single cause of action, Breach of Contract. First Citizens alleged that the Defendants failed to make payments towards a Commercial Note ("the Note") that both Defendants executed on May 22, 2008. The Note was secured by a Mortgage and the Mortgage was filed of record with the Greenville County Register of Deeds on May 28, 2008 (Book 4959, Page 2301).

The Defendants' last payment towards the Commercial Note was on September 18, 2008. The Defendants do not contest the amount owed to Plaintiff. Instead, the Defendants contend that the Plaintiff's action is time-barred by the Statute of Limitations. In accordance with the terms of the of the Consent Order entered in this case, the Court decides this case on the briefs submitted by the parties. The parties' only dispute is whether or not the statute of limitations has expired on the Plaintiff's claim against the Defendants.

The Defendants contend that the three-year statute of limitations (S.C. Code § 15-3-530(1)) applies to the Plaintiff's claim. As more particularly set forth herein, the Plaintiff's claim against the Defendants is governed by a twenty-year statute of limitations. Accordingly, the Plaintiff is entitled to a Judgment against the Defendants in this action in the amount prayed for in its Complaint and itemized in the Affidavit of Michael O'Hare, filed contemporaneously with the Plaintiff's Motion for Summary Judgment.

STANDARD

"The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-S. Mgmt. Co., Inc.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). "Once the moving party carries its initial burden, the 'opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial.'"" *Hedgepath v. American Telephone and Telegraph Company*, 348 S.C. 340, 559 S.E.2d 327, 335 (Ct. App. 2002) (citations omitted).

HOLDING

Defendants contend that the three-year statute of limitations (S.C. Code § 15-3-530(1)) applies to the Plaintiff's claim against the Defendants for the breach of a Commercial Note. S.C. Code § 15-3-530(1) states that an action shall be brought: "[w]ithin three years: (1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520." (emphasis added). S.C. Code § 15-3-520 provides a twenty-year statute of limitations for "an action upon a bond or other contract in writing secured by a mortgage of real property." S.C. Code § 15-3-520(a) (1976). The Commercial Note signed by the Defendants on May 22, 2008, is a "contract in writing secured by a mortgage of real property." Therefore, the twenty-year limitations period applies in the instant case.

In the case before this Court, the Commercial Note was executed and secured contemporaneously with a mortgage. The note is "a contract in writing, secured by a mortgage of real property" and falls under the twenty-year statute of limitations, S.C. Code § 15-3-520. When the legislature reduced the limitations period of S.C. Code § 15-3-530 from six years to three years in 1988, it preserved the Section 15-3-520 exception: "Within three years: (1) an

2 

action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520." S.C. Code Ann. § 15-3-530. Therefore, the Plaintiff in this civil action had twenty years to file suit against the Defendants and is entitled to Judgment, as a matter of law, against the Defendants in this civil action in the amount of \$66,263.49, plus interest accruing thereon at the contract rate of 4.75% per annum pursuant to the terms of the Commercial Note (\$6.93/day from June 27, 2014) for a total amount, as of September 15, 2015 of \$69,347.34.¹ In addition, the Plaintiff is entitled to its attorney's fees and the costs of this action by the terms of the Commercial Note.

Before awarding attorneys fees, this Court must conduct a two-part analysis. First, this Court must verify that it can award attorneys' fees. Second, the Court must conduct an analysis in accordance with *Jackson v. Speed*, 486 S.E.2d 750, 326 S.C. 289 (S.C. 1997). In accordance with *American Federal Bank, FSB v. Number One Main Joint Venture*, 467 S.E.2d 439, 321 S.C. 169 (S.C. 1996) (citations omitted), "[A]ttorneys' fees are not recoverable unless authorized by contract or statute. In the case at hand, attorney's fees are recoverable in accordance with the terms of the Note.

In *Jackson*, the South Carolina Supreme court stated that the following should be considered when determining a reasonable attorney's fee:

[T]he court should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Further, on appeal, an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. *Jackson v. Speed* at 760 (internal citations omitted).

For the reasons set forth herein, \$5,000 in attorney's is reasonable, based upon the Court's consideration of the factors below.

The nature, extent and difficulty of the legal services rendered

This was a contested breach of contract action involving contract interpretation and a statutory analysis of the Statute of Limitations. This case was filed over one year ago and Plaintiff's Counsel has successfully navigated this case to a resolution. Plaintiff's counsel, Joey R. Floyd, has

¹ June 27, 2014 to September 15, 2015 = 445 days. Accrued interest, as of September 15, 2015: 445 days x 6.93 = \$3,083.85.

approximately fourteen years of experience as an attorney. Defendant's counsel, Randall S. Hiller, has over thirty years experience as an attorney.

The contingency of compensation

The contract between Plaintiff and the Defendants expressly provides for the Plaintiff to recover its attorneys' fees.

The time and labor necessarily devoted to the case

Plaintiff's counsel filed this action, narrowed the issues in dispute with Defendants' Counsel, reached an agreement with the Defendants' Counsel to allow this matter to be decided on briefs, drafted and filed a Memorandum in Support of its Motion for Summary Judgment and provided this Court with a proposed Order for consideration.

The fee customarily charged in the locality for similar legal services

A fee of 15% is not reasonable in light of the circumstances of this case and exceeds the amount necessary to collect in a case where the parties consent to no hearing and a decision pursuant to Summary Judgment.

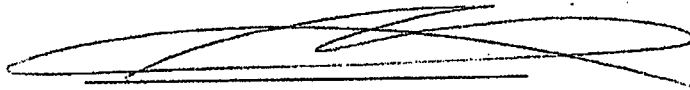
The beneficial results obtained

The Plaintiff's Counsel has achieved a beneficial result for his client in that the Plaintiff's Motion for Summary Judgment has been granted. In other words, the Plaintiff's Counsel has achieved the most beneficial result at this point in time.

ORDER OF JUDGMENT

It is therefore ORDERED that a Judgment be entered against the Defendants, Ronald D. Taylor and Ted D. Smith, in the following amounts: \$69,347.34 as the amount due, as of September 15, 2015, \$5,000 in attorneys' fees, \$495.89 in costs, for a total amount of \$74,843.23, with interest accruing thereon at the post-judgment interest rate.

IT IS SO ORDERED.



The Honorable Robin B. Stilwell
Circuit Court Judge for the Thirteenth Judicial Circuit

September 24, 2015

) IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-23-4097

))

)

1

)

1

[illegible]

I, Annie Rich

Pleadings/Documents Served:

Order of Judgment, signed by Judge Stilwell on 9/24/15 and filed on 10/6/15

Person(s) Served:

Randall S. Hiller, Esquire
Post Office Box 1716
Greenville, SC 29602

Annie Dick

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

First Citizens Bank and Trust

Plaintiff,

vs.

Ted Smith and Ron Taylor

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-23-4097

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

FILED
CLERK OF COURT
S.C.
PAUL J. V. EICHER
OCT 29 PM 3 12

Plaintiff's Attorney:

Joey Floyd, Bar No. _____

Address:

P.O. Box 61110, Columbia, SC 29260

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Randall S. Hiller, Bar No. 2513

Address:

850 Wade Hampton Blvd., Greenville, SC

Phone: 232-0026 Fax 242-4692

E-mail: rsh@rshpa.org Other: ahk@rshpa.org

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Reconsider

Estimated Time Needed: 15 min.

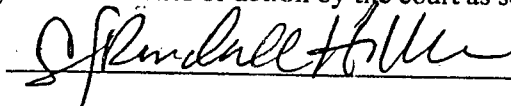
Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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



October 13, 2015

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$** _____

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED - \$** _____

☐ **CONTESTED - AMOUNT DUE: \$** _____

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

First Citizens Bank and Trust
Company, Inc.,)

Plaintiff)

v.)

Ronald D. Taylor and Ted D. Smith,)

Defendants)

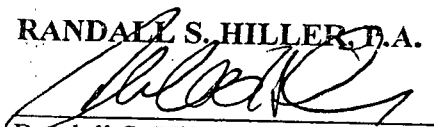
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2014-CP-23-4097

MOTION TO RECONSIDER

FILED
COURT
CLERK
PAUL B. V. REIMER
2015 OCT 28 PM 3 12
21 SMC

YOU WILL PLEASE TAKE NOTICE that the Defendants by and through their undersigned counsel, will move before the Presiding Judge for the Thirteenth Judicial Circuit, Greenville, South Carolina, at such time and place as his Honor may designate for an Order, pursuant to Rule 59 and Rule 60, of the South Carolina Rules of Civil Procedure, on the grounds that the consent order to decide the case on cross motions for summary judgment was specifically predicated on being determined on the basis of the pleadings of record filed with the Greenville County Court, memoranda in support of their respective positions and affidavits, if any, filed by the parties hereto. The Order was granted on a matter that was outside the scope of the pleadings and the consent order. The Defendants most certainly did not agree to have the case decided by cross motions for summary judgment on matters outside the scope of the pleadings and to which Defendant had not answered or plead.

RANDALL S. HILLER, D.A.


Randall S. Hiller (SCB#2513)

Attorney for Petitioner
850 Wade Hampton Blvd.
Greenville, S.C. 29609
864/232-0026
SC Bar No.: 2513

October 12, 2015
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2014-CP-23-4097

First Citizens Bank and Trust

Plaintiff,

vs.

Ted Smith and Ron Taylor

Defendant.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney:

Joey Floyd, Bar No. _____

Address:

P.O. Box 61110, Columbia, SC 29260

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Randall S. Hiller, Bar No. 2513

Address:

850 Wade Hampton Blvd., Greenville, SC

Phone: 232-0026 Fax 242-4692

E-mail: rsh@rshpa.org Other: ahk@rshpa.org

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

SECTION I: Hearing Information

Nature of Motion: Reconsider

Estimated Time Needed: 15 min.

Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

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



October 13, 2015

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

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

RECEIVED
JUDGMENT IN A CIVIL CASE
DEC 03 2015 CASE NO: 2014CP2304097
SC Court of Appeals

2015 OCT 29 PM 3 14
FBI - GREENVILLE
COURT

First Citizens Bank And Trust Company Inc vs. Ronald D Taylor

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this October 29, 2015.

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the October 29, 2015, and a copy mailed first class this October 29, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Joey Randell Floyd Bruner, Powell, Wall & Mullins,
LLC P.O. Box 61110 Columbia, SC 29260

Randall Scott Hiller 850 Wade Hampton Blvd.
Greenville, SC 29609

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

First Citizens Bank and Trust
Company, Inc.,

Plaintiff,

vs.

Ronald D. Taylor and Ted D. Smith,

Defendants.

IN THE COURT OF COMMON PLEAS

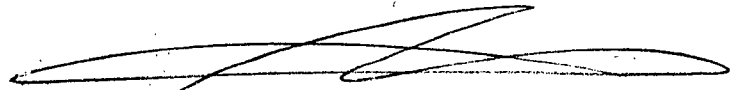
THIRTEENTH JUDICIAL CIRCUIT

**ORDER DENYING
MOTION TO RECONSIDER**

Case No.: 2014-CP-23-4097

This matter comes before the Court pursuant to the Defendant's Motion to Reconsider the Court's previous Order of September 24, 2015. The Motion is respectfully denied. Notwithstanding assertions to the contrary, the Court relied upon only those documents, memoranda of law, affidavits, and pleadings which were provided by the respective parties. The ruling was made strictly within the provisions of Rule 56 of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED.



ROBIN B. STILWELL
THIRTEENTH JUDICIAL CIRCUIT

October 26, 2015
Greenville, South Carolina

FILED
CLERK OF COURT
JULIA P. ROBERTS
2015 OCT 29 PM 3 10
CLERK

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Hon. Robin B. Stilwell

Case No. 2014-CP-23-4097

First Citizens Bank and Trust
Company, Inc.

Respondent,

v.

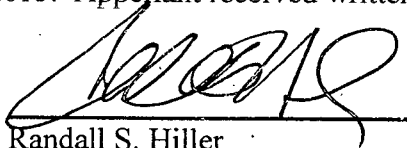
Ronald D. Taylor and Ted D.
Smith,

Appellants.

NOTICE OF APPEAL

Ronald D. Taylor and Ted D. Smith appeal the orders of the Honorable Robin B. Stilwell dated October 26, 2015 and September 24, 2015. Appellant received written notice of entry of the final order on November 3, 2015.

December 1, 2015


Randall S. Hiller
850 Wade Hampton Blvd
Greenville, South Carolina 29609
(864) 232-0026
Attorney for Appellants

Other Counsel of Record:
Joey R. Floyd
P.O. Box 61110
Columbia, SC 29260
Attorney for Respondent
(803) 252-7693

RECEIVED
DEC 03 2015
SC Court of Appeals

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

RECEIVED

JUDGMENT IN A CIVIL CASE

DEC 03 2015 CASE NO: 2014CP2304097

SC Court of Appeals

First Citizens Bank And Trust Company Inc vs. Ronald D Taylor

2015 OCT 29 PM 3 14
CLERK OF COURT
FREDERICK W. HENDERSON

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this October 29, 2015.

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the October 29, 2015, and a copy mailed first class this October 29, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Joey Randell Floyd Bruner, Powell, Wall & Mullins,
LLC P.O. Box 61110 Columbia, SC 29260

Randall Scott Hiller 850 Wade Hampton Blvd.
Greenville, SC 29609

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

First Citizens Bank and Trust
Company, Inc.,

Plaintiff,

vs.

Ronald D. Taylor and Ted D. Smith,

Defendants.

IN THE COURT OF COMMON PLEAS

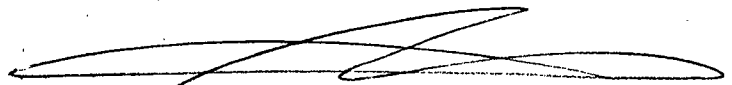
THIRTEENTH JUDICIAL CIRCUIT

**ORDER DENYING
MOTION TO RECONSIDER**

Case No.: 2014-CP-23-4097

This matter comes before the Court pursuant to the Defendant's Motion to Reconsider the Court's previous Order of September 24, 2015. The Motion is respectfully denied. Notwithstanding assertions to the contrary, the Court relied upon only those documents, memoranda of law, affidavits, and pleadings which were provided by the respective parties. The ruling was made strictly within the provisions of Rule 56 of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED.



ROBIN B. STILWELL
THIRTEENTH JUDICIAL CIRCUIT

October 26, 2015
Greenville, South Carolina

FILED
OCT 29 2015
PAUL D. WILSON, CLERK
2015 OCT 29 PM 3 10

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

First Citizens Bank and Trust

Plaintiff,

vs.

Ted Smith and Ron Taylor

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-23-4097

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

OCT 29 PM 3 13

CLERK OF COURT
J. S.C.
PAUL J. WILKINS
CLERK

Plaintiff's Attorney:

Joey Floyd, Bar No. _____

Address:

P.O. Box 61110, Columbia, SC 29260

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Randall S. Hiller, Bar No. 2513

Address:

850 Wade Hampton Blvd., Greenville, SC

Phone: 232-0026 Fax 242-4692

E-mail: rsh@rshpa.org Other: ahk@rshpa.org

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Reconsider

Estimated Time Needed: 15 min.

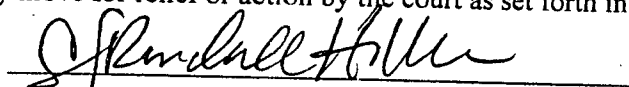
Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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



October 13, 2015

Signature of Attorney for ☐ Plaintiff ☒ Defendant

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$** _____

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED - \$** _____

☐ **CONTESTED - AMOUNT DUE: \$** _____

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2014-CP-23-4097

First Citizens Bank and Trust
Company, Inc.,)

Plaintiff)

v.)

Ronald D. Taylor and Ted D. Smith,)

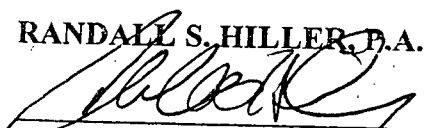
Defendants)

MOTION TO RECONSIDER

FILED
GREENVILLE, S.C.
PAUL R. WILKINSON
2015 OCT 28 PM 3 12
21 SMC

YOU WILL PLEASE TAKE NOTICE that the Defendants by and through their undersigned counsel, will move before the Presiding Judge for the Thirteenth Judicial Circuit, Greenville, South Carolina, at such time and place as his Honor may designate for an Order, pursuant to Rule 59 and Rule 60, of the South Carolina Rules of Civil Procedure, on the grounds that the consent order to decide the case on cross motions for summary judgment was specifically predicated on being determined on the basis of the pleadings of record filed with the Greenville County Court, memoranda in support of their respective positions and affidavits, if any, filed by the parties hereto. The Order was granted on a matter that was outside the scope of the pleadings and the consent order. The Defendants most certainly did not agree to have the case decided by cross motions for summary judgment on matters outside the scope of the pleadings and to which Defendant had not answered or plead.

RANDALL S. HILLER, P.A.



Randall S. Hiller (SCB#2513)

Attorney for Petitioner
850 Wade Hampton Blvd.
Greenville, S.C. 29609
864/232-0026
SC Bar No.: 2513

October 12, 2015
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2014-CP-23-4097

First Citizens Bank and Trust

Plaintiff,

vs.

Ted Smith and Ron Taylor

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Joey Floyd, Bar No. _____

Address:

P.O. Box 61110, Columbia, SC 29260

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Randall S. Hiller, Bar No. 2513

Address:

850 Wade Hampton Blvd., Greenville, SC

Phone: 232-0026 Fax 242-4692

E-mail: rsh@rshpa.org Other: ahk@rshpa.org

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

SECTION I: Hearing Information

Nature of Motion: Reconsider

Estimated Time Needed: 15 min.

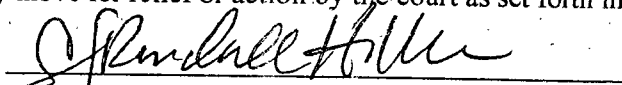
Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached.

☐ Form Motion/Order

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



October 13, 2015

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$** _____

☐ **EXEMPT:**

(check reason)

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

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED - AMOUNT DUE: \$** _____

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP2304097

First Citizens Bank And Trust Company Inc vs. Ronald D Taylor

FILED
CLERK OF COURT
PAUL B. WICKENSIMER
2015 OCT 6 PM 4:11

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 6th Day of October 2015 .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 1st Day of October 2015 , and a copy mailed first class this , 6th Day of October 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Joey Randell Floyd Bruner, Powell, Wall & Mullins,
LLC P.O. Box 61110 Columbia, SC 29260

Randall Scott Hiller 850 Wade Hampton Blvd.
Greenville, SC 29609

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
First Citizens Bank and Trust Company,)
Inc.,)
)
Plaintiff,)
)
v.)
)
Ronald D. Taylor and Ted D. Smith,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2014-CP-23-4097

ORDER

2015 OCT 1 PM 3:43

FILED-CITIZENS BANK
CLERK OF COURT
PAUL E. SMITH

WLB

PROCEDURAL HISTORY AND FACTS

The Plaintiff, First Citizens Bank and Trust Company, Inc. (referred to herein as "Plaintiff" or "First Citizens"), filed this lawsuit on July 28, 2014 against the above-named Defendants alleging a single cause of action, Breach of Contract. First Citizens alleged that the Defendants failed to make payments towards a Commercial Note ("the Note") that both Defendants executed on May 22, 2008. The Note was secured by a Mortgage and the Mortgage was filed of record with the Greenville County Register of Deeds on May 28, 2008 (Book 4959, Page 2301).

The Defendants' last payment towards the Commercial Note was on September 18, 2008. The Defendants do not contest the amount owed to Plaintiff. Instead, the Defendants contend that the Plaintiff's action is time-barred by the Statute of Limitations. In accordance with the terms of the of the Consent Order entered in this case, the Court decides this case on the briefs submitted by the parties. The parties' only dispute is whether or not the statute of limitations has expired on the Plaintiff's claim against the Defendants.

The Defendants contend that the three-year statute of limitations (S.C. Code § 15-3-530(1)) applies to the Plaintiff's claim. As more particularly set forth herein, the Plaintiff's claim against the Defendants is governed by a twenty-year statute of limitations. Accordingly, the Plaintiff is entitled to a Judgment against the Defendants in this action in the amount prayed for in its Complaint and itemized in the Affidavit of Michael O'Hare, filed contemporaneously with the Plaintiff's Motion for Summary Judgment.

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STANDARD

"The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCF; *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-S. Mgmt. Co., Inc.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). "Once the moving party carries its initial burden, the 'opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial.'"" *Hedgepath v. American Telephone and Telegraph Company*, 348 S.C. 340, 559 S.E.2d 327, 335 (Ct. App. 2002) (citations omitted).

HOLDING

Defendants contend that the three-year statute of limitations (S.C. Code § 15-3-530(1)) applies to the Plaintiff's claim against the Defendants for the breach of a Commercial Note. S.C. Code § 15-3-530(1) states that an action shall be brought: "[w]ithin three years: (1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520." (emphasis added). S.C. Code § 15-3-520 provides a twenty-year statute of limitations for "an action upon a bond or other contract in writing secured by a mortgage of real property." S.C. Code § 15-3-520(a) (1976). The Commercial Note signed by the Defendants on May 22, 2008, is a "contract in writing secured by a mortgage of real property." Therefore, the twenty-year limitations period applies in the instant case.

In the case before this Court, the Commercial Note was executed and secured contemporaneously with a mortgage. The note is "a contract in writing, secured by a mortgage of real property" and falls under the twenty-year statute of limitations, S.C. Code § 15-3-520. When the legislature reduced the limitations period of S.C. Code § 15-3-530 from six years to three years in 1988, it preserved the Section 15-3-520 exception: "Within three years: (1) an

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action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520." S.C. Code Ann. § 15-3-530. Therefore, the Plaintiff in this civil action had twenty years to file suit against the Defendants and is entitled to Judgment, as a matter of law, against the Defendants in this civil action in the amount of \$66,263.49, plus interest accruing thereon at the contract rate of 4.75% per annum pursuant to the terms of the Commercial Note (\$6.93/day from June 27, 2014) for a total amount, as of September 15, 2015 of \$69,347.34.¹ In addition, the Plaintiff is entitled to its attorney's fees and the costs of this action by the terms of the Commercial Note.

Before awarding attorneys fees, this Court must conduct a two-part analysis. First, this Court must verify that it can award attorneys' fees. Second, the Court must conduct an analysis in accordance with *Jackson v. Speed*, 486 S.E.2d 750, 326 S.C. 289 (S.C. 1997). In accordance with *American Federal Bank, FSB v. Number One Main Joint Venture*, 467 S.E.2d 439, 321 S.C. 169 (S.C. 1996) (citations omitted), "[A]ttorneys' fees are not recoverable unless authorized by contract or statute. In the case at hand, attorney's fees are recoverable in accordance with the terms of the Note.

In *Jackson*, the South Carolina Supreme court stated that the following should be considered when determining a reasonable attorney's fee:

[T]he court should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Further, on appeal, an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. *Jackson v. Speed* at 760 (internal citations omitted).

For the reasons set forth herein, \$5,000 in attorney's is reasonable, based upon the Court's consideration of the factors below.

The nature, extent and difficulty of the legal services rendered

This was a contested breach of contract action involving contract interpretation and a statutory analysis of the Statute of Limitations. This case was filed over one year ago and Plaintiff's Counsel has successfully navigated this case to a resolution. Plaintiff's counsel, Joey R. Floyd, has

¹ June 27, 2014 to September 15, 2015 = 445 days. Accrued interest, as of September 15, 2015: 445 days x 6.93 = \$3,083.85.

approximately fourteen years of experience as an attorney. Defendant's counsel, Randall S. Hiller, has over thirty years experience as an attorney.

The contingency of compensation

The contract between Plaintiff and the Defendants expressly provides for the Plaintiff to recover its attorneys' fees.

The time and labor necessarily devoted to the case

Plaintiff's counsel filed this action, narrowed the issues in dispute with Defendants' Counsel, reached an agreement with the Defendants' Counsel to allow this matter to be decided on briefs, drafted and filed a Memorandum in Support of its Motion for Summary Judgment and provided this Court with a proposed Order for consideration.

The fee customarily charged in the locality for similar legal services

A fee of 15% is not reasonable in light of the circumstances of this case and exceeds the amount necessary to collect in a case where the parties consent to no hearing and a decision pursuant to Summary Judgment.

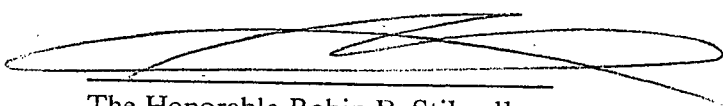
The beneficial results obtained

The Plaintiff's Counsel has achieved a beneficial result for his client in that the Plaintiff's Motion for Summary Judgment has been granted. In other words, the Plaintiff's Counsel has achieved the most beneficial result at this point in time.

ORDER OF JUDGMENT

It is therefore ORDERED that a Judgment be entered against the Defendants, Ronald D. Taylor and Ted D. Smith, in the following amounts: \$69,347.34 as the amount due, as of September 15, 2015, \$5,000 in attorneys' fees, \$495.89 in costs, for a total amount of \$74,843.23, with interest accruing thereon at the post-judgment interest rate.

IT IS SO ORDERED.


The Honorable Robin B. Stilwell
Circuit Court Judge for the Thirteenth Judicial Circuit

September 24, 2015

A Certified Copy
Paul B. Williams
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 10/6/15

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Hon. Robin B. Stilwell

Case No. 2014-CP-23-4097

First Citizens Bank and Trust
Company, Inc.,

Respondent,

v.

Ronald D. Taylor and Ted D.
Smith,

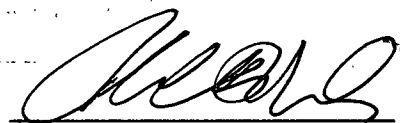
Appellant.

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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certified that this Record on Appeal complies with Rule 211(b), SCACR.

February 12, 2016



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