STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
In the Court of Common Pleas

James B. Jackson, Jr., Special Circuit Judge

Appellate Case No.: 2015-001633
Common Pleas Case No.: 2015-CP-38-01427

Newtek Small Business Finance, Inc.....Respondent,

v.

Kritikumar H. Mehta.....Appellant.

FINAL BRIEF OF RESPONDENT

Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, SC 29250
(803) 779-2211
(803) 779-6700 Fax
drew@harrisonfirm.com
COUNSEL FOR APPELLANT

Bryan D. Caskey
FOSTER LAW OFFICE, LLC
3100 Devine Street
Columbia, SC 29205
(803) 400-1921
(803) 400-1951 Fax
bryan@fosterlawoffice.net
COUNSEL FOR RESPONDENT

April 25, 2016
Columbia, South Carolina

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QUESTIONS PRESENTED

1. Did the trial court properly grant summary judgment on the issue of liability for a guaranty of a commercial promissory note despite an affidavit alleging an oral representation that there would be complete forgiveness of the debt in connection with a short sale?

2. Did the trial court abuse its discretion in denying the Appellant's motion to amend his pleadings to allege a futile cause of action?

3. Was summary judgment appropriate given the state of discovery?

STATEMENT OF THE CASE

On February 21, 2007, Krishna of Orangeburg, Inc. (hereinafter "Krishna") made, executed, and delivered a promissory note in the original principal amount of $725,000.00 to Newtek Small Business Finance, Inc. (hereinafter "Newtek") (R. p. 1, lines 7 – 11). The funds were used for the purchase of commercial real estate and a hotel in Orangeburg County (hereinafter the "Property"). (R. p. 1, lines 7 – 11). Krishna made, executed, and delivered a purchase money mortgage to Newtek secured by the Property. (R. p. 1, lines 7 – 11). As additional security, the Appellant (hereinafter "Mehta"), in his individual capacity, made, executed, and delivered an Unconditional Guarantee (hereinafter the "Guaranty"), to guarantee the promissory note. (R. p. 1, line 12 – p. 2 line 2). Mehta is the president of Krishna. (R. p. 36).

On February 26, 2013, Newtek commenced a foreclosure action against Krishna, in which Newtek sought to foreclose its interest in the Property. (R. p. 2, lines 3 – 4). Prior to the judgment of foreclosure, Krishna contracted to sell the Property to a third party for $437,000.00. (R. p. 2, lines 4 – 6). Newtek consented to this short sale and specifically agreed to satisfy its mortgage encumbering the Property. (R. p. 2, lines 6 - 7). In seeking Newtek's consent for this short sale, one of the explicitly negotiated terms was whether Newtek would waive its right to pursue the deficiency associated with the promissory note and guaranty. (R. p. 3, lines 18 – 21); (R. p. 87, lines 8 – 10); (R. p. 148); and (R. p. 161).

Specifically, Newtek was presented with a draft contract containing language in which Newtek agreed to release and discharge Mehta from any and all guarantees related to the promissory note. Newtek expressly rejected the proposed contract. (R. p. 148). After further negotiations, the parties reached a final short sale agreement, in which this language was deleted. (R. p. 161).

The short sale closed on September 10, 2013. (R. pp. 47 – 48). Following the short sale, Newtek received the sales proceeds, and credited them towards payment of the amount due under

the promissory note. (R. p. 2, lines 8 – 9). The foreclosure action was dismissed, and Newtek delivered a Satisfaction of Mortgage, which specifically included language regarding Newtek's reservation of rights to seek full payment under the promissory note and the Guaranty. (R. p 49).

Following Mehta's failure to honor the guaranty, on December 3, 2014, Newtek filed this action to enforce the guaranty for the amount remaining under the promissory note. (R. pp. 8 – 22). On February 11, 2014, Mehta filed and served his answer in which he vaguely claimed that the settlement of the foreclosure action "may have released or otherwise extinguished the debt". (R. p. 25, lines 1 – 2).

On March 10, 2014, Newtek moved for summary judgment, seeking a judgment against Mehta for the outstanding balance owed under the guaranty. (R. p. 27 – 28). On October 30, 2014, the parties advised the Court that settlement talks had proven unsuccessful and a summary judgment hearing would be necessary. (R. p. 128). The summary judgment hearing was scheduled for December 4, 2014. On December 1, 2014, Mehta served an affidavit alleging an oral representation from an agent of Newtek indicating that Newtek had orally agreed to waive any amount owing from Mehta following the short sale. (R. pp. 66 – 67). Newtek filed and served a Return and Memorandum of Law in Support on December 4, 2014. (R. pp. 129- 135).

Following a hearing on December 4, 2014, the trial court entered an Order Granting Summary Judgment on February 25, 2015. (R. pp. 1 – 4).

Mehta then timely filed a motion to reconsider. (R. pp. 73). Newtek filed and served both a Return and a Supplemental Memorandum of Law. (R. pp. 164 – 182).

After a hearing on May 27, 2016, the court entered an Order denying the motion to reconsider on July 1, 2015. (R. pp. 5 – 7).

This appeal followed.

STANDARD OF REVIEW

In reviewing a grant of summary judgment, the appellate court applies the same standard as the trial court under Rule 56(c), SCRCP. *Quail Hill, L.L.C. v. Cnty. of Richland*, 387 S.C. 223, 234, 692 S.E.2d 499, 505 (2010). Summary judgment is proper if, viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP.

ARGUMENT

I. Mehta's affidavit was properly excluded from consideration as extrinsic evidence because the short sale contract's language is clear and unambiguous.

The executed short sale contract approved by Newtek is clear and unambiguous and contains all that is necessary to constitute a contract. In construing or interpreting a contract, "it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties." *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46, 747 S.E.2d 178, 184 (2013) (quoting *D.A. Davis Constr. Co. v. Palmetto Props., Inc.*, 281 S.C. 415, 418, 315 S.E.2d 370, 372 (1984)). "If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect." *Id.*

Moreover, "[i]f a contract is unambiguous, extrinsic evidence cannot be used to give the contract a meaning different from that indicated by its plain terms." *Watson v. Underwood*, 407 S.C. 443, 455, 756 S.E.2d 155, 161 (Ct. App. 2014) (quoting *Bates v. Lewis*, 311 S.C. 158, 161 n.1, 427 S.E.2d 907, 909 n.1 (Ct. App. 1993)) (internal quotation marks omitted); *see also Gordon Farms, Inc. v. Carolina Cinema Corp.*, 294 S.C. 158, 160, 363 S.E.2d 235, 237 (Ct. App. 1987) ("No authority is needed for the proposition that extraneous evidence is not admissible to alter or vary the terms of an unambiguous written contract.").

Here, Mehta argues that his affidavit alleging an oral representation from Newtek was improperly excluded because the short sale contract "...is silent as to whether the short sale would do away with the debt or with Mehta's liability on the guaranty." (Appellant's Brief, p. 15). The sole case upon which Mehta rests this proposition of law is *Keith v. River Consulting, Inc.*, 365 S.C. 500, 618 S.E.2d 302 (Ct. App. 2005), which is easily distinguished from this case.

The central question in *Keith* was whether extrinsic evidence of an indemnification provision constituted trade usage that was "typical in the industry" and would be admissible to further supplement an oral contract. *Id.* In *Keith,* two parties entered into an oral contract for the lease of a concrete truck to pump concrete into a building foundation during a commercial construction project. Following the completion of the concrete job, a "job ticket" was issued from one party to the other which contained indemnification language. In holding that the language on the "job ticket" was admissible, this Court held that a question of fact existed as to whether the disputed language was or was not understood by both parties at the time of entering into the contract in the context of being a common trade practice in the construction industry in similar situations where equipment is leased. The Court allowed the extrinsic evidence of each party's understanding of what was common trade usage to fill in the gaps, as the Court reasoned that it was possible for some standard provisions of the oral contract could have been mutually understood by not explicitly expressed. *Id.*

Unlike *Keith*, this case does not concern an oral contract between parties where gaps about mutually understood standard provisions might need to be filled in by trade usage. On the contrary, this case involves a detailed, written document, negotiated over time by represented parties. Accordingly, it would be reasonable to expect that all terms of the short sale contract be expressed, without the need to divine them from extrinsic evidence. Further, the parties in this case do not repeatedly do business with each other, or otherwise enter into contracts with each other, thereby developing a customary trade practice with regards to certain issues.

Instead, the contract at issue in this case is a detailed contract to sell commercial real estate for less than the amount owed on the first mortgage. All terms were explicitly set forth in the contract, and the contract also contains both a non-reliance and a merger clause. (R. p. 154). When a document claims to be the full expression of an agreement, the law will presume that the document is, in fact, complete. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia,* 409 S.C. 568, 762 S.E.2d 696 (2014) has ruled:

> "When a writing, upon its face, imports to be a complete expression of the whole agreement, and contains thereon all that is necessary to constitute a contract, it is presumed that the parties have introduced into it every material item and term, **and parol evidence is not admissible to add another term to the agreement, although the writing contains nothing on the particular item to which the parol evidence is directed**."

Stevens, 762 S.E.2d at 701 (emphasis added); *see also Gladden v. Keistler*, 141 S.C. 524, 542, 140 S.E. 161, 167 (1927); *see also Jordan v. Sec. Grp., Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993).

The primary argument that Mehta asserts is that the agreement is "silent" on the issue of whether the remaining debt owed will be forgiven, but Mehta cannot point to any customary trade practice or course of dealing that would support this argument, in line with his reliance on *Keith*. Rather, Mehta asserts that Newtek engaged an elaborate conspiracy to induce him to sell his property to a third party, and but for this conspiracy, Mehta could have sold his property for a higher value. On a practical level, even if this were true, which it is not, such a conspiracy does not even make sense, as it was in Newtek's best interests as the secured party, to have the real estate sell for the maximum amount possible in order to recover on its loan.

Moreover, the idea that if a writing is "silent" on an issue automatically leads to the admission of extrinsic evidence has no limiting factor. The short sale contract in this case is "silent" on an infinite number of issues. For instance, it is "silent" on the issue of whether Newtek will bake a birthday cake

for Mehta every year on his birthday. Presumably, this is because a provision about baking birthday cakes is not part of the short sale contract.

Fortunately, it is not necessary to break new legal ground to resolve this issue, as this is specifically addressed in South Carolina's current understanding of the parol evidence rule. "The parol evidence rule is a substantive rule of law that prohibits the introduction of evidence to contradict, **add to**, alter, explain, or vary the terms of an unambiguous valid written contract." *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 762 S.E.2d 696, 705 (2014) (Pleicones, J., dissenting, on other issues) (citing *Garnett v. WRP Enterps., Inc.*, 380 S.C. 206, 669 S.E.2d 591 (2008)) (emphasis added).

As is clear from *Stevens* and the well settled law on this issue, extrinsic evidence cannot be used to add a new term to an unambiguous written document. Nowhere in Mehta's argument does he claim that the short sale contract is ambiguous. Rather, Mehta's claim is simply that the contract is "silent", on an issue, and therefore extrinsic evidence should be admitted. This is a misunderstanding of the parol evidence rule as set forth by out Supreme Court in *Stevens* and South Carolina law for years.

Instead, there must first be a finding that the writing is ambiguous in some manner that would therefore necessitate the use of extrinsic evidence to ascertain the true intent and meaning of the parties. If the document is unambiguous, then the analysis is over. "[E]xtrinsic evidence may only be considered if the contract is ambiguous." *Preserv. Capital Consultants, LLC v. First Am. Title Ins. Co.*, 406 S.C. 309, 320, 751 S.E.2d 256, 261 (2013) (citing *Duncan v. Little*, 384 S.C. 420, 425, 682 S.E.2d 788, 790 (2009)).

Based upon the foregoing, the trial court properly refused to consider the affidavit from Mehta and properly granted summary judgment as to Mehta's liability on the guaranty.

II. Mehta was involved with the negotiation and execution of the short sale agreement, so the third-party exception to the parol evidence rule does not apply.

Mehta further argues that an exception to the parol evidence rule permits him to introduce extrinsic evidence, on the theory that he was "not a party to the short sale agreement." (Appellant's

Brief, p. 13). In support of this exception to the parol evidence rule, Mehta relies upon two cases, *Baptist Foundation for Christian Educ. v. Baptist College at Charleston*, 317 S.E.2d 453, 282 S.C. 53 (Ct. App. 1984) and *City of Orangeburg v. Buford*, 227 S.C. 280, 87 S.E.2d 822 (1955).

As an initial point, it is conceded that the parol evidence rule does not preclude a third-party from introducing extrinsic evidence as to a writing which that party had no input into drafting and never had the opportunity to asset to the provisions in such a writing. However, this exception does not apply in the instant case. The case of *City of Orangeburg v. Buford* is instructive as to why.

Buford involved a dispute between the City of Orangeburg and Ms. Buford in a condemnation action and the amount to be paid to Ms. Buford as the landowner. The question before the Court was whether the trial court properly excluded testimony to explain a term in the lease between Ms. Buford and her tenant, Belk-Hudson. Inc. *Id* at 283, 87 S.E.2d at 824.

Specifically, the lease contained the term "extending approximately 25 feet" in describing the rear of a basement to be constructed by the tenant. *Id.* At trial, Ms. Buford offered testimony by the tenant's manager to explain why the word "approximately" was included. *Id.* Essentially, it was because the true length of the distance was unknowable with absolute certainty at the time of the execution of the lease, due to the inherent uncertainty of subterranean construction. *Id.* In actuality, the length of the underground improvement ended up being thirty-five feet, rather than the "approximately twenty-five feet" as stated in the lease. *Id.*

At trial, the court excluded this testimony at the request of the City of Orangeburg on the theory that the parol evidence rule excluded the admissibility of any extrinsic evidence to vary or contradict the terms of the written document. *Id* at 284, 87 S.E.2d at 824. On appeal, our Supreme Court reversed this exclusion holding that that the parol evidence rule "...does not apply to a controversy between third parties, or to a controversy between a third party and one of the parties to an instrument." *Id.* What is illuminating about this holding is that our Supreme Court further explained

the rationale underlying this exception stating "This is so because a stranger, not having assented to the instrument, is not bound by it and is free to vary or contradict it, and consequently his adversary must be equally free to do so." *Id.*

From this explanation, it is apparent that the lack of an opportunity to assent to a writing, or to otherwise have an opportunity to participate in the crafting of a writing, is the reason for the third-party exception to the parol evidence rule.

Here, the short sale contract is between Krishna (as the seller); Quantum Mortgage Corporation; (as the purchaser) and it was approved by Newtek (as the mortgage holder) in regards to accepting a lesser payoff than the amount owed. (R. pp. 149 – 161). It is undisputed that Mehta, in addition to being the guarantor, is also the president of Krishna, participated in the negotiations of the short sale, and executed the short sale contract. The fundamental reason behind the third-party exception to the parol evidence rule as explained *Buford* was that a third-party typically has no opportunity to assent to the terms in a writing which is between other parties.

Because Mehta had ample opportunity, and did in fact, asset to the terms of the short sale contract, the *Buford* exception does not apply. While Mehta clearly signed the contract as the representative of his company, and not in his individual capacity, it is undeniable that Mehta had the ability to inject his own language and either assent or dissent from the contract. Based on the foregoing, as Mehta had the opportunity to assent or participate in the crafting of the short sale contract, the underlying reason for the *Buford* exception to the parol evidence rule does not exist for Mehta, and he should not be allowed to seek refuge in it.

III. Even if an alleged statement were made, it is not actionable against Newtek under a negligent misrepresentation theory, as contemplated in Mehta's proposed amended pleading.

Although leave to amend pleadings should be generally be "freely given", this Court has held that it may be denied where the proposed amendment would be futile. *Jennings v. Jennings*, 389 S.C. 190,

209, 697 S.E.2d 671, 681 (Ct. App. 2010). Further, it is well established that a motion to amend pleadings is left to the sound discretion of the trial judge. *Foggie v. CSX Transportation*, 313 SC. 98 103, 431 S.E.2d 587, 590 (1993).

As an alternative method of preserving his case in the face of summary judgment on the issue of liability, Mehta argues that he should have been permitted to amend his answer to allege a counterclaim for negligent misrepresentation against Newtek, under a tort theory. However, the trial court properly denied this proposed amendment of pleadings as a futile theory. As explained in detail below, the fundamental reason why it would be futile for Mehta to allege a negligent misrepresentation action against Newtek is that Newtek owes no duty of care to Mehta. The full extent of the parties' relationship is that Newtek made a commercial loan to Mehta's company, and Mehta executed an individual guaranty for that loan.

The only duties between the parties are one of creditor, debtor/guarantor created by contract, and such contractual duties cannot support a tort claim for negligent misrepresentation. "[T]he law is well-settled that a breach of contractual duties does not give rise to an action in tort for negligence." *Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 503 n.5, 473 S.E.2d 52, 55 n.5 (1996); *see also Tommy L. Griffin Plumbing & Heating Co. v. Jordon, Jones & Goulding, Inc.*, 320 S.C. 49, 54-55, 463 S.E.2d 85, 88 (1995) ("A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie.")

"[A]bsent special circumstances, the relationship between mortgagee and mortgagor is that of a debtor/creditor." *Burwell v. South Carolina Nat'l Bank*, 288 S.C. 34, 40, 340 S.E.2d 786, 790 (1986).[1] *see also Florentine Corp. v. PEDA I, Inc.*, 287 S.C. 382, 386, 339 S.E.2d 112, 114 (1985) ("Where there is no confidential or fiduciary relationship and an arm's length transaction between mature, educated people is involved, there is no right to rely" *(citing Thomas v. Am. Workmen*, 197 S.C. 178, 182–83, 14 S.E.2d 886, 887–88 (1941)). *Kerr v. Branch Banking & Trust Co.*, 408 S.C. 328, 759 S.E.2d 724 (S.C., 2014).

Quite simply, Newtek owes no duty of care to Mehta other than as defined by contract as the relationship is one of guarantor and creditor. The duty of care is an essential element of the Mehta's proposed cause of action, but because it apparent that Mehta cannot meet this element, his claim fails as a matter of law, without the need for any fact-finding.

Further, there is no liability for negligent misrepresentation as to "matters which plaintiff could ascertain on his own in the exercise of due diligence." *Quail Hill, LLC*, 387 S.C. at 240, 692 S.E.2d 499, 508 (2010) (quoting *AMA Mgt. Corp. v. Strasburger*, 309 S.C. 213, 223, 420 S.E.2d 868, 874 (Ct. App. 1992)). Mehta alleges that he was told his entire mortgage debt would be waived, but he was on notice that no such provision made it into the final version of the short-sale agreement which he reviewed and signed, and that explicit language to the contrary was contained in the mortgage satisfaction. Because Mehta cannot prove this necessary element of a claim for negligent misrepresentation, his claim fails as a matter of law, without the need for any fact-finding.

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[1]The South Carolina Supreme Court has been reluctant to recognize or create new duties of care that would expand the scope of traditional tort liability. *E.g., Huggins v. Citibank, NA*, 355 S.C. 329, 334, 585 S.E.2d 275 (2003) (holding that credit card issuers have no duty to protect potential victims of identity theft); *Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co.*, 355 S.C. 614, 586 S.E.2d 586 (2003) (declining to recognize a general duty of care from an independent insurance adjuster or insurance adjusting company to the insured); *Hendricks v. Clemson University*, 353 S.C. 449, 578 S.E.2d 711 (2003) (holding that a school owes no duty of care to a student in giving advice concerning the courses the student should take); *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997) (holding that the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them); *Byerly v. Connor*, 307 S.C. 441, 415 S.E.2d 796 (1992) (holding that the South Carolina Public Service Authority had no duty to discover and warn of a latent hazardous condition on land that it leased to another).

Based on the foregoing, the trial court properly denied Mehta's motion to amend his answer to allege a counterclaim against Newtek under a tort theory of negligent misrepresentation. To the extent that Mehta sought to assert a claim against any third party, Mehta is free to assert such a claim in a separate action, and no prejudice exists.

IV. Mehta had full and complete opportunity to complete any discovery he wished, and as further inquiry into the facts was not necessary to clarify the application of the law.

A party claiming summary judgment was premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact. *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54-55, 677 S.E.2d 32, 36 (Ct. App. 2009).

Accordingly, it is necessary for Mehta to demonstrate both why the amount of time he had to conduct discovery was insufficient and also demonstrate why and proposed discovery would create a genuine issue of material fact. A failure to meet either of these elements is fatal to Mehta's argument on this particular issue.

In the instant case, the action was filed on December 3, 2014. (R. pp.8 – 22). On March 10, 2014, Newtek moved for summary judgment, seeking a judgment against Mehta for the outstanding balance owed under the guaranty. (R. p. 27). One year and one day after the filing of the action, the summary judgment hearing was convened. (R. pp. 1 – 4). According to Mehta's affidavit, the alleged statement upon which his entire theory of the cases rests was made sometime before September 10, 2013. Consequently, if Mehta's affidavit is to be believed, then Mehta knew of this alleged statement before the action was commenced, during the entire pendency of the case, during settlement negotiations, for months after receipt of Newtek's motion for summary judgment, but only then brought this alleged statement to light on the eve of the summary judgment hearing.

Despite allegedly knowing about this statement during all times relevant, it was not until December 2, 2014 - two days before the summary judgment hearing - that Mehta served written discovery. (R. pp. 183 – 195). Accordingly, Mehta cannot claim to have been vigorously asserting this claim.

Mehta's justification for failing to serve discovery in this matter is that he believed the case was settled. (Appellant's Brief, p. 21). While it is true that settlement negotiations had been underway during the entirety of the action, no final settlement ever occurred. Moreover, it is commonplace for settlement negotiations to take place both prior to and during litigation, and settlement negotiations do not act as an excuse to fail to either prosecute or defend cases. In the context of the statute of limitations, this Court has consistently held that simply undertaking settlement negotiations does not relieve a party from timely filing an action. "Settlement negotiations commenced but not finalized, however, will not bar a defendant's assertion of the statute of limitations." *Moates v. Bobb*, 322 S.C. 172, 470 S.E.2d 402 (Ct. App. 1996).

Further, it is undisputed that at no time did Newtek mislead Mehta on the fact that any formal settlement would be subject to approval of the SBA. It is further undisputed that although the parties had a contingent settlement agreement, there was never a fully perfected settlement agreement. Based upon this undeniable fact, Mehta was always on notice no settlement had been realized, and therefore would need to protect his rights. Nothing precluded Mehta from conducting discovery during the entirety of the case, simultaneously with pursuit of settlement.

In any event, there can be no doubt that on October 30, 2014, no settlement had been reached, and Newtek requested a hearing on its motion for summary judgment. (R. p. 128). At this point, even assuming for the sake of argument that Mehta has some justification for failing to assert his counterclaim and serve discovery to this point, he had no justification for delaying further after the

hearing on the motion for summary judgment was requested. For this reason alone, Mehta cannot meet the first test of showing why the amount of time he had to conduct discovery was insufficient.

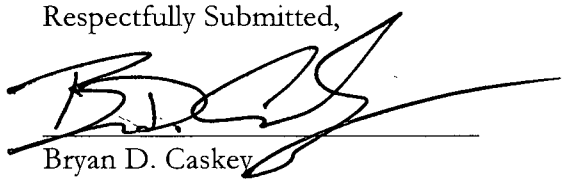
However, even assuming that Mehta had served discovery at the outset of the action, the discovery sought would not create a genuine issue of material fact. As has been set forth above, the alleged statement is extrinsic evidence that is not admissible to add a provision to the short sale contract. In the context of summary judgment, Mehta's allegations were assumed to be true, and further discovery cannot transform this extrinsic evidence into anything admissible, as further discovery cannot overcome the parol evidence rule.

In this case, the discovery served at the eve of summary judgment does not do anything to create or seek out any evidence that would be admissible to create a genuine issue of material fact to defeat summary judgment on the issue of liability. There was no further inquiry necessary to clarify the application of the law in this case, and therefore, the trial court was correct in granting summary judgment.

CONCLUSION

Based upon the foregoing, the order granting summary judgment, entered on February 25, 2015 should be affirmed.

Respectfully Submitted,



Bryan D. Caskey
SC Bar # 75754
FOSTER LAW OFFICE, LLC
3100 Devine Street
Columbia, South Carolina 29205
(803) 400-1921
(803) 400-1951 Fax
bryan@fosterlawoffice.net
COUNSEL FOR RESPONDENT

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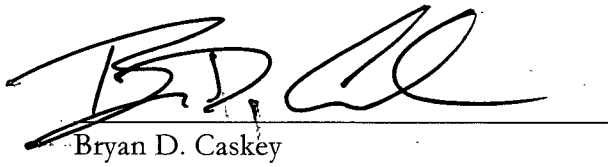
CERTIFICATE OF SERVICE

I, Bryan D. Caskey, hereby certify that the **Final Brief of Respondent and Certificate of Counsel** was served on all parties below by depositing a copy of the same, postage prepaid, first-class mail on the date set forth below:

Andrew Radeker, Esquire
P.O. Box 50143
Columbia, SC 29250

Dated at Columbia, South Carolina this 25th day of April, 2016.



Bryan D. Caskey

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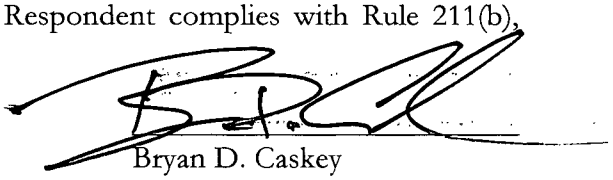
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.



Bryan D. Caskey
FOSTER LAW OFFICE, LLC
3100 Devine Street
Columbia, SC 29205
(803) 400-1921
(803) 400-1951 Fax
bryan@fosterlawoffice.net
COUNSEL FOR RESPONDENT

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