

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Judge

Case No: 2009-CP-26-12046

First American Title Insurance
Company, Plaintiff

v.

Michele Paddy Refosco, Attorney
at Law, Defendant and Third Party Plaintiff

v.

AmeriSearches, LLC and Wade
Schaffner, Third Party Defendant,

OF WHOM

AmeriSearches, LLC and Wade
Schaffner are..... Appellants,

AND

Michele Paddy Refosco and First American
Title Insurance Company are..... Respondents

NOTICE OF APPEAL

RECEIVED
SEP 24 2012
SC Court of Appeals

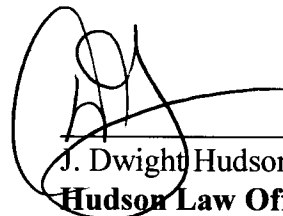
AmeriSearches and Wade Schaffner hereby appeal from the following Order(s) of the Honorable Larry B. Hyman:

(1) **Order (Not Ending Action)**” dated August 27, 2012 and recorded August 29, 2012 which denied Appellants’ “Motion For Relief From And/Or To Alter, Amend & Reconsider. Appellants received written notice of the entry of the Order on September 4, 2012.

(2) **Order Granting The Defendant/Third Party Plaintiff’s Michele Paddy Refosco, Motion For Summary Judgment AND Denying The Third Party Defendants’ AmeriSearches, LLC And Wade Schaffner, Motion To Dismiss And Motion For Summary Judgment (Not Ending Action)** dated April 16, 2012 and recorded April 23, 2012. Appellants received written notice of the entry of the Order by US Mail on April 26, 2012.

Copies of the said Orders are attached hereto and incorporated by reference herein

Dated: September 21, 2012



J. Dwight Hudson, Esquire

Hudson Law Offices

1203 48th Avenue North

Suite 111

Myrtle Beach, SC 29577

(843) 692-9889

T: (843) 692-9889

F: (843) 692-9190

E: Hudsonlaw@hudsonlawoffice.com

Attorney For Appellants

Other Counsel of Record:

Daniel J. MacDonald Esq.
Rice, MacDonald, Winters & Breeden
950 48th Ave. N, Ste., 200
Myrtle Beach, SC 29577
Fax: (843) 497-9599
Email: dmacdonald@ricemaclaw.com
Attorney for Michele Paddy Refosco

W. Cliff Moore, III Esq.
ELLIS LAWHORNE & SIMS PA
1330 Lady St, 4th Floor
PO Box 2285
Columbia, SC 29202
Fax: (803) 779-4749
Email: cmoore@ellislawhorne.com
Attorney for First American Title Insurance Co.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Judge

Case No: 2009-CP-26-12046

First American Title Insurance
Company, Plaintiff

v.

Michele Paddy Refosco, Attorney
at Law, Defendant and Third Party Plaintiff

v.

AmeriSearches, LLC and Wade
Schaffner, Third Party Defendant,

OF WHOM

AmeriSearches, LLC and Wade
Schaffner are..... Appellants,

AND

Michele Paddy Refosco and First American
Title Insurance Company are..... Respondents

CERTIFICATE OF SERVICE

RECEIVED
SEP 24 2012
S.C. COURT OF APPEALS

This is to certify that on September 21, 2012 I served a copy of Appellants' NOTICE OF APPEAL in the above-captioned matter upon counsel for the respondents by first class mail with sufficient first class postage prepaid and affixed thereto, to his/their addresses of record, addressed as follows and it further certifies that I have served/forwarded the same to the Clerk of Court for Horry County and to the Presiding Judge, all as noted below:

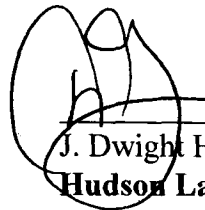
Daniel J. MacDonald Esq.
Rice, MacDonald, Winters & Breeden
950 48th Ave. N, Ste., 200
Myrtle Beach, SC 29577
Fax: (843) 497-9599
Email: dmacdonald@ricemaclaw.com
Attorney for Michele Paddy Refosco

W. Cliff Moore, III Esq.
ELLIS LAWHORNE & SIMS PA
1330 Lady St, 4th Floor
PO Box 2285
Columbia, SC 29202
Fax: (803) 779-4749

Email: cmoore@ellislawhorne.com
Attorney for First American Title Insurance Co.

Melanie Huggins
Clerk of Court
Government & Justice Ctr.
1301 Second Avenue
Conway, SC 29526

The Honorable Larry B. Hyman, Jr.
Judge, Fifteenth Judicial Circuit
1301 Second Avenue, Ste. 3B76
Conway, SC 29526



J. Dwight Hudson, Esquire
Hudson Law Offices

1203 48th Avenue North
Suite 111
Myrtle Beach, SC 29577
(843) 692-9889

T: (843) 692-9889

F: (843) 692-9190

E: Hudsonlaw@hudsonlawoffice.com

Dated:
September 21, 2012

Attorney For Appellants

65646

HUDSON LAW OFFICES

1203 48th AVENUE NORTH
SUITE 111

MYRTLE BEACH, SOUTH CAROLINA 29577

TELEPHONE (843) 692-9889
TOLL FREE: 1-877- 874-5256
FAX (843) 692-9190
www.hudsonlawoffice.com

SHALLOTTE OFFICE:
5285 MAIN STREET, SUITE 21
SHALLOTTE, NORTH CAROLINA 28459
TELEPHONE: (910) 755-6543
FAX (843) 692-9190
TOLL FREE: 1-877- 874-5256

CONWAY OFFICE:
211 LAUREL STREET, PO BOX 7
CONWAY, SOUTH CAROLINA 29528
TELEPHONE: (843) 248-3620
FAX (843) 692-9190
TOLL FREE: 1-877- 874-5256

J. DWIGHT HUDSON*
MARY ANNE GRAHAM
LUCIA B. BACOT*

EMAIL: hudsonlaw@hudsonlawoffice.com
OR: hudsonlaw@sc.rr.com

*ADMITTED IN S.C. AND N.C.

REPLY TO: MYRTLE BEACH OFFICE

September 21, 2012

The Hon. Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: First American Title Insurance Company v. Michele Paddy Refosco v. AmeriSearches, LLC and Wade Schaffner (Case No: 2009-CP-26-12046)

Dear Ms. Kitchings:

Enclosed for filing is an original and a copy of a Notice of Intent to Appeal **By Appellants AmeriSearches, LLC and Wade Schaffner** in the above case. Also enclosed are the following:

- 1. Proof of service of the Notice of Appeal;
- 2. Copies of the Orders to be challenged on appeal, attached to and incorporated in the Notice of Intent to Appeal
- 3. My check for the filing fee of \$100.00.

Please file the original and return the clocked copy in the enclosed stamped, self-addressed, return envelope.

By copy of this letter and by the enclosed Certification of Service, I serve the same upon counsel for the Respondents. Also by copy of this letter, I forward the same to the Clerk of Court for Horry County for filing and copy the same to the Presiding Judge.

With best regards, I remain



J. Dwight Hudson, Esq.

JDH: mag
Enclosure(s): as stated
cc: Daniel J. MacDonald, Esq.
W. Cliff Moore, III, Esq.
Melanie Huggins, Clerk of Court
The Honorable Larry B. Hyman, Jr.

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SEP 24 2012
SC Court of Appeals

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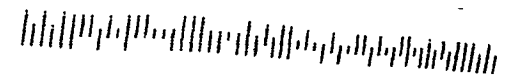
HUDSON LAW OFFICES
SUITE 111
1203 48TH AVENUE NORTH
MYRTLE BEACH, SOUTH CAROLINA 29577

RECEIVED
SEP 24 2012
SC Court of Appeals

TO
The Hon. Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
FIRST AMERICAN TITLE INSURANCE)
COMPANY,)
)
Plaintiff,)
)
v.)
)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
)
Defendant.)
)
and)
)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
)
Third Party Plaintiff,)
)
v.)
)
AMERISEARCHES, LLC and WADE)
SCHAFFNER,)
)
Third Party Defendants.)
)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-26-12046

FILED
HORRY COUNTY
12 AUG 29 AM 10:38
MELANIE HIGGINS-WARD
CLERK OF COURT

ORDER

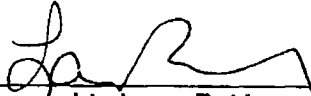
(Not Ending Action)

This matter comes before the Court pursuant to the Third Party Defendants', Amerisearches, LLC and Wade Schaffner, Motion for Relief from and/or to Alter, Amend or Reconsider Order. The Motion seeks relief from my Order granting the Defendant/Third Party Plaintiff's, Michelle Paddy Refosco, Motion for Summary Judgment and Denying the Third Party Defendants', Amerisearches, LLC and Wade Schaffner, Motion to Dismiss and Motion for Summary Judgment (Not Ending Action) signed by me on April 16, 2012 and filed in the Office of the Clerk of Court for Horry County on April 23, 2012.

Appearing on behalf of the Third Party Defendants was J. Dwight Hudson, Esquire, and appearing on behalf of the Third Party Plaintiff was Daniel J. MacDonald, Esquire. Based upon the arguments of counsel at the hearing, a review of the Order, a review of the alleged errors set forth in the Third Party Defendants' Motion, I hereby respectfully deny the Third Party Defendants' Motion for Relief from and/or to Alter, Amend or Reconsider Order.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Third Party Defendants', Amerisearches, LLC and Wade Schaffner, Motion for Relief from and/or to Alter, Amend or Reconsider Order is denied.

AND IT IS SO ORDERED.



Honorable Larry B. Hyman
Presiding Judge, 15th Judicial Circuit

Conway, South Carolina

8-27- _____, 2012

Rice, MacDonald & Hicks, P.A.
Attorneys at Law

H. THOMPSON RICE, JR. (of counsel)
DANIEL J. MACDONALD ♦
DAVID C. HICKS
ANNA S. MAGANN
H. T. RICE, III

♦ CERTIFIED MEDIATOR

Parkway Center
950 - 48th Avenue North, Suite 200
Myrtle Beach, South Carolina 29577-5434

<http://www.RiceMacLaw.com>

TELEPHONE: 843.449.4493
FACSIMILE: 843.497.9599

SENDER'S E-MAIL:
DMacDonald@RiceMacLaw.com

April 25, 2012

J. Dwight Hudson, Esquire
Hudson Law Offices
1203 48th Avenue North
Myrtle Beach, SC 29577

W. Cliff Moore, III, Esquire
Ellis Lawhorne & Sims
P.O. Box 2285
Columbia, SC 29402

Re: First American Title Insurance Company v. Michele Paddy Refosco,
Attorney at Law v. AmeriSearches, L.L.C. and Wade Schaffner
Case No. 2009-CP-26-12046

Gentlemen:

Enclosed please find a clocked copy of the Order Granting the Defendant/Third Party Plaintiff's, Michele Paddy Refosco, Motion for Summary Judgment and Denying the Third Party Defendants', AmeriSearches, LLC and Wade Schaffner, Motion to Dismiss and Motion for Summary Judgment (Not Ending Action), which I hereby serve upon you pursuant to the South Carolina Rules of Civil Procedure.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

RICE, MACDONALD & HICKS, P.A.



Daniel J. MacDonald

DJM/lch

Enclosures

cc: Michele Paddy Refosco, Esquire

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 FIRST AMERICAN TITLE INSURANCE)
 COMPANY,)
)
 Plaintiff,)
)
 v.)
)
 MICHELE PADDY REFOSCO,)
 ATTORNEY AT LAW,)
)
 Defendant.)
)
 and)
)
 MICHELE PADDY REFOSCO,)
 ATTORNEY AT LAW,)
)
 Third Party Plaintiff,)
)
 v.)
)
 AMERISEARCHES, LLC and WADE)
 SCHAFFNER,)
)
 Third Party Defendants.)
)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE NO. 2009-CP-26-12046

HORRY COUNTY
 12 APR 23 PM 1:40
 MELANIE HULL MS-YARD
 CLERK OF COURT

**ORDER GRANTING THE DEFENDANT/THIRD PARTY PLAINTIFF'S,
 MICHELE PADDY REFOSCO, MOTION FOR SUMMARY JUDGMENT
 AND
 DENYING THE THIRD PARTY DEFENDANTS', AMERISEARCHES, LLC
 AND WADE SCHAFFNER, MOTION TO DISMISS AND MOTION FOR
 SUMMARY JUDGMENT**

(NOT ENDING ACTION)

This matter comes before the Court pursuant to Cross Motions for Summary Judgment filed by the Defendant/Third Party Plaintiff, Michele Paddy Refosco, Attorney at Law (hereinafter referred to as "Refosco"), and the Third Party Defendants, Amerisearches, LLC (hereinafter referred to as "Amerisearches") and Wade Schaffner (hereinafter referred to as "Schaffner"). The Third Party Defendants also have filed a Motion to Dismiss, which will be handled as a Motion for Summary Judgment.

The hearing on the Motions was held on September 7, 2011. In addition to the affidavits filed with the parties' motions, the parties submitted all or part of the depositions of Michelle Paddy Refosco and Wade Schaffner, along with the pertinent exhibits. Third Party Defendant Schaffner testified individually, and as the 30(b) (6) witness of Third Party Defendant Amerisearches.

Based upon the evidence submitted and the law, I find and conclude that there is no dispute as to a material fact, and as a matter of law the Defendant/Third Party Plaintiff Refosco is entitled to summary judgment on her claims of indemnity against the Third Party Defendants Amerisearches and Schaffner to the extent Defendant/Third Party Plaintiff Refosco is liable to the Plaintiff, First American Title Insurance Company (hereinafter "FATIC"). I also deny the Motion for Summary Judgment and Motion to Dismiss of the Third Party Defendants Amerisearches and Schaffner. In support of my decision, I find and conclude as follows:

PROCEDURAL BACKGROUND

This case involves claims resulting from a properly indexed mortgage, which was missed and not disclosed in a title search completed by Third Party Defendant Schaffner on behalf of his company, Third Party Defendant Amerisearches. The title search was relied upon by the Defendant/Third Party Plaintiff Refosco as part of a closing Defendant/Third Party Plaintiff Refosco performed on behalf of her client, RMB Homes, LLC (hereinafter referred to as "RMB"). The missed mortgage ultimately resulted in title insurance claims being paid by the Plaintiff FATIC.

In its Complaint, Plaintiff FATIC has asserted claims against Defendant/Third Party Plaintiff Refosco for contractual indemnification. Defendant/Third Party Plaintiff Refosco denied Plaintiff FATIC's allegations and filed a Third Party Complaint against Third Party Defendant Schaffner and Third Party Defendant Amerisearches for negligence and equitable indemnification. The Third Party Defendants Amerisearches and Schaffner, answered the Third Party Complaint by general denial and asserted numerous defenses, as discussed below.

Third Party Defendant Amerisearches and Third Party Defendant Schaffner filed their Motion for Summary Judgment on or about June 11, 2011, seeking dismissal of Defendant/Third Party Plaintiff Refosco's third party claims as a matter of law. Defendant/Third Party Plaintiff Refosco filed her Motion for Summary Judgment on June 28, 2011 seeking to dismiss Third Party Defendant Amerisearches' and Third Party Defendant Schaffner's defenses and a grant of liability against Third Party Defendant Amerisearches and Third Party Defendant Schaffner, jointly and severally, in favor of Defendant/Third Party Plaintiff Refosco on her causes of action of negligence and/or indemnification.

At the time of the hearing on the Cross Motions, the parties had served and answered Interrogatories and Requests for Production of Documents. Additionally, the depositions of Michele Paddy Refosco, Attorney at Law, and Wade Schaffner, individually, and as 30(b)(6) witness for Third Party Defendant Amerisearches, had been taken.

FINDING OF UNDISPUTED FACTS

For several years, Defendant/Third Party Plaintiff Refosco represented Gaetan (Guy) and Susan (Sue) Remillard and their various real estate entities, including entities know as RMB Homes, LLC and Remco, Inc., performing, among other things, real estate closings. Defendant/Third Party Plaintiff Refosco, a licensed South Carolina attorney whose practice is focused on real estate transactional work, handled over 300 transactions for the Remillards and their entities during her representation of them. (Refosco Depo., Page 16, Line 8 to Page 17, Line 23).

Defendant/Third Party Plaintiff Refosco used the services of Third Party Defendant Amerisearches to perform title searches in Horry County. Third Party Defendant Amerisearches is a South Carolina limited liability company owned by Third Party Defendant Schaffner, and is in the business of providing title search services to attorneys. In addition to owning Third Party Defendant Amerisearches, Third Party Defendant Schaffner actually performs title searches.

In June 2007, Defendant/Third Party Plaintiff Refosco represented RMB in a transaction in which RMB acquired forty-six lots (46) in the Red Bluff Village subdivision in the western part of Horry County. To finance the purchase, RMB obtained a loan from SCB&T in the amount of One Million Nine Hundred Forty Thousand Seven Hundred and No/100 (\$1,940,700.00) Dollars. In exchange for that loan, SCB&T obtained a first mortgage on the forty-six (46) lots in Red Bluff Village. SCB&T also obtained a first mortgage on six lots in Cedar Woods Subdivision in the eastern part of Horry County as additional collateral for its loan. The Cedar Woods lots had been acquired by RMB in 2005.

To complete the SCB&T loan transaction, Defendant/Third Party Plaintiff Refosco hired Third Party Defendant Amerisearches to perform the title search on the Red Bluff parcels and the Cedar Woods lots. Third Party Defendant Schaffner, the owner of Third Party Defendant Amerisearches, actually conducted the title search and prepared the summary sheet for this transaction. The title search consisted of a review of the records of the ROD, Clerk of Court and tax records for Horry County. Since the purpose of this transaction was the acquisition of the forty-six (46) lots in Red Bluff, upon completion of the transaction, Defendant/Third Party Plaintiff Refosco filed the title information for this closing under RMB, and referenced Red Bluff Villages as the matter for the file.

In September 2007, RMB decided to begin construction of homes on lots 9, 12 and 40 in Cedar Woods. These lots were three (3) of the six (6) given as additional collateral in June 2007 for the SCB&T loan for Red Bluff Villages. To finance the construction, RMB arranged for loans with First Federal of Charleston ("First Federal"). RMB asked Defendant/Third Party Plaintiff Refosco to close the

financing transaction. As part of her work to close the First Federal construction loans, Defendant/Third Party Plaintiff Refosco ordered title searches on the three (3) lots from Third Party Defendant Amerisearches. The actual title work was performed by Third Party Defendant Schaffner.

In her instructions to Third Party Defendant Amerisearches, Defendant/Third Party Plaintiff Refosco specifically requested a current owner update and provided the tax map numbers of the three (3) lots, the lot and block numbers, and a specific deed book and page reference from which Third Party Defendant Amerisearches was to search. By providing the specific deed from which the examination was to start, Defendant/Third Party Plaintiff Refosco provided the beginning date for Third Party Defendant Amerisearches' title search. There is no evidence that the information provided by Defendant/Third Party Plaintiff Refosco was incorrect or inadequate. (Refosco Depo., Page 23, Lines 10-16; Page 42, Lines 12-16; Page 50, Lines 14-20).

Third Party Defendants Schaffner and Amerisearches do not dispute that the deed reference provided by Defendant/Third Party Plaintiff Refosco in her request was recorded prior to the recorded SCB&T mortgage, which encumbered the three (3) lots in Cedar Woods. It is admitted by Third Party Defendant Schaffner that the SCB&T mortgage could have been located when Third Party Defendant Schaffner searched the title of the three (3) Cedar Woods lots. (Schaffner Depo., Page 30, Lines 8-23).

In searching the Cedar Woods' title, Third Party Defendant Schaffner used the computerized index provided by Office of the Horry County Register of Deeds. It is admitted by Third Party Defendant Schaffner that the SCB&T mortgage is indexed under RMB, and when he performed his search, the computer index actually listed the missed mortgage, but he failed to note it due to the description of the property subject to the mortgage on the computerized index. When searching the ROD computerized index, a list of documents appears on the screen, and to view the actual document the user merely clicks on the computer link, and the full document appears. Third Party Defendant Schaffner's defense is that the computer screen description section for the

SCB&T mortgage only had a partial description, and identified the property as asev lots Red Bluff Village S... (ellipses in the original). A photograph of the screen indicating the language was submitted by the parties at the hearing.

Despite the obvious partial or incomplete description, Third Party Defendant Schaffner admits he did not click on the link for this mortgage. Third Party Defendant Schaffner concedes that had he clicked on the link, the system would have brought up the actual document, which would have shown the Cedar Woods lots as being subject to the SCB&T mortgage. (Schaffner Depo., Page 66, Line 12 to Page 67, Line 16).

Because Third Party Defendant Schaffner did not click on this link, he did not identify the mortgage as encumbering the Cedar Woods lots, did not note the SCB&T mortgage on his Title Summary Sheet, and did not provide a copy of the mortgage to Defendant/Third Party Plaintiff Refosco for review. Third Party Defendant Schaffner indicates that after the missed mortgage was discovered in 2008, he recreated his search and located the missed mortgage by clicking the link he passed over in his original search.

Since the title report provided by Third Party Defendant Amerisearches indicated no mortgages on the three (3) Cedar Woods lots, at the closing of the construction loan, Defendant/Third Party Plaintiff Refosco asked Mr. Remillard if there were any mortgages on the parcel. Remillard indicated he did not believe there were any mortgages. (Refosco Depo, Page 18, Line 4 to Page 19, Line 3). Defendant/Third Party Plaintiff Refosco testified in her deposition, that during the closing of the First Federal transaction, she had no recollection of the Cedar Woods lots being subject to SCB&T's mortgage. Defendant/Third Party Plaintiff Refosco indicated that she did not locate the prior mortgage in her files because it was stored in her Red Bluff Villages file. Defendant/Third Party Plaintiff Refosco indicates that she orders title searches so that she does not have to rely on her memory or internal filing system. (Refosco Depo., Page 22, Line 8 to Page 24, Line 6; Page 79, Lines 13-25; Page 82, Line 13 to Page 83, Line 2).

Because Defendant/Third Party Plaintiff Refosco was not aware of the SCB&T mortgage, when the First Federal construction loans were closed, she

wrote a title opinion letter, and three (3) lender's policies of Plaintiff FATIC, insuring that First Federal's mortgage had a first priority. She did not take exception to the SCB&T mortgage.

In August of 2008, Defendant/Third Party Plaintiff Refosco was contacted by a banker with SCB&T, who inquired into the status of SCB&T's mortgage on the six (6) lots in Cedar Woods Subdivision. In discussions between SCB&T and Remillard, the banker learned that RMB had constructed houses on three (3) lots, having borrowed money from First Federal using the three (3) lots as collateral. Ultimately, RMB defaulted on the SCB&T loan, and in January 2009 SCB&T began a foreclosure action. In its action, SCB&T named First Federal as a junior mortgage lien holder on lots 9, 12 and 40 of Cedar Woods Subdivision. First Federal filed a title insurance claim with Plaintiff FATIC based on the policies written by Defendant/Third Party Plaintiff Refosco. In October 2009, Plaintiff FATIC paid One Hundred Twenty Thousand Seven Hundred Twenty-Six and 49/100 (\$120,726.49) Dollars to SCB&T as payoff of the SCB&T mortgage, which resulted in First Federal becoming the first lien holder on the three (3) Cedar Woods lots.

Plaintiff FATIC brought suit against Defendant/Third Party Plaintiff Refosco for contractual indemnity based upon her agency contract with Plaintiff FATIC. Defendant/Third Party Plaintiff Refosco denied Plaintiff FATIC's claims, and brought a Third Party Complaint against Third Party Defendants Amerisearches and Schaffner. The Third Party Complaint asserts claims of negligence and indemnity against Third Party Defendants Amerisearches and Schaffner for failing to properly search the title, and missing the properly indexed mortgage. Third Party Defendants Amerisearches and Schaffner denied Defendant/Third Party Plaintiff Refosco's claims, and asserted the defenses of negligence of others, comparative negligence, waiver, lack of reliance and no legal duty. They also asserted that title searching is the practice of law, and that the duty to perform a title search is a non-delegable duty. Finally, Third Party Defendant Schaffner asserts he is not personally liable because Third Party

Defendant Amerisearches is a limited liability company, and he is not personally liable for the entity's negligence.

CONCLUSIONS OF LAW

Standards for Motion for Summary Judgment

Summary Judgment is appropriate when there is no genuine issue as to any material fact viewing the evidence and inferences in the light most favorable to the non-moving party. See, Helena Chemical Co. v. Allianz Underwriters Ins. Co. et. al., 357 S.C. 631, 644, 594 S.E.2d 455,462 (2004); Williamsburg Rural Water & Sewer Co., Inc. v. Williamsburg County Water & Sewer Authority, 357 S.C. 251, 593 S.E.2d 154 (Ct. App. 2003); and Cox & Floyd Grading, Inc. v. Kajima Construction Services, Inc., 356 S.C. 512, 589 S.E.2d 789 (Ct. App. 2003). Once the moving party meets the initial burden of showing an absence of evidentiary support for the opponent's case, the non-moving party must come forward with specific facts showing a genuine issue for trial. See, Williamsburg Water & Sewer Co., Inc., 357 S.C. at 251, 593 S.E.2d 154, 157 (Ct. App. 2003).

The Title Search Alone in This Case Was Not the Practice of Law.

(Second and Tenth Defenses of Third Party Defendants

Shaffner and Amerisearches)

Third Party Defendants Schaffner and Amerisearches argue they cannot be held liable by Defendant/Third Party Plaintiff Refosco because title searches are the practice of law, and since they are not attorneys, they cannot be held liable for a negligent title search. This defense is without merit.

In Buyers Services, 292 S.C. 426, 432, 357 S.E.2d 15, 18 (1987), the South Carolina Supreme Court expressly allowed the use of lay person abstractors in the performance of title searches and preparation of abstracts, if the services are for the benefit of and if supervised by a licensed attorney. In Doe v. McMaster, 355 S.C. 306, 313, 585 S.E.2d 773, 776 (2003) (McMaster I), the South Carolina Supreme Court held that a title search company could conduct title examinations so long as it is under the supervision of a licensed attorney. The Supreme Court noted that a title search and preparation of title documents for the Lender, without direct attorney supervision, constitutes the

unauthorized practice of law.” Subsequently, in Doe v. McMaster, 371 S.C. 14, 636 S.E.2d 866 (2006) (McMaster II), the South Carolina Supreme Court laid out items conducted in a real estate closing which constituted the practice of law. As to title searches, the court provided that A[t]he title search and preparation of title documents for the lender and subsequent preparation of related documents is the practice of law, which must be performed or supervised by an attorney. See, Doe v. McMaster, 371 S.C. 14, 17, 636 S.E.2d 866, 868 (2006) (McMaster II).

In Buyers Services and McMaster I and McMaster II, the Supreme Court’s underlying policy for concluding that title searches were part of the “practice of law” was protection of the public who relied on the services for real estate transactions. The Supreme Court did not consider or address the potential liability of the lay person abstractor to the supervising attorney for the lay person’s negligent acts during the performance of the title search services.

It is clear that the South Carolina Supreme Court has not mandated that a title search must actually be performed by an attorney. Instead, the South Carolina Supreme Court specifically allowed for lay people (non-attorneys) to conduct the actual title search and abstract, so long as a licensed attorney supervises the process.

It is not disputed that Defendant/Third Party Plaintiff Refosco acted as supervising attorney in this matter. Defendant/Third Party Plaintiff Refosco gave Third Party Defendants Amerisearches and Schaffner specific instructions as to what date or occurrence to begin the search by providing the deed, and thus the date from whence Third Party Defendant Amerisearches was to search the title. Defendant/Third Party Plaintiff Refosco also provided the tax map number, the lot and block reference, and other necessary information for the search. Her clear instructions provided the date to begin the search, which preceded the recording of the SCB&T mortgage. It is clear that if performed properly, the title search should have revealed the mortgage missed by Third Party Defendant Schaffner. (Refosco Depo., Page 23, Lines 10-16; Page 50, Lines 14-20). Defendant/Third Party Plaintiff Refosco provided Third Party Defendant Schaffner with the

necessary information which she thought, in her professional opinion, should be covered by the search. (Refosco Depo., Page 42, Lines 12-16).

Third Party Defendant Schaffner acknowledges that he received all necessary information to perform a search on the properties (Schaffner Depo., Page 30, Lines 8-23). He started the search from the date requested by Defendant/Third Party Plaintiff Refosco, which was the date of the deed of the property into RMB. (Schaffner Depo., Page 35, Line 23 to Page 36, Line 7). All Third Party Defendant Schaffner was required to do was review the public records, and provide to Defendant/Third Party Plaintiff Refosco the information sought by her to form her opinions of title.

Third Party Defendant Schaffner also acknowledges missing the SCB&T mortgage because he did not fully search the Horry County ROD computer index. He admits that he saw the index reference for the SCB&T mortgage, but did not click the link despite the obviously incomplete property description. (Schaffner Depo., Page 66, Line 12 to Page 67, Line 16).

There is no issue as to any material fact that the title search in this case was properly supervised by Defendant/Third Party Plaintiff Refosco. Since the South Carolina Supreme Court has continuously held that it is appropriate for an attorney to use independent title abstractors to perform title searches, so long as the attorney properly supervises the process, and there is no material fact as to Defendant/Third Party Plaintiff Refosco's supervision, Third Party Defendants Amerisearches' and Schaffner's defense of unauthorized practice of law is dismissed.

Third Party Defendants Schaffner and Amerisearches also argue that, since title searching is considered the practice of law, they cannot be liable for the negligent title searches because the standard to be applied is that of an attorney. I disagree.

In performing its title searches, Third Party Defendants Amerisearches and Schaffner merely review the public records and report their findings back to the supervising attorney. They offer no opinions as to title, only their finding of the records. Defendant/Third Party Plaintiff Refosco supervises the search by

providing guidance as to the timeframe of the search, the property to be searched, and reviewing the title report provided by the title examination. From the information provided by the search, Defendant/Third Party Plaintiff Refosco then expresses her opinion as to the status of the title.

As indicated above, the mere review of the public records and providing an abstract to a licensed attorney for a fee is allowed by Buyers Services, and its progeny. As such, the service of obtaining information from the public record and providing it to an attorney is not, in this context, the practice of law. Therefore, the appropriate standard to be applied is that of a reasonable person or title searcher under the circumstances, not that of an attorney.

Therefore, Defendant/Third Party Plaintiff Refosco is entitled to Summary Judgment against Third Party Defendants Amerisearches and Schaffner on these defenses.

**Third Party Defendants Amerisearches' and Schaffner's
Negligence and Indemnity**

(Defendant/Third Party Plaintiff Refosco's Claims)

Defendant/Third Party Plaintiff Refosco claims that, if she is liable to Plaintiff FATIC, she is entitled to equitable indemnity from Third Party Defendants Amerisearches and Schaffner, jointly and severally. This claim is based upon her reliance upon the negligently performed title search resulting in Plaintiff FATIC's claims against her.

Courts allow for equitable indemnification when there is a specific relation of the indemnitee to the indemnitor in dealing with a third party. See, Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 389, 611 S.E.2d 235, 237 (2005), quoting James C. Gray, Jr. and Lisa D. Catt, The Law of Indemnity in South Carolina, 401 S.C.L. Rev. 603, 604 (1990). Indemnity creates a "form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. Id., quoting First Gen. Servs. Of Charleston, Inc. v. Miller, 314 S.C. 439, 442, 445 S.E.2d 446, 449 (1994). A relationship between a contractor and subcontractor supports a claim for equitable indemnification. Id.

It is undisputed that Third Party Defendant Amerisearches was acting as a direct independent contractor for Defendant/Third Party Plaintiff Refosco when performing the title search, and was compensated for its services. Third Party Defendant Amerisearches also knew that Defendant/Third Party Plaintiff Refosco would rely on the accuracy of its search in performing a closing on the lots for which the search was requested.

Traditionally, courts have allowed equitable indemnity in cases of imputed fault or where some special relationship exists between the first and second parties. See, Town of Winnsboro v. Wiedeman-Singleton, Inc. (Winnsboro I), 303 S.C. 52, 56, 398 S.E.2d 500, 502 (Ct. App. 1990), *aff'd*, 307 S.C. 128, 414 S.E.2d 118 (1992) (Winnsboro II) (citation omitted); and First General Servs. v. Miller, 314 S.C. 439, 445 S.E.2d 446 (1994). Ordinarily, if one person is compelled to pay damages because of negligence imputed to him as the result of a tort committed by another, he may maintain an action for indemnity against the person whose wrong has thus been imputed to him. See, Atlantic Coast Line R.R. v. Whetstone, 243 S.C. 61, 132 S.E.2d 172 (1963). This is subject to the proviso that no personal negligence of his own has joined in causing the injury. *Id.* In Stuck v. Pioneer Logging Machinery, Inc., 279 S.C. 22, 301 S.E.2d 552 (1983), our Supreme Court explained:

We note that the modern trend concerning the right to indemnity is to look to principles of equity. According to equitable principles, a right of indemnity exists whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join. Stuck v. Pioneer Logging and Machinery, 279 S.C. 22, 24, 301 S.E.2d 552, 553 (1983).

The law of equitable indemnification allows recovery of expenses when the act of the wrongdoer involves the innocent defendant in litigation, or places him in such relation with others as makes it necessary to incur expenses to protect his interest. See, Addy v. Bolton, 257 S.C. 28, 183 S.E.2d 708 (1971). "Expenses" under the Addy rule include any costs which are reasonably necessary to defend litigation or otherwise protect the innocent party's interest.

The Court of Appeals, in Griffin v. Van Norman, 302 S.C. 520, 397 S.E.2d 378 (Ct. App. 1990), determined that settlement costs were recoverable in a cause of action for indemnity.

It is not disputed that Defendant/Third Party Plaintiff Refosco acted as supervising attorney in this matter. Defendant/Third Party Plaintiff Refosco gave Third Party Defendants Amerisearches and Schaffner specific instructions as to what date or occurrence to begin the search by providing the deed, and thus the date from whence Third Party Defendant Amerisearches was to search the title. Third Party Defendant Schaffner acknowledges that he received all necessary information to perform a search on the properties (Schaffner Depo., Page 30, Lines 8-23). He started the search from the date requested by Defendant/Third Party Plaintiff Refosco, which was the date of the deed of the property into RMB. (Schaffner Depo., Page 35, Line 23 to Page 36, Line 7). All Third Party Defendant Schaffner was required to do was review the public records, and provide the information sought by Defendant/Third Party Plaintiff Refosco to form her opinions of title.

It is clear that if performed properly, the title search should have revealed the mortgage missed by Third Party Defendant Schaffner. (Refosco Depo., Page 23, Lines 10-16; Page 50, Lines 14-20). Third Party Defendant Schaffner acknowledges missing the SCB&T mortgage because he did not fully search the Horry County ROD computer index. He admits that he saw the index reference for the SCB&T mortgage, but did not click the link despite the obviously incomplete property description. (Schaffner Depo., Page 66, Line 12 to Page 67, Line 16). Third Party Defendant Schaffner acknowledges his failure to click on each entry of the computer index is at his own understood risk. (Schaffner Depo., Page 72, Lines 10- 24; Page 103, Line 4 to Page 107, Line 1).

It is clear that the parties had a relationship where Third Party Defendant Amerisearches knew that as an independent contracting title abstractor, Defendant/Third Party Plaintiff Refosco was relying on the accuracy of its searches in issuing title opinions. It is likewise clear that Third Party Defendant Schaffner, as the actual searcher, and Third Party Defendant Amerisearches, as

his employer, negligently performed the title search by improperly relying on a partial short property description in the computer index. This is especially true since Third Party Defendant Schaffner knew, and took the risk of not clicking on unclear descriptions, to ensure that the property he was searching was not encumbered by the properly indexed mortgage.

I, therefore, find and conclude, based upon the relationship of the parties and the negligence in performing the search, that Third Party Defendants Amerisearches and Schaffner are liable to Defendant/Third Party Plaintiff Refosco, and shall indemnify her for any liability she has to Plaintiff FATIC, and the costs of defense of the claims by Plaintiff FATIC

**Imputed Knowledge, Assumption of the Risk, Lack of Reliance
(Second, Sixth, Eighth, Ninth and Tenth Defenses of Third Party
Defendants Shaffner and Amerisearches)**

Third Party Defendants Amerisearches and Schaffner assert that Defendant/Third Party Plaintiff Refosco was negligent or otherwise barred from her claims because knowledge of the June 2007 SCB&T transaction is automatically imputed to her when handling the subsequent transaction. They also assert that this previous knowledge bars her from reliance on the title search.

South Carolina Courts have held that the fact that an attorney was previously involved in a transaction does not automatically impute knowledge to the attorney or the attorney's client in a subsequent transaction. See, First Palmetto Savings Bank v. Patel, 344 S.C. 179, 543 S.E.2d 241 (Ct. App. 2001); and Pee Dee State Bank v. Prosser, 295 S.C. 229, 367 S.E.2d 708 (Ct. App. 1988) (overruled on other grounds).

In First Palmetto Savings Bank v. Patel, 344 S.C. 179, 543 S.E.2d 241 (Ct. App. 2001), an attorney was involved in several commercial loan transactions involving the same parcel of property over several years while representing different parties. The attorney testified that during his work on the transaction questioned in the case, he did not have specific recollection of the particulars of the prior transactions. The Court of Appeals examining the issue of

whether knowledge obtained by the attorney in the earlier transaction was imputed to a subsequent client, stated that a principal [client] is charged with the knowledge an agent [attorney] acquired prior to the formation of the agency only when it is clearly shown that the knowledge was in the mind of the agent while acting for the principal or where he acquired it so recently as to raise the presumption he still retained it in his mind. Id. at 184, 244-45. If the agent does not have actual knowledge of a past act or event, then it cannot be imputed to the principal by whom he is employed. The court thus concluded that the prior knowledge was not imputable.

In Pee Dee State Bank v. Prosser, 295 S.C. 229, 367 S.E.2d 708 (Ct. App. 1988) (overruled on other grounds), the Court of Appeals declined to find actual notice where there was no testimony as to the attorney's state of mind, and since the prior transaction had occurred approximately one year earlier.

Defendant/Third Party Plaintiff Refosco's deposition testimony indicates she conducted over four thousand (4,000) real estate transactions at the time of her deposition, and over three hundred (300) transactions for RMB and its affiliated companies. (Refosco Depo., Page 7, Line 5; Page 16, Line 8 to Line 19). Defendant/Third Party Plaintiff Refosco indicates she had no recollection that the Cedar Woods lots served as additional collateral for the SCB&T loan when she closed First Federal's loans, in part because the purpose of the SCB&T transaction was the take down of forty-six (46) lots in the Red Bluff Subdivision. (Refosco Depo., Page 22, Line 14 to Page 23, Line 2).

Defendant/Third Party Plaintiff Refosco attempted to confirm whether any liens existed on the Cedar Woods lots by asking her client if they were aware of any encumbrances on the lots at the time of the First Federal closing. Her client indicated there was none. (Refosco Depo., Page 18, Lines 18-21; Page 50, Lines 15-17). Defendant/Third Party Plaintiff Refosco relied solely on the title search pulled under her supervision by Third Party Defendant Schaffner. (Refosco Depo., Page 24, Lines 2-4). As Defendant/Third Party Plaintiff Refosco indicates, the purpose of the title search is so she does not have to rely on her memory. (Refosco Depo., Page 23, Lines 3-24). There is no evidence that

Defendant/Third Party Plaintiff Refosco had any recollection of the SCB&T mortgage encumbering the Cedar Woods lots when she closed the First Federal construction loans.

Additionally, in Defendant/Third Party Plaintiff Refosco's office, the loan documents for the SCB&T mortgage were filed under Red Bluff Development, as it was the purpose of the SCB&T transaction. (Refosco Depo., Page 41, Line 21 to Page 42, Line 2; Page 48, Lines 15-21). Defendant/Third Party Plaintiff Refosco specifically requested the information she knew she needed to accurately review the title of the property. (Refosco Depo. Page 42, Lines 11-16). Since there is no evidence that Defendant/Third Party Plaintiff Refosco had actual knowledge of the mortgage at the time of the First Federal transaction, there is no basis to impute knowledge of the previous transaction to her as a basis for denial of her claim. Since there is no basis to impute knowledge, there is no basis for contributory/comparative negligence or assumption of the risk. Likewise, there is no dispute that Defendant/Third Party Plaintiff Refosco actually relied upon the title search provided, and her previous knowledge does not bar her from reliance.

Therefore, as a matter of law, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment on Third Party Defendant Amerisearches' and Third Party Defendant Schaffner's defenses relying on imputed knowledge of Defendant/Third Party Plaintiff Refosco.

Non- Delegable Duty

(Second and Tenth Defenses of Third Party Defendants

Schaffner and Amerisearches)

Third Party Defendants Schaffner and Amerisearches assert that they are not liable to Defendant/Third Party Plaintiff Refosco for their negligence or in indemnity because of the theory of non-delegable duty. Third Party Defendants Schaffner and Amerisearches misunderstand the theory of non-delegable duty.

As discussed above, the duty or performance of the title search can be delegated to a non-attorney abstractor, so long as properly supervised by the attorney. AA person who delegates to an independent contractor an absolute

duty owed to another person remains liable for the negligence of the independent contractor just as if the independent contractor were an employee. See, Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005). A person may delegate the *duty* to an independent contractor, but if the independent contractor breaches that duty by acting negligently or improperly, the delegating person remains *liable* for that breach. It actually is the liability, not the duty, that is non-delegable. See, Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005) (emphasis in original).

The real effect of finding a duty to be non-delegable is to render not the duty but the liability non-delegable; the person subject to a non-delegable duty is certainly free to delegate the duty, but will be liable to the third parties for any negligence of the delegatee, regardless of fault of the delegator. See, Nedrow v. Pruitt, 336 S.C. 668, 676, 521 S.E.2d 755, 759 (Ct. App. 1999)

Applied to this case, the theory of non-delegable duty indicates that Defendant/Third Party Plaintiff Refosco cannot, by virtue of delegation of the title search to Third Party Defendant Amerisearches, escape liability for Third Party Defendant Schaffner's and Third Party Defendant Amerisearches' negligence as to Plaintiff FATIC or First Federal. It does not, however, work to relieve Third Party Defendants Amerisearches and Schaffner of their liability to Defendant/Third Party Plaintiff Refosco.

Courts allow for equitable indemnification when there is a specific relation of the indemnitee to the indemnitor in dealing with a third party. See, Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 389, 611 S.E.2d 235, 237 (2005), quoting James C. Gray, Jr. and Lisa D. Catt, The Law of Indemnity in South Carolina, 401 S.C.L. Rev. 603, 604 (1990). Indemnity creates a "form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. Id., quoting First Gen. Servs. Of Charleston, Inc. v. Miller, 314 S.C. 439, 442, 445 S.E.2d 446, 449 (1994). A relationship between a contractor and subcontractor supports a claim for equitable indemnification. Id. Additionally, when an employee or agent is

acting within the scope of employment, he can still be personally liable for his actions. In Long v. Norris, 342 S.C. 561, 538 S.E.2d 5 (Ct. App. 2000), Norris, who acted under the scope of his employment in towing Long's vehicle, remained in the lawsuit because an agent's liability for resulting damages is unaffected by the fact he was acting in a representative capacity. Id. at 576, 13.

It is undisputed in this case that it was the duty of the attorney to supervise loan closings and the title abstract. (Refosco Depo., Page 24, Line 24). However, the duty on the part of the attorney does not relieve the title searcher from liability for failing to properly search the request made by the attorney. Defendant/Third Party Plaintiff Refosco contracted with Third Party Defendant Amerisearches to conduct title search in this matter, and Third Party Defendant Schaffner actually performed the search. (Refosco Depo., Page 23, Lines 10-16; Page 50, Lines 14-20). She provided clear guidelines under which Third Party Defendant Schaffner was to conduct his search. He was to review the information contained in the Horry County ROD, and provide that information to Defendant/Third Party Plaintiff Refosco for her professional review. (Refosco Depo., Page 24, Lines 9-15).

Since there is no question as to a material fact, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment on the Third Party Defendant Amerisearches' and Third Party Defendant Schaffner's defenses of non-delegable duty because this theory does not insulate them from liability for their own negligence.

Mis-Indexing

(Seventh and Thirteenth Defenses of Third Party Defendants Schaffner and Amerisearches)

Third Party Defendants Amerisearches and Schaffner, assert that the missed mortgage was mis-indexed by the Clerk of Court, and because of this alleged mis-indexing they are excused from liability. Third Party Defendant Schaffner argues that the ROD incomplete description of "sev lots Red Bluff Village..." constitutes mis-indexing.

The deposition testimony of Third Party Defendant Schaffner indicates that when he performed the search for the First Federal closing, he located the SCB&T mortgage in the ROD computerized records. However, despite the incomplete description of the property subject to the listed mortgage, Third Party Defendant Schaffner failed to click on the link to review the full document. (Schaffner Depo., Page 62, Line 16 to Page 63, Line 21; Page 66, Line 1 to Page 68, Line 11; Page 72, Lines 10-14). He admits that had he clicked on the link, the SCB&T mortgage would have appeared, and he would have seen that it encumbered the Cedar Woods lots. The reason given for not clicking the link is because clicking of all of the links for RMB would have been too time consuming, and the Third Party Defendant Schaffner choosing to rely on the screen was at his own risk. (Schaffner Depo., Page 72, Lines 10-24; Page 105, Line 11 to Page 107, Line 1).

S.C. Code §§ 30-7-10, 30-9-10, 30-9-20, 30-9-40, and 30-9-75 govern the indexing of documents filed in the Office of the ROD in this state. The statutes only require that mortgages be indexed by name. They do not require descriptions of the effected property to be provided. Additionally, South Carolina cases addressing proper indexing of mortgages provide that proper alphabetical indexing of a recorded mortgage by last name is all that is required. See, Liberty Loan Corporation v. Mumford, 283 S.C.134, 322 S.E.2d 17 (Ct. App. 1984). Therefore, the incompleteness of the description, if any, is not "mis-indexing" under South Carolina law, and is not a shield from liability. In fact, the appropriate inference from the partial description in this case, is that Third Party Defendant Schaffner should have looked at the mortgage because of the incomplete description.

Since there is no question of material fact, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment against Third Party Defendants Amerisearches and Schaffner on these defenses.

Duty of Third Party Defendants Schaffner and Amerisearches
(Fourth Defense of Third Party Defendants Schaffner and Amerisearches)

Third Party Defendants Schaffner and Amerisearches allege they do not owe a duty to Defendant/Third Party Plaintiff Refosco. The factual basis asserted for this defense actually discloses that they do not make a plea for no duty, but instead assert the same claims related to the practice of law and imputed knowledge defenses.

Whether the law recognizes a particular duty is an issue of law to be determined by the court. See, Ellis v. Niles, 324 S.C. 223, 479 S.E.2d 47 (1996). "There is no formula for determining duty... a duty is the sum total of those considerations of policy which lead the law to say that a particular plaintiff is entitled to protection." See, Araujo v. Southern Bell, 291, S.C. 54, 57, 351 S.E.2d 908 (Ct. App. 1986). It is undisputed that Third Party Defendants Amerisearches and Schaffner undertook to perform a title search for Defendant/Third Party Plaintiff Refosco, for a fee, as an independent contractor. As a result of this arrangement, Third Party Defendants Amerisearches and Schaffner had a duty to perform the search in a reasonable manner under the circumstances.

Since there is no question of material fact, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment as a matter of law in the defense of no duty.

Third Party Defendant Schaffner's Individual Liability
(Second Defense of Third Party Defendants Amerisearches and Schaffner)

Third Party Defendant Schaffner argues he is not personally liable for his own negligence. Where an agent or employee has committed a tort against a third person, the agent's liability for the resulting damages is unaffected by the fact he was acting in representative capacity. See, Long v. Norris and Associates, Ltd, 342 S.C 561, 538 S.E.2d 5 (Ct. App. 2000). Vicarious liability does not eliminate the primary liability of the tortfeasor. See, Gilbert v. Mid-South Mach. Co., 267 S.C. 211, 227 S.E.2d 189 (1976).

It is undisputed that Third Party Defendant Schaffner actually performed the defective title search. He is, therefore, liable for his own negligence. Therefore, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment against Third Party Defendants Amerisearches and Schaffner on this defense.

**No Proof of Comparative Negligence or Assumption of the Risk by
Defendant/Third Party Plaintiff Refosco
(Sixth, Seventh and Eighth Defenses of Third Party Defendants
Amerisearches and Schaffner)**

Third Party Defendants Schaffner and Amerisearches assert that Defendant/Third Party Plaintiff Refosco was negligent. Proof of violation of an attorney's standard of care must be by expert testimony. See, Harris Teeter, Inc. v. Moore and Van Allen, PLLC, 390 S.C. 275, 701 S.E.2d 742 (2010). In this case, Third Party Defendants Amerisearches and Schaffner have failed to provide any expert testimony establishing the standard of care or breach of this standard by Defendant/Third Party Plaintiff Refosco. Third Party Defendants Amerisearches and Schaffner have also failed to prove any instance or act of negligence by Defendant/Third Party Plaintiff Refosco.

Additionally, the doctrine of assumption of the risk as a complete bar to recovery was effectively abolished in 1998. See, Davenport v. Cotton Hope Plantation HPR, 333 S.C. 71, 508 S.E.2d 565 (1998); Berberich v. Jack, 392 S.C. 278, 709 S.E.2d 607 (2011). The defense has essentially become a part of the defense of comparative negligence.

Since Third Party Defendants Amerisearches and Schaffner have failed to prove the applicable standard of care or deviation from same, their defenses of comparative negligence and assumption of the risk must be dismissed as a matter of law. Therefore, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment against Third Party Defendants Amerisearches and Schaffner on these defenses.

No Proof of Waiver or Release
(Third and Ninth Defenses of Third Party Defendants
Schaffner and Amerisearches)

Third Party Defendants Amerisearches and Schaffner assert that Defendant/Third Party Plaintiff Refosco has waived her claims, released her claims, assumed the risk or failed to rely on the title search.

Waiver is the voluntary relinquishment of a known right. See, Janasik v. Fairway Oaks Villas HPR, 307 S.C. 339, 415 S.E.2d 384 (1992). There is no evidence that Defendant/Third Party Plaintiff Refosco has waived or released her rights against Third Party Defendants Amerisearches and/or Schaffner. Therefore, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment against Third Party Defendants Amerisearches and Schaffner on these defenses.

ORDER

Based upon the above Findings of Fact and Conclusions of Law:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant/Third Party Plaintiff Refosco, is entitled to judgment against the Third Party Defendants Amerisearches and Schaffner, jointly and severally, for indemnity for any liability Defendant/Third Party Plaintiff Refosco owes to the Plaintiff FATIC, as it relates to the underlying claims for lots 9, 12 and 40 in Cedar Woods, including the reasonable cost of defense of the claims against Defendant/Third Party Plaintiff Refosco by the Plaintiff FATIC.

IT IS FUTHER ORDERED, ADJUDGED AND DECREED that all of the defenses of the Third Party Defendants Amerisearches and Schaffner are dismissed with prejudice, and the Motion for Summary Judgment and Motion to Dismiss of the Third Party Defendants Amerisearches and Schaffner, are denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the claims by Plaintiff FATIC against Defendant/Third Party Plaintiff Refosco are not resolved by this Order.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
FIRST AMERICAN TITLE INSURANCE)
COMPANY,)
)
Plaintiff,)
)
v.)
)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
)
Defendant.)
)
and)
)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
)
Third Party Plaintiff,)
)
v.)
)
AMERISEARCHES, LLC and WADE)
SCHAFFNER,)
)
Third Party Defendants.)
)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-26-12046

CERTIFICATE OF MAILING

I, Lynn Howard, an employee of the Law Firm of Rice, MacDonald & Hicks, P.A., counsel for the Defendant/Third Party Plaintiff, Michele Paddy Refosco, Attorney at Law, in the above entitled action, certify that I have this day mailed a clocked copy of the **Order Granting the Defendant/Third Party Plaintiff's, Michele Paddy Refosco, Motion for Summary Judgment and Denying the Third Party Defendants', Amerisearches, LLC and Wade Schaffner, Motion to Dismiss and Motion for Summary Judgment (Not Ending Action)** to counsel for the Plaintiff and the Third Party Defendants at their addresses of record, with sufficient postage attached thereto

as follows:

W. Cliff Moore, III, Esquire
Ellis Lawhorne & Sims
P.O. Box 2285
Columbia, SC 29402

J. Dwight Hudson, Esquire
Hudson Law Offices
1203 48th Avenue North
Myrtle Beach, SC 29577

Lynn Howard

Myrtle Beach, South Carolina

April ____, 2012

REC'D
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SEC COURT OF APPEALS